

WESTERN AUSTRALIA.

FORREST PLACE AND CITY STATION DEVELOPMENT ACT 1985.

(No. 106 of 1985.)

ARRANGEMENT.

Section.

1. Short title.
2. Commencement.
3. Definitions.
4. Ratification and effect of enabling agreement.
5. Effect of development plan agreement.
6. Implementation of agreements and authorization of statutory bodies.
7. Demolition of Padbury buildings.
8. Land may be reserved in strata.
9. Power to grant easements over reserves.
10. Public nature of development.
11. Street closure.
12. Provisions as to land taken or acquired to implement the agreements.
13. Reserved land vested in the City.
14. Disposal of land by City.
15. Expenditure and borrowing by City.
16. City Station complex.
17. City not required to call tenders.
18. Power of City to control access to development site.
19. Power of Commission in relation to leases and easements.
20. Agreements to be published and laid before Parliament.

SCHEDULE.

FORREST PLACE AND CITY STATION DEVELOPMENT.

No. 106 of 1985.

AN ACT to facilitate the redevelopment of land in and in the vicinity of Forrest Place and the City railway station in Perth, and the development of certain facilities over portions of that land, and for related purposes.

[Assented to 17 December 1985.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Forrest Place and City Station Development Act 1985*. Short title.

No. 106.] *Forrest Place and City Station* [1985.
Development.

Commence-
ment.

2. This Act shall come into operation on the day on which it is assented to by the Governor.

Definitions.

3. In this Act, unless the contrary intention appears—

“agreements” means the enabling agreement and the development plan agreement;

“development plan agreement” means the agreement the execution of which is contemplated by clause 4 (6) of the enabling agreement, and includes that agreement as amended, varied or added to from time to time by the parties thereto;

“enabling agreement” means the agreement the text of which, other than the Schedules thereto, is set out in the Schedule to this Act, and includes that agreement as amended, varied or added to from time to time by the parties thereto;

“law” means a written or other law other than this Act;

“reserved land” means land reserved under Part III of the Land Act 1933 in implementation of the agreements;

“the City” means the City of Perth, a municipality constituted under the Local Government Act 1960;

“the Commission” means The Western Australian Government Railways Commission constituted under the Government Railways Act 1904.

Ratification
and effect
of enabling
agreement.

4. (1) The enabling agreement is ratified and the execution of the enabling agreement by or on behalf of the parties thereto shall be deemed to have always been authorized.

1985.] *Forrest Place and City Station* [No. 106.
Development.

(2) Each provision of the enabling agreement shall operate and have effect, and shall be deemed to have operated and had effect on and from 1 November 1985, according to its terms notwithstanding any law.

(3) Any purported modification of any law contained, or provided for, in a provision of the enabling agreement shall operate and take effect so as to modify that law for the purposes of the enabling agreement, and shall be deemed to have so operated and taken effect on and from 1 November 1985, according to its terms notwithstanding any law.

(4) Copies of the Schedules to the enabling agreement shall be made available for inspection by any person free of charge at the office of the City.

5. (1) When the development plan agreement has been executed each provision of it shall operate and have effect according to its terms notwithstanding any law.

Effect of
development
plan
agreement.

(2) Any purported modification of any law contained, or provided for, in a provision of the development plan agreement shall operate and take effect so as to modify that law for the purposes of the enabling agreement.

6. (1) The parties to the agreements are authorized to implement the agreements.

Implementa-
tion of
agreements
and
authoriza-
tion of
statutory
bodies.

(2) Each of the following bodies, namely, the City, the Commission and the Minister for Western Australian Government Railways has power to execute all works, perform all acts and do all things necessary or expedient for the implementation of—

(a) the agreements; and

No. 106.] *Forrest Place and City Station* [1985.
Development.

(b) any agreement entered into, contract made, or undertaking given by that body in implementation of the agreements.

(3) In relation to the enabling agreement subsections (1) and (2) shall be deemed to have had effect on and from 1 November 1985.

Demolition
of Padbury
buildings.

