

AGREEMENT NO. 361

HARBOR DEPARTMENT
AGREEMENT 1362
CITY OF LOS ANGELES

AGREEMENT BETWEEN THE HARBOR DEPARTMENT
OF THE CITY OF LOS ANGELES
AND THE DEPARTMENT OF WATER AND POWER
OF THE CITY OF LOS ANGELES

THIS AGREEMENT between the HARBOR DEPARTMENT OF THE CITY OF LOS ANGELES (hereinafter referred to as "Harbor"), acting by and through the Board of Harbor Commissioners of the City of Los Angeles and THE DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES (hereinafter referred to as "Water and Power"), acting by and through the Board of Water and Power Commissioners of the City of Los Angeles, entered into on the 6th day of November, 1985, is for the purpose of setting terms and conditions for Water and Power to construct, operate and maintain a system of water pipelines, fire hydrants, service laterals, meters and related facilities upon certain lands located in Los Angeles Harbor and under the control or jurisdiction of the Board of Harbor Commissioners. This Agreement is made with reference to the following facts:

RECITALS

One of the functions of Harbor is to manage, operate, and control all the lands and waters in the Harbor District, as defined in the Los Angeles City Charter; and

One of the functions of Water and Power is to construct, operate, maintain, extend, manage, and control works and property for the purpose of supplying the City and its inhabitants with water, as defined in the Los Angeles City Charter; and

It is necessary that the water system be extended, enlarged, maintained, managed and operated as required to meet the demands for water supply within the area under jurisdiction of the Board of Harbor Commissioners of the City of Los Angeles; and

Water and Power and Harbor heretofore agreed in Board of Harbor Commissioners' Order No. 1903, adopted August 15, 1944, to an assignment of a system of certain water pipes and fire hydrants to Water and Power, and Water and Power was therein granted a permit to construct, alter, operate and maintain said system under and through land in the Harbor District, subject to conditions set forth in said Board Order; and

The parties hereto desire to redefine the rights and responsibilities of each with respect to the water system in the Harbor District in relation to the present and future needs of the parties.

NOW, THEREFORE, it is agreed by the parties hereto as follows:

Section 1:

Water and Power agrees to construct, alter, maintain, repair, operate and use, under the terms and conditions hereinafter set forth, a system of existing and future pipelines, conduits, structures, extensions, service laterals, meters and fire hydrants together with the necessary appurtenances connected therewith, under, along and across Harbor property presently under the control, supervision and management of the Board of Harbor Commissioners situated within the Harbor District of the City of Los Angeles (hereinafter referred to as "The System"). Future Harbor property as described above shall also be covered by this Agreement. The System shall not include any of the aforementioned component parts on the customer's (use) side (as opposed to the supply side) of any water meter. The System may be enlarged, altered, or modified from time to time in a manner herein provided to meet the needs of the parties. The actual location and description of the components of The System shall be set forth in drawings reflecting the current as-built conditions prepared jointly under the direction of and executed by the Assistant General Manager - Water for Water and Power and Executive Director of Harbor. Said drawings shall be referenced hereto by an index attached hereto as Exhibit "A" and said drawings shall be maintained and updated periodically by Water and Power. Prints of the updated drawings will be provided to Harbor. Harbor will provide Water and Power with drawings depicting Harbor lands and streets. The System, as installed and modified from time to time, as depicted on the several maps indexed in Exhibit "A", shall be owned and maintained by Water and Power and shall be an integral portion of the domestic

supply and fire-fighting system of the City of Los Angeles. As such, the parties note that presently all charges levied by Water and Power for maintenance of public fire hydrants are pursuant to rate ordinances adopted by the Council in accordance with the Charter of the City of Los Angeles. Presently, charges are paid by the City of Los Angeles out of funds appropriated for the maintenance of fire-fighting systems of said City and are not a charge on Harbor.

Section 2:

The agreement contained in Section 1 is subject to and will be exercised by Water and Power pursuant to each and every one of the following express terms and conditions:

- (a) Before the installation or alteration of any portion of The System is begun, Water and Power shall file with the Chief Harbor Engineer, drawings showing the pipelines, conduits, structures, extensions, service laterals, meters, fire hydrants or appurtenances proposed to be altered or installed. All such facilities shall be installed in accordance with normal Water and Power practices and the requirements of the Chief Harbor Engineer. The construction plans and right-of-way for any new pipelines, conduits, structures, extensions, service laterals, meters, fire hydrants or appurtenances shall be approved by the Chief Harbor Engineer of Harbor before installation is begun.

