

AMENDMENT NO. 1
TO CONTRACT NO. MS222-09R
BETWEEN
SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY
AND
MASS ELECTRIC CONSTRUCTION COMPANY
FOR
COMMUNICATIONS AND SIGNALS MAINTENANCE SERVICES

This Contract Amendment, effective September 1, 2014, is entered into by and between the SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY (hereinafter "Authority") and Mass Electric Construction Company (hereinafter "Contractor").

RECITALS

WHEREAS:

- I. Authority and Contractor entered into an agreement for communications and signal maintenance services on December 29, 2009.
- II. The Authority hereby amends the contract under Amendment No. 1 to revise Article 5, Annual Budget to revise due dates for services plans and annual budgets.

NOW, THEREFORE, Authority and Contractor hereby amend the Contract as follows:

- I. Article 5, Annual Budget, shall be deleted in its entirety and replaced with the following:

5. ANNUAL BUDGET

5.1. PREPARATION OF PROPOSED SERVICE PLAN

During the term of this Agreement and prior to October 1 of each year, Authority shall prepare and submit to Contractor a Service Plan(s) covering the next Fiscal Year(s). This Service Plan shall include a detailed description of the Services Authority expects Contractor to provide during the next Fiscal Year(s). These Services will form the basis for the Approved Budget(s) and the Service Plan(s).

5.2. PREPARATION OF PROPOSED BUDGET

5.2.1. During the term of this Agreement and no later than October 20 of each year, or twenty (20) days after delivery of the Service Plan by Authority, Contractor shall prepare and submit to Authority a proposed budget, in a format to be determined by Authority, for provision of Services described in the Service Plan(s) for the next Fiscal Year(s). The proposed budget shall reflect actual operations and levels of Services being provided during the then-current Fiscal Year, except as modified for the coming Fiscal Year(s). The proposed budget shall:

- a. Be consistent with the Service Plan(s) and requirements set forth at Appendix S
- b. Be based upon the FBLC rates proposed for years one through six, and appropriately inflated rates for subsequent years seven through ten
- c. Be based upon mutually agreed-upon quantities of material purchases and subcontracted services
- d. List all positions whose time will be chargeable during the coming Fiscal Year(s)
- e. Include a mutually developed list of expenditures relating to rental of Contractor-owned vehicles and equipment projected for the Fiscal Year(s)
- f. Specify the assumptions used in developing the proposed budget(s)
- g. Include Contractor's safety plan and associated costs
- h. Include the annual training plan and associated costs
- i. Include the annual plan for maintenance and support of both Authority and Contractor-owned equipment and vehicles
- j. Include a billing schedule for the applicable Fiscal Year(s)

5.2.2. The proposed budget(s) shall include the costs Contractor may incur in performing Ordinary Maintenance and Special Supplementary Maintenance. Contractor shall maintain the resources and capacity to perform Special Supplementary Maintenance, which is estimated at seven percent (7%) of the Ordinary Maintenance budget. Authority shall develop and include estimates for Special Supplementary Maintenance in the Approved Budget(s). Expenditures for Special Supplementary Maintenance shall be authorized through the CTO process.

5.3 AUTHORITY REVIEW OF PROPOSED BUDGET

No later than November 20 or thirty (30) calendar days after Contractor submits its budget(s) for each year(s), whichever is later, Authority shall present to Contractor its comments on the proposed budget(s), the Service Plan(s), and all other proposals Contractor has provided, which will specify the item(s), if any, to

which Authority objects, and the basis for each objection. Authority and Contractor shall promptly enter into negotiations to resolve any objectionable items. The parties will complete the negotiations and resolve any outstanding issues by no later than April 1 of each year.

5.4 APPROVED BUDGET

The final Approved Budget(s) shall include (1) an agreed-upon Ordinary Maintenance budget(s); (2) amounts for (a) Direct Costs for materials and subcontracted services, (b) rental of Contractor owned equipment and vehicles, (c) Contractor's annual safety and training programs; and (3) contract authority for (w) Special Supplementary Work, (x) Extraordinary Work, (y) Recollectable Work and (z) support for R&R and New Capital.

5.5. ADJUSTMENT OF FBLC AND EQUIPMENT RATES

For the years 2012 through 2015 and for the option years beyond the initial 6-year Agreement period, the FBLC rates incorporated into this Agreement as set forth on Appendix S, shall be adjusted annually effective at the beginning of the Fiscal Year based on assumed percentages of 3.5% for exempt employees and 3% for covered employees, subject to re-evaluation of actual escalation percentages based on Contractor's annual published guidelines for exempt employees and actual percentages contained in the IBEW Collective Bargaining Agreement for covered employees. Equipment rates shall be adjusted annually effective at the beginning of the Fiscal Year based on the relationship of the then most recent Customer Price Index (CPI) for the Los Angeles, Anaheim and Riverside areas issued each January 1st. This index will be compared to the CPI index published on January 1st of the prior year. This comparison will indicate the changes in material prices, wage rates and supplements combined, excluding fuel to be used in adjusting the equipment rates. If the change in the CPI Index from one year to another is negative or zero then no annual adjustment shall occur. Adjustments will be made to the Direct Labor rate portion of the FBLC rates only.

5.6. BUDGET PLAN FOR FIRST YEAR OF AGREEMENT

For the portion of the Fiscal Year remaining after the Effective Date of this Agreement, Contractor's budget plan will be based on one twelfth of Contractor's first year rates as proposed, times the remaining months in that Fiscal Year as amended prior to start of Services. Beginning with Fiscal Year 2010/11, Contractor and Authority shall establish the budget amount for the next full Fiscal Year(s) using the procedure described in Sections 5.1. through 5.5, above.

5.7. BUDGET AMENDMENT FOR UNFORESEEN EVENTS

Upon the occurrence of events that were not reasonably foreseeable at the time of approval of the Approved Budget(s), and which will cause a material change in the assumptions used in developing the Approved Budget(s), the parties shall

agree upon amendments to the Approved Budget(s) for that Fiscal Year(s) to reflect those changes.

5.8. BUDGET REVISIONS FOR COST OVERRUNS

If Service costs are projected to exceed the Approved Budget in effect at the time Contractor performs such Services, such overruns must be justified and addressed appropriately prior to incurring any costs in excess of the Approved Budget. Contractor's failure to obtain Authority's approval of any costs in excess of the Approved Budget may result in Authority's rejection of such costs.

III. As hereby amended, the Contract remains in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Contract Amendment to be executed as of the day first above written.

SOUTHERN CALIFORNIA
REGIONAL RAIL AUTHORITY

MASS ELECTRIC CONSTRUCTION
COMPANY

By:



Michael P. DePallo
Chief Executive Officer

By: _____

APPROVED AS TO FORM:

DON DEL RIO



General Counsel