7. (1) The City has power to arrange for and supervise the demolition of the buildings and improvements situated on that land being portion of each of Perth Town Lots V10 and V11 and being part of the land on Plan 4845 and being the whole of the land comprised in Certificate of Title Volume 1526 Folio 227, and to act on behalf of the State in arranging and supervising that demolition.

(2) Subsection (1) shall be deemed to have had effect on and from 26 September 1985.

Land may
be reserved
in strata.

8. The power of the Governor under Part III of the Land Act 1933 to reserve lands vested in the Crown shall, in relation to the implementation of the agreements, be construed to include power to reserve land in strata or layers above or below ground level.

Power
to grant
easements
over
reserves.

9. (1) For the purposes of the application of Part VIIIA of the Land Act 1933 to and in relation to reserved land—

(a) section 134B of that Act shall be deemed to be amended in subsection (1) by inserting after paragraph (a) the following paragraph—

“ (aa) support; ”;

1985.] *Forrest Place and City Station* [No. 106.
Development.

- (b) section 134D of that Act shall be deemed to be amended by inserting after subsection (2) the following subsection—

“ (3) Where there is a dominant tenement in relation to an easement granted under section 134B of this Act and that dominant tenement comprises land registered under the Transfer of Land Act 1893, the registered proprietor of that land may lodge a copy of the instrument creating the easement with the Registrar of Titles who shall duly register the benefit of the easement under that Act. ”; and

- (c) section 134J of that Act shall be deemed to be amended in subsection (2) by deleting “, remove from the appropriate register” and substituting the following—

“ or may prejudice the implementation of the agreements referred to in the Forrest Place and City Station Development Act 1985, remove from the appropriate register or registers ”.

(2) The power conferred by Part VIIIA of the Land Act 1933 shall be construed to include power to grant easements in relation to reserved land that is above or below ground level but not to include power to grant easements under the air space referred to in section 16 (1).

10. For the purposes of any written law the implementation of the agreements shall be deemed to be—

Public
nature of
development.

- (a) a public work;
- (b) for a public purpose; and
- (c) in the public interest.

No. 106.] *Forrest Place and City Station* [1985.
Development.

Street
closure.

11. (1) Notwithstanding the Local Government Act 1960 the City may prohibit or restrict thoroughfare in a street or public place in its municipal district—

(a) by causing fences and barriers to be placed on or across the street or public place; or

(b) in any other manner,

if, and for such period as, the town clerk of the City considers that prohibition or restriction to be necessary or expedient for the implementation of the agreements.

(2) Notwithstanding section 288A of the Local Government Act 1960 where it is necessary for the implementation of the agreements for a street that is dedicated to public use to be closed, otherwise than temporarily—

(a) the City shall, when it considers the time appropriate, notify the Minister that the closure of the street should take effect; and

(b) when the notification referred to in paragraph (a) has been given the street shall be closed with effect from such day as is specified by the Governor by Order published in the *Gazette*.

(3) Section 294 (1) (a) and (b) of the Local Government Act 1960 apply to the closure of a street under subsection (2) of this section as if it were the closure of a street under that Act.

(4) In this section each of the expressions “public place” and “street” has the meaning given to that expression in the Local Government Act 1960.

Provisions as
to land
taken or
acquired to
implement
the
agreements.

12. (1) Subsections (2) to (6) of section 17 of the Public Works Act 1902 do not apply to the taking of land in implementation of the agreements.

1985.] *Forrest Place and City Station* [No. 106.
Development.

(2) The City shall be the respondent under and for the purposes of the Public Works Act 1902 in relation to any claim for compensation for the taking of land by the State in implementation of the agreements.

(3) Where the notice or transfer under which land is taken or otherwise acquired by the State provides that the land is being taken or acquired in order for it to become reserved land then, upon the notice or transfer taking effect, the land shall, by virtue of this subsection, be revested in Her Majesty as of Her former estate and constituted Crown land within the meaning of that expression in the Land Act 1933 and, if it is under the operation of the Transfer of Land Act 1893, removed from the operation of that Act.

(4) Where a portion of a parcel of land that is under the operation of the Transfer of Land Act 1893 is taken or otherwise acquired by the State in implementation of the agreements the Registrar of Titles shall, at the request of a registered proprietor of the remainder of the land, endorse on the Certificate of Title to the remainder of the land a memorandum in or to the effect of the appropriate form set out in the development plan agreement.