- (b) Before any construction, alteration, or repair work is done to any existing or future water facilities, Water and Power shall secure from the Chief Harbor Engineer and pay for such excavation permits and other permits, as may be necessary, provided that emergency maintenance or emergency repair work required to be done need not be delayed pending the securing of such excavation or other necessary permits.
- (c) The work of installing, constructing, altering, or repairing any portion of The System shall be done with as little hindrance as practicable to the ordinary use of Harbor property. Any special construction of new portions of The System necessary to protect existing adjacent buildings, railroad tracks, pavements, poles, or other improvements shall be provided by Water and Power, and such special construction or excavations shall be in a manner satisfactory to the Chief Harbor Engineer. Existing buildings, pavements, sidewalks or other improvements necessary to be removed in order to install, alter or repair any portion of The System may be removed only with the consent of the owner thereof and the Harbor, and shall be replaced in the same location, or other location satisfactory to such owner and the Harbor, by Water and Power. As soon as the installation, repair, or alteration of The System is completed, all portions of the premises excavated or otherwise disturbed thereby shall be restored to pre-excavation conditions satisfactory to the Chief Harbor Engineer. Water and Power shall cause any trench

excavation or construction activity by it to be in compliance with all applicable safety and health regulations.

SECTION 2
(d) Water and Power is hereby granted 15 foot wide nonexclusive right-of-ways for all existing and future water facilities.

Except where mutually agreed variances are allowed, the centerline of the right-of-ways will be concentric with the centerline of the installed pipelines. The right-of-way provisions in this paragraph supersede requirements and conditions contained in previously issued right-of-way documents with exceptions as indicated in Section 5. ~~Water~~ and Power and persons under contract to it shall also have the right at any time, subject to the reservations contained in Paragraph (e) herein to construct, operate and maintain pipelines for water service and other related facilities (including underwater pipelines) in, over, and along the subject right-of-ways, and to temporarily enter upon, pass, repass, deposit tools, equipment and materials thereon.

(e) Harbor reserves the right to use, on behalf of the City, and to grant others the right to use, all or any portion of the surface or subsurface area of the right-of-ways granted in Paragraph (d) for any and all lawful purposes, but agrees to not make it impossible or unduly difficult for Water and Power to use such right-of-ways or gain access to its pipelines and other water facilities. Harbor shall notify Water and Power prior to permitting others to use or do work

or prior to using or doing work within all right-of-ways containing water facilities. Harbor shall not construct or permit the construction of permanent buildings or permanent cargo handling structures, except wharves, within the right-of-ways granted under the terms of this Agreement without prior mutual agreement.

(f) Water and Power shall endeavor to maintain water facilities capable of providing an operating pressure of not less than 40 psi in the water mains during all normal water use periods excluding periods of fire demand. Water and Power shall endeavor, except as modified in this Agreement, to operate and maintain The System to meet presently established levels of service within the lands under control of the Board of Harbor Commissioners in the Harbor District in a manner similar to that utilized for the City at-large.

(g) Water and Power shall, at its expense, maintain The System to supply a minimum available fire flow of 6000 gallons per minute at twenty pounds per square inch residual pressure in the water main under normal operating conditions in pipelines 20 inches or greater in size.

6000 GPM @ 20 PSI
(PIPE 20" OR GREATER)

(h) Harbor may request extensions or changes to The System in regard to the size, location, elevation, pressure at the meter, or structural reinforcement for protection of the water facilities. Water and Power reserves the right to determine whether to extend fire hydrant laterals, require

main extensions to accommodate fire hydrant installations and relocations, or to require a fire service. Where such extensions or changes are requested by Harbor, Harbor shall give at least thirty days written notice to Water and Power and the extensions or changes agreed to shall be completed in such time after said thirty days as shall be mutually agreeable.

Section 3:

- (a) Main extensions, meters, hydrants and service on Harbor property which are required or requested as a result of developments within Harbor lands shall be fully paid for by Harbor or its tenants. Main extensions that in the judgement of Water and Power are needed to serve property in addition to Harbor property, will be financed in an equitable manner considering benefits to all parties. Water and Power owned main extensions, hydrants, meters and services will only be provided within streets which are open to the general public unless other locations are mutually agreed to.
- (b) The cost of any relocation, enlargement, replacement, removal and/or abandonment requested by Harbor, shall be allocated between Harbor and Water and Power in the following manner:
- (1) The cost of the relocation, replacement, removal and/or abandonment shall be borne by Water and Power where the

portion or portions of The System have been in place for 75 years or more.

The cost of replacement, removal, and/or abandonment of The System due to obsolescence, physical deterioration, corrosion or ordinary wear and tear shall be borne by Water and Power.

(2) Harbor will pay the total cost for relocating, raising, lowering, reinforcing, removing and/or abandoning water system facilities made necessary by conflicting improvements or changes in use of Harbor land except for those facilities whose disposition is defined in Section 5. The scope of work shall be based on sound engineering investigation and calculations and determination by Water and Power. It is agreed that whenever possible, considering limitations imposed by strength of pipe, ground conditions, other engineering considerations, and maintenance and operating considerations, existing mains in areas to be improved will be either reinforced or protected in-place.

When Harbor improvements require fill to be placed over an existing water line resulting in a cover in excess of 4-feet from finished pavement surface to top of pipe, Harbor will pay for the additional cost of maintenance and operation that result from the increase of cover.

- (3) When a portion of The System is required to be enlarged, Harbor shall pay for the cost of the enlargement plus its portion of the cost of an in-kind replacement. Water and Power will pay 1/75th of the total current costs (as defined in (5) below) of an in-kind replacement multiplied by the number of years that the part of The System required to be enlarged has been completed in-place. Harbor shall pay the remainder of the in-kind replacement cost. Any removal or abandonment costs associated with the above enlargement, shall be shared in like manner.
- (4) When a portion of The System is required to be removed or abandoned, the Chief Harbor Engineer may approve the abandonment in-place provided the facilities are capped and filled as directed by the Chief Harbor Engineer and the fees established by the Board of Harbor Commissioners are paid by the responsible party.
- (5) Costs shall include actual direct costs and indirect costs. Direct costs shall include, but not be limited to, direct labor, materials, permit fees, resurfacing and equipment costs used specifically for work performed by both parties under this Agreement. Indirect costs shall include, but not be limited to, administrative and general expenses, retirement and death benefits, health care costs, supervision and engineering and tool expenses. Indirect costs shall be charged at the in-house percentage rate calculated by Water and Power and Harbor Accounting Divisions.

- (6) Harbor will not be charged for unused life of any facilities abandoned by Water and Power as a result of Harbor paid relocation, enlargement, or replacement of such facilities.

Section 4:

Under the terms and conditions of this Agreement, existing and future mains, services, meters, laterals, and hydrants may be located:

(a) in streets with curbs and drainage meeting current City Engineer standards which are accessible to the general public; (b) in Harbor streets not improved with curbs and drainage meeting current City Engineer standards which are accessible to the general public; (c) in terminal areas where the public is generally excluded; and (d) within the limits of channel crossings and other areas as described and dealt with in Section 5. Because of the operational constraints and the increased potential for damage to its water facilities associated with locations (b) and (c) above, Water and Power is unwilling to install its facilities in these locations unless Harbor provides relief from financial liability for damage and excessive maintenance expense. Harbor agrees to and will provide this relief as stated below:

- (a) When water facilities are located in streets that are improved with curbs and drainage meeting current City Engineer standards which are accessible to the general

public, Water and Power will operate and maintain its water facilities at its expense to the same extent it would if said facilities were located in a dedicated public street and Harbor will provide no financial liability relief to Water and Power for unusual operating environment.

(b) When water facilities are located in Harbor streets that are not improved with curbs and drainage meeting current City Engineer standards which are accessible to the general public, Harbor relieves Water and Power from liability for damage to property, equipment, and facilities of Harbor or its tenants resulting from flooding or water flow resulting from a main or service break. Harbor, pursuant to this Agreement, will not provide financial relief for claims resulting from the undermining of the pavement or cavities in the street surface caused by a main or service break.

(c) When water facilities are located in existing or future terminal areas where the public is generally excluded:

(1) Harbor relieves Water and Power from financial liability for damage to property, equipment, or facilities of Harbor or its tenants resulting from main or service breaks. Harbor also relieves Water and Power from claims for damages resulting from a loss of water supply to the customers where the main or service break occurred. Harbor also agrees to pay for valves to be used in such areas to isolate the area in the

event of a break in The System and will obtain Fire Department approval for access conditions to existing fire hydrants and pay for relocation of same required by the Fire Department. Access to water meters for meter reading and maintenance purposes will be provided upon request and is subject to Water and Power approval of meter maintenance and reading conditions. Normal water facility repair costs, including temporary resurfacing, would be at the expense of Water and Power. Harbor will participate in repair costs, if determined by Water and Power, based on sound engineering investigation that the break or repair was caused by or contributed to by terminal operation.