(5) Part III of the Town Planning and Development Act 1928 does not apply to or in relation to any subdivision or amalgamation made in implementation of the agreements.

(6) A reference in this section to the taking of land is a reference to the setting apart, taking or resumption of the land under the Public Works Act 1902.

13. Where reserved land is vested in the City—

Reserved
land vested
in the City.

- (a) the Order in Council vesting the land in the City shall not be revoked under section 34B (1) of the Land Act 1933 except with the consent of the City; and

- (b) in any case where the City does not have power under any other law to implement a purpose for which the land is reserved, the City is, by virtue of this section, empowered to perform all acts and do all things necessary or expedient for the implementation of that purpose.

Disposal
of land
by City.

14. Notwithstanding section 266 of the Local Government Act 1960 the City may, in implementation of the agreements, sell or otherwise dispose of an estate in fee simple, or any lesser estate, in land which is vested in or held by it.

Expenditure
and
borrowing
by City.

15. (1) The City is authorized to expend money out of any fund kept by the City in performing the functions conferred upon it by this Act or any other written law or by the agreements with respect to the implementation of the agreements and with respect to the care, control and management of any reserved land vested in the City.

(2) Any—

- (a) act or thing done by the City;
- (b) liability incurred by the City; or
- (c) expenditure made by the City from any fund kept by the City,

before the commencement of this Act to facilitate the redevelopment of land in and in the vicinity of Forrest Place and the City railway station, or the development of facilities over portions of that land, or for a related purpose shall be deemed to have always been lawfully and validly done, incurred or made.

(3) Sections 609 to 613 of the Local Government Act 1960 do not apply in relation to the borrowing of money by the City for the performance by the City of any function conferred upon it by this Act or any

other written law or by the agreements with respect to the implementation of the agreements or with respect to the care, control and management of any reserved land vested in the City.

16. (1) The Governor may, by Order published in the *Gazette*, excise an air space as generally depicted in item 2 of the First Schedule to the enabling agreement from the land below it and upon the publication of that order—

City Station
complex.

- (a) that air space shall, by virtue of this subsection, be revested in Her Majesty as of Her former estate and constituted Crown land within the meaning of that expression in the Land Act 1933; and
- (b) where the land below any portion of that air space is under the operation of the Transfer of Land Act 1893, that portion of that air space shall, by virtue of this section, be removed from the operation of that Act.

(2) Subsection (2) of section 11 of the City of Perth Parking Facilities Act 1956 does not apply to or in relation to any exercise by the City of a power conferred on it by subsection (1) (b) of that section with respect to the air space referred to in subsection (1) of this section.

(3) The powers conferred by subsection (2b) of section 11 of the City of Perth Parking Facilities Act 1956 are not exercisable with respect to the air space referred to in subsection (1) of this section.

(4) Part III of the Town Planning and Development Act 1928 does not apply to or in relation to the air space referred to in subsection (1) of this section or any premises in that air space.

17. Regulations made under section 274 of the Local Government Act 1960 do not apply to the execution of work or the furnishing of goods in implementation of the agreements.

City not
required to
call tenders.

Power of
City to
control
access to
development
site.

18. (1) For the purposes of section 82B of the Police Act 1892—

(a) the City shall be deemed to be an occupier of—

(i) premises upon which works are being executed in implementation of the agreements; and

(ii) premises comprising reserved land that is vested in the City; and

(b) a warning or indication given by an officer of the City in relation to premises referred to in paragraph (a) shall be deemed to be a warning or indication by the City.

(2) In subsection (1) “officer” has the meaning given to that expression in the Local Government Act 1960.

Power of
Commission
in relation
to leases and
easements.

19. (1) Notwithstanding subsection (3) of section 63 of the Government Railways Act 1904 the Minister to whom the administration of that Act is for the time being committed by the Governor may, under that subsection, authorize the Commission to grant a lease of land in implementation of the agreements for a period exceeding 50 years.