- (2) In the event that a claim for damages resulting from a loss of water supply from a customer outside the area where a break occurred is sustained or upheld, Harbor agrees to pay such claims to the extent of Harbor's liability.

SECTION 4th
(c)

- (3) Harbor shall provide access for repair crews within six hours of reasonable notice by Water and Power to Harbor of the time that access is required to repair a break and that crews will be available to repair the break after access is provided. Water and Power is hereby authorized to take appropriate actions to temporarily obtain access in an emergency if Harbor

fails to provide access. The General Manager of Water and Power will give the Executive Director of Harbor two weeks notice to permanently remedy the accessibility condition in the event that this access is not provided by Harbor or when it is perceived that this access provision cannot be provided. In the event this notice fails to remedy the accessibility condition, Water and Power will have the discretion to relocate the main and the costs of such relocation will be shared in accordance with Section 3(b) of this Agreement.

Section 5:

The water system facilities described in this section are exceptions to be considered separately from the facilities covered by the terms and conditions of the preceding sections. These water system facilities are to be operated and maintained by Water and Power in accordance with the terms and conditions of the permits which authorized their installation, except as modified by this section.

- (a) Existing mains crossing channels (channel limits are bulkhead or top of slope to bulkhead or top of slope) shall be maintained by Water and Power. Harbor will not provide any financial liability except as follows:

(1) In the event Harbor and/or the Federal Government elect to increase the depth of a channel to more than 45-feet below MLLW at an existing crossing location, Harbor will participate in protection, replacement, or relocation expense in accordance with Section 3(b) of this Agreement except for locations where the water facility has less cover than required by Harbor and/or Federal Government permits.

(2) In the event a wharf or other cargo handling structure is constructed over an existing channel crossing, installed in accordance with original permit conditions, Harbor will protect the existing water facility during construction. The cost of protection, relocation, replacement, or modification will be Harbor responsibility. Water and Power will pay all additional costs associated with such construction if it is discovered during construction that a water facility was not installed in accordance with as-built drawings and such condition results in additional engineering and construction costs.

(b) The 20-inch water main crossing the channel between Berth 84 and Berth 234 was authorized to be installed subject to the terms and conditions of BHC Order No. 1685 and Harbor General Permit No. 2-1937. A portion of this main, directly adjacent to the face of the wharf at Berth 234, was installed at a depth less than -45-feet MLLW.

It is agreed that this main will continue to be operated and maintained by Water and Power in its present location until such time as those portions located above a depth of -45-feet MLLW interfere with the operations of the Harbor or its tenants. When requested by Harbor, those interfering portions located above a depth of -45-feet MLLW between pierhead lines or face of wharf will be lowered or otherwise removed at Water and Power expense.

This main crossing will not be eligible for Harbor participation for relocation or modification expense until it is lowered to provide a minimum cover of 10-feet for water facilities below existing channel bottom elevation of -45-feet MLLW between pierhead lines or face of wharf.

- (c) At the water main crossing of the Cerritos Channel at Henry Ford Avenue, a 16-inch and 20-inch main has been installed on the Badger Avenue (Henry Ford Avenue) Bridge. This main was authorized to be installed subject to the terms and conditions of BHC Order No. 1903 and Harbor Department General Permit Nos. 12-1952 and 52-1982.

It is agreed that the main will continue to be operated and maintained by Water and Power in its present location on the bridge.

BADGER BRIDGE

Harbor agrees to maintain the bridge supporting the main until such time that the bridge is no longer required for Harbor purposes. At that time or when it is mutually determined that a replacement main with increased capacity is necessary, it is agreed Harbor will share equally with Water and Power in the costs to construct a replacement pipeline crossing of the Cerritos Channel. The operation and maintenance of the replacement pipeline shall be covered by the applicable terms and conditions of this Agreement.

SECTIONS:
(d)

Approximately 450-feet of 24-inch water main, located on Terminal Island between Berths 215-216 and Old Dock Street, has been installed at the ground surface between two retaining walls directly adjacent to the footing of one wall and above the footing of the other wall. This main was authorized to be installed in accordance with the terms and conditions of BHC Order No. 2257 (Harbor General Permit No. 14-1949).