(2) The powers conferred on the Commission by subsection (2) of section 67 of the Government Railways Act 1904 shall be deemed, in respect of land below the air space referred to in section 16 (1), to include power to grant an easement of support and, notwithstanding that section 67, an easement of support granted by the Commission over that land is not revocable by the Commission.

Agreements
to be
published
and laid
before
Parliament.

20. (1) In this section “future agreement” means—

(a) the development plan agreement; or

1985.] *Forrest Place and City Station* [No. 106.
Development.

- (b) any agreement amending, varying or adding to the enabling agreement or the development plan agreement.

(2) The Minister shall cause any future agreement to be—

- (a) published in the *Gazette*; and
(b) laid on the Table of each House of Parliament,

as soon as practicable after the execution of that agreement.

(3) It is sufficient compliance with subsection (2) (a) if a future agreement is published in the *Gazette* without any maps, plans or diagrams that form part of that agreement.

SCHEDULE.

THIS ENABLING AGREEMENT is made the 1st day of November 1985

BETWEEN:

THE HONOURABLE BRIAN THOMAS BURKE M.L.A.
Premier of the State of Western Australia acting for and on behalf of the State of Western Australia and its instrumentalities from time to time ("the State") of the first part

and

CITY OF PERTH of Council House 27-29 St. George's Terrace Perth a Municipality and body corporate constituted under the Local Government Act 1960 ("the City") of the second part

and

MINISTER FOR WESTERN AUSTRALIAN GOVERNMENT RAILWAYS a body corporate constituted under the Government Railways Act 1904 ("Minister for Railways") of the third part

and

THE WESTERN AUSTRALIAN GOVERNMENT RAILWAYS COMMISSION of Westrail Centre West Parade East Perth a body corporate constituted under the Government Railways Act 1904 ("Westrail") of the fourth part

No. 106.] *Forrest Place and City Station* [1985.
Development.

RECITALS:

- A. The Involved Parties agreed in the Deed and the Agreement in Principle to proceed with the design and costing of the Project in accordance with the Agreement in Principle, so that prior to 28 February 1986 the Involved Parties were to be in a position to meet together and determine whether the Project would proceed.
- B. The Parties have agreed to proceed with the Project and have agreed to enter into this Agreement so that the Design Drawings may be completed and so that part of the Project may be commenced prior to the Due Date.
- C. The Parties have agreed that the City will continue negotiations with each of the Interested Parties so that the Project may proceed after the Due Date either with or without the participation of some or all of the Interested Parties and the Parties have agreed that the Project will proceed on the Due Date in any event.

IT IS AGREED—

DEFINITIONS AND INTERPRETATION

Definitions

1. In this Agreement unless the contrary intention appears—

“advise”, “agree”, “apply”, “approve”, “consent”, “demand”, “direct”, “give notice”, “notify”, “request”, or “require”, means advise, reach agreement, apply, approve, consent, demand, direct, give notice, notify, request, or require in writing as the case may be and any inflexion or derivation of any of those words has a corresponding meaning;

“Agreement in Principle” means the Memorandum of Agreement annexed to the Deed;

“AHD” means the Australian Height Datum which is the datum surface derived in accordance with the formula for that datum within the Perth Metropolitan Zone as specified by the Surveyor General of Western Australia and set out in the Australian Height Datum (AHD) National Mapping Council of Australia Special Publication 8 (1979) or in any publication amending or in substitution thereof;

1985.] *Forrest Place and City Station* [No. 106.
Development.

- “Architect” means the architect engaged by the City on its own behalf and as agent for the State for the Project, from time to time;
- “Armstrong Jones” means Armstrong Jones Management Ltd. of 15 William Street, Perth;
- “Australia Post” means the Australian Postal Commission which is a body corporate constituted under the Postal Services Act 1975 of the Commonwealth of Australia;
- “Basement Entry and Exit Ramps” whether referred to separately or together means those parts of the Basement Reserve commencing at ground level north of the northern boundary of the Myer W.A. Land descending into the Basement Reserve, and ascending from the Basement Reserve to ground level and terminating north of the northern boundary of the Northwest Corner Land, which ramps provide access to and from the Basement Reserve;
- “Basement Plan” means the plan in Item 1 of the First Schedule;
- “Basement Reserve” means that part of the Reserved Land comprised in the Basement Plan;
- “Carillon Land” means all that land being Portion of each of Perth Town Lots F14 and F15 and being Lot 101 the subject of Diagram 62479 and being the whole of the land comprised in Certificate of Title Volume 1669 Folio 980;
- “City Arcade” means City Arcade Pty. Ltd. of 207 Murray Street Perth;
- “City Arcade Land” means all that land being portion of each of Perth Town Lots F15 and F16 and being Lot 100 the subject of Diagram 60166 and being the whole of the land comprised in Certificates of Title Volume 1665 Folio 818 and Volume 1583 Folio 980;
- “City Station Complex” means the building to be constructed over the Westrail Land within the City Station Reserve as indicated on the Schematics;
- “City Station Complex Plan” means the plans in Item 2 of the First Schedule;
- “City Station Complex Reserve” means that part of the Reserved Land comprised in the City Station Complex Plan;

No. 106.] *Forrest Place and City Station* [1985.
Development.

"Clause" means a clause of this Agreement;

"Commonwealth Bank" means Commonwealth Banking Corporation a body corporate constituted under the Commonwealth Banks Act 1959 of the Commonwealth of Australia;

"Crown" means the Crown in the right of the State of Western Australia;

"Deed" means the Deed made on 5 December 1984 between the Involved Parties as varied by subsequent deeds made between the Involved Parties;

"Design Drawings" means the drawings plans and data for the Project to be prepared and issued by the Architect prior to 30 November 1985 as varied in accordance with this Agreement which drawings will enable the Parties to proceed with the implementation of the Project;

"Dollars" means the local currency of the Commonwealth of Australia in force at the date of execution of this Agreement;

"DPA" or "Development Plan Agreement" means the agreement the execution of which is contemplated by Clause 4 (6), as amended, varied or added to from time to time by the parties thereto;

"Due Date" means 1 February 1986;

"Forrest Place Land" means all that land from Wellington to Murray Street as shown in brown on LTO Plan 4845;

"Ground Level Plan" means the plan in Item 3 of the First Schedule;

"Ground Level Reserve" means that part of the Reserved Land comprised in the Ground Level Plan and includes all escalators and lifts situated on or to be constructed on the land the subject of the Ground Level Reserve in accordance with the Design Drawings;

"Indirect Costs" means the fees costs expenses premiums and charges for the Project incurred:

(a) by the City and the State in respect of—

(i) negotiating with the Interested Parties;

1985.] *Forrest Place and City Station* [No. 106.
Development.

(ii) fees payable to the Co-ordinators of the Project appointed by the City and the State;

(iii) public relations promotions and advertising; and

(iv) stamp duty and registration at the Office of Titles;

and

(b) by the City in respect of—

(i) project professional indemnity Insurance required by Clause 14 (2) (c);

(ii) legal costs;

(iii) surveyor's fees other than those directly incurred by the Architect; and

(iv) the costs referred to in paragraph (i) and Item 7 of the Sixth Schedule

and such other like fees costs expenses premiums and charges for the Project incurred either before or after the execution of this Agreement but does not include the Project Costs;

“Interested Parties” means Commonwealth Bank, Australia Post, Myers W.A., Myer Joint Venture, Armstrong Jones, W.A. Trustees, City Arcade and Westpac;

“Involved Parties” means the State, the City, Australia Post, Commonwealth Bank, Westrail, Myer Properties Ltd, City Arcade, Westpac and Armstrong Jones;

“Minister” means the Minister in the Government of the State for the time being responsible (under whatsoever title) for the administration of the Act to ratify this Agreement and pending the coming into operation of that Act means the Minister for Planning and includes the successors in office of the Minister;

“Myers W.A.” means Myer Properties W.A. Ltd, formerly Boans Ltd.;

No. 106.] *Forrest Place and City Station* [1985.
Development.