It is agreed that this portion of the 24-inch main will continue to be operated and maintained in its present location until the area is redeveloped or the walls are removed, and the main is either relocated or protected in-place to be compatible with the redevelopment and land use. At the time Harbor elects to redevelop Harbor land at the location of this main, all construction costs associated with the relocation, replacement, removal, abandonment, or

protection in-place of the main to make it compatible with the proposed redevelopment and land use will be shared equally by Harbor and Water and Power. The main, in its relocated or protected position would then be fully covered by all the terms and conditions of this Agreement.

Section 6:

Nothing in this Agreement is intended to impose on Water and Power any new liabilities, not presently imposed on Water and Power by the laws of California, in favor of Harbor, its tenants, lessees, assignees, or others, by reason of furnishing water or providing water service, including, but not limited to, personal injury and property damage and damages for disruption of water service, or water service at pressures greater or lesser than provided herein.

Section 7:

Neither Water and Power nor Harbor shall be liable for any nonperformance of this Agreement due to causes of any nature beyond its control, including, but not limited to, acts of God and the public enemy, acts of government in either its sovereign or contractual capacity, war, declared or undeclared, fire, flood, drought, dam outages or damage or destruction to the water system upstream from the Harbor area, labor or civil strife, epidemics, or similar unusual conditions.

Section 8:

Whenever any disagreement or controversy shall arise between the parties hereto concerning the construction or meaning of this Agreement, or concerning any of their rights or obligations hereunder, excluding the setting of water rates approved by the City Council in accordance with City Charter requirements, or concerning any violation of its provisions, or any refusal to perform any act or duty herein provided for, such disagreement or controversy shall, on demand of either party hereto, be submitted to a board of arbitrators composed of persons who shall be disinterested between the parties as to such disputes and constituted as follows, to wit: One arbitrator shall be appointed by each of the parties hereto and one additional arbitrator shall be selected by the other arbitrators so appointed. Immediately upon the completion of the appointment of the members of said board of arbitrators, said board shall set the matter in dispute for hearing and shall proceed to hear and determine the same. A decision made by a majority of the arbitrators shall be final and binding upon the parties to the controversy and shall be complied with by them. Each party shall bear the expense of the arbitrator appointed by it and both parties concerned shall share equally in the expense of the other arbitrator.

Section 9:

If either party to this Agreement disagrees with any decision made by a Board of Arbitrators, that party will have the right to give written notice of their intention to terminate the Agreement. Such termination would occur three years from the date of notice unless, within that three year period, arrangements between the two parties are made to either extend or rescind the termination or amend the agreement to the satisfaction of both parties.

Section 10:

In the event the provisions of this Agreement are inconsistent with the Rules of Water and Power, as amended, then the provisions of this Agreement shall prevail and be controlling.

Section 11:

All previously issued right-of-way documents and permits for the installation and operation of water system facilities on Harbor property, with the exception of those documents for the facilities described in Section 5, are superseded by this Agreement.

Section 12:

The Secretary of the Board of Harbor Commissioners shall certify to the execution of this Agreement by the Board of Harbor Commissioners of the City of Los Angeles and the Secretary of the Board of Water and Power Commissioners shall certify to the execution of this Agreement by the Board of Water and Power Commissioners and shall transmit the same to the City Council of the City for its approval. Upon such approval, the Secretary shall cause the same to be published once in a newspaper of general circulation printed and published in the City of Los Angeles.

I HEREBY CERTIFY that the foregoing Agreement was entered into by the Board of Harbor Commissioners of the City of Los Angeles at its meeting of November 6, 1985, and the Board of Water and Power Commissioners of the City of Los Angeles at its meeting of SEP 12 1985.

BOARD OF WATER AND POWER COMMISSIONERS
OF THE CITY OF LOS ANGELES

BOARD OF HARBOR COMMISSIONERS
OF THE CITY OF LOS ANGELES

By *Paul Hahn*
General Manager and Chief Engineer

By *[Signature]*
CHIEF DEPUTY EXECUTIVE DIRECTOR

By *[Signature]*
Secretary

By *Audrey H. Yamada*
acting Secretary

DATE _____

DATE Sept. 25, 1986

APPROVED AS TO FORM

JAMES K. HAHN, City Attorney

EDWARD C. FARRELL, Chief Assistant
City Attorney for Water and Power

WINSTON TYLER, Senior Assistant
City Attorney for Harbor Department

By *[Signature]*

By *[Signature]*

EDWARD A. SCHLOTMAN
Assistant City Attorney

GERALD SWAN
Assistant City Attorney

ELC/WFB/cam
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AUTHORIZED BY R

SEP 17 1985