“Myer Joint Venture” means the participants from time to time in a joint venture established for the re-development of the Myer W.A. Land;

“Myer W.A. Land” means all those pieces of land being—

- (a) portion of Perth Town Lot V5 and being the whole of the land comprised in Certificate of Title Volume 1153 Folio 540;
- (b) portion of Perth Town Lot V5 the subject of Diagram 168 and being the whole of the land comprised in Certificate of Title Volume 1164 Folio 909;
- (c) portion of each of Perth Town Lots V7, V8, V9 & V10 the subject of Diagram 2301 and being the whole of the land comprised in Certificate of Title Volume 1186 Folio 810;
- (d) portion of each of Perth Town Lots V9 & V10 and being the whole of the land comprised in Certificate of Title Volume 1326 Folio 389;
- (e) portion of Perth Town Lot V6 and being the whole of the land comprised in Certificate of Title Volume 910 Folio 135 together with the right of carriageway over the portion coloured brown on the map thereon; and
- (f) portion of Perth Town Lots V7 and V8 and being the whole of the land comprised in deposited diagram 126 and being the whole of the land comprised in Certificate of Title Volume 477 Folio 24;

“Northwest Corner Land” means all that land being portion of each of Perth Town Lots V13, V14, V15 and V16 and being Lot 100 the subject of Diagram 63404 and being the whole of the land comprised in Certificate of Title Volume 1642 Folio 686 limited however to a depth of 12.19 metres but subject to certain mineral and other reservations as set out in Transfer C536780 which are in addition to those reservations to the Crown already contained in the original grant;

“Padbury Building Land” means all that land being portion of each of Perth Town Lots V10 and V11 and being part of the land on Plan 4845 and being the whole of the land comprised in Certificate of Title Volume 1526 Folio 227;

1985.] *Forrest Place and City Station* [No. 106.
Development.

“Parties” means the parties to this Agreement;

“Project” means the development and redevelopment of the Reserved Land certain roads and land contiguous to the Reserved Land in accordance with the Schematics, the Design Drawings and this Agreement and includes all matters and things necessary for or in any way connected with that development and redevelopment;

“Project Committee” means a Committee comprising the Minister, the Lord Mayor or Deputy Lord Mayor of the City and the Chairman or Acting Chairman of the Metropolitan Region Planning Authority constituted under and for the purposes of this Agreement;

“Project Costs” means the fees costs expenses premiums and charges for the Project and includes the fees costs expenses premiums and charges incurred by the City and the State or either of them in respect of—

- (a) the production of the Schematics and the Design Drawings;
- (b) the resumption of any land hereunder;
- (c) the effecting of the insurance required by Clauses 14 (1) and (2) (a) and (b);
- (d) the amount of SIXTY THOUSAND DOLLARS (\$60 000.00) referred to in Clause 12 (3);
- (e) the alterations and changes to Westrail’s signalling system referred to in Clause 12 (4) (a);
- (f) the construction of toilet and wash facilities referred to in Clause 12 (4) (b); and
- (g) the implementation and completion of the Project

whether incurred before or after the execution of this Agreement and includes any escalation provided for in this Agreement and agreed or approved variations to those fees costs expenses premiums and charges but does not include the Indirect Costs;

No. 106.] *Forrest Place and City Station* [1985.
Development.

“Reserved Land” means all that land shown as reserved on the plans in the First Schedule and as may be varied by the Design Drawings;

“Schedule” means a Schedule to this Agreement;

“Schematics” means the plans, drawings and data contained in the Third Schedule;

“Sub-clause” means a Sub-clause of the Clause in which the reference appears;

“this Agreement”, means this Agreement and includes any Schedule to this Agreement;

“Timetable” means the timetable in the Fifth Schedule and includes any variations to the Timetable authorised pursuant to this Agreement;

“Upper Level Plan” means the Plan in Item 4 of the First Schedule;

“Upper Level Reserve” means that part of the Reserved Land comprised in the Upper Level Plan;

“W.A. Trustees” means West Australian Trustees Ltd. of 135 St. George’s Terrace, Perth;

“Westpac” means Westpac Investment Management Pty. Ltd. a company incorporated in New South Wales having its principal office in Western Australia at 109 St. George’s Terrace, Perth;

“West Pedestrian Overpass” means that part of the Reserved Land comprised in the Upper Level Plan which crosses over Wellington Street from the Northwest Corner Land to the Horseshoe Bridge;

“Westrail Land” means the land hatched on the plan in Item 1 of the Sixth Schedule which is vested in the Minister for Railways on behalf of the Crown pursuant to the Government Railways Act 1904;

“Westrail Timetable” means the Timetable in Item 2 of the Sixth Schedule.

1985.] *Forrest Place and City Station* [No. 106.
Development.

2. (1) In this Agreement unless the contrary intention appears— Interpreta-
tion.

- (a) references to the Parties shall include successors and permitted assigns;
- (b) the table of contents and the headings, including headings to Schedules are for convenience only and shall not affect the interpretation or construction of this Agreement;
- (c) a reference to an Act by name is a reference to an Act of the Parliament of Western Australia; and
- (d) a reference to an Act whether by name or otherwise includes the amendments to the Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the rules, regulations and by-laws for the time being in force thereunder.

2. (2) This Agreement including any dates and time limits specified herein may be varied by the Parties by agreement.

2. (3) Time shall be computed for the purposes of this Agreement in accordance with the provisions of the Interpretation Act 1984.

RATIFICATION AND OPERATION

3. (1) The State shall introduce and sponsor a Bill in the Parliament of Western Australia to, *inter alia*—

- (a) ratify this Agreement;
- (b) authorise the implementation of this Agreement and deem that implementation to have been authorised on and from the execution of this Agreement;
- (c) authorise the execution and implementation of the DPA; and
- (d) authorise the implementation and completion of the Project,

and the State shall endeavour to secure its passage and its coming into operation as an Act before 31 December 1985.

No. 106.] *Forrest Place and City Station* [1985.
Development.

3. (2) If on 31 December 1985 the Bill referred to in Sub-clause (1) has not come into operation as an Act then—

- (a) this Agreement shall cease and determine;
- (b) the City and the State shall each pay one half of the Project Costs and the Indirect Costs incurred until that date and the State's proportion of those costs shall include the costs of the demolition of the buildings on the Padbury Building Land;
- (c) the State shall pay the costs incurred by Westrail for the matters referred to in Clause 12 (4) and any costs incurred in stabilising the buildings or any part thereof on the Myer W.A. Land; and
- (d) no Party shall have any claim against any other Party with respect to any matter or thing arising out of, done, performed or omitted to be done or performed with respect to the Project or under this Agreement other than the liability of the Parties to pay the Project Costs and Indirect Costs as required by this Clause.

3. (3) On the Bill referred to in Sub-clause (1) coming into operation as an Act all the provisions of this Agreement shall operate and have effect and shall be deemed to have operated and had effect on and from the execution of this Agreement, notwithstanding the provisions of any Act or law.

THE PROJECT

4. (1) The Project includes—

- (a) the production of the Schematics and Design Drawings;
- (b) the demolition of the buildings on the Padbury Building Land;
- (c) the construction of the City Station Complex;
- (d) the construction of the various overpasses and walkways from Roe Street to the Carillon Land and the City Arcade Land as shown on the Schematics and which are situated on the Upper Level Reserve;

1985.] *Forrest Place and City Station* [No. 106.
Development.

- (e) the redevelopment of the Ground Level Reserve for the purposes specified in Item 3 of the Second Schedule;
- (f) the redevelopment of the Basement Reserve as a basement for the purposes specified in Item 1 of the Second Schedule;
- (g) the alteration and relocation of existing gas, storm-water, water, sewerage, telephone and electricity services;
- (h) the installation of escalators steps and lifts for pedestrian movement between the Basement Reserve, the Ground Level Reserve and the Upper Level Reserve, and the City Station Complex and the Westrail Land; and
- (i) landscaping, installation of street furniture, signs and lighting in accordance with the Design Drawings.

4. (2) The Parties HEREBY AGREE to—

- (a) proceed with the production of the Design Drawings in accordance with this Agreement, the Schematics and the objectives and criteria in the Agreement in Principle;
- (b) do all things necessary to proceed with the implementation of the Project according to the Timetable until the Due Date; and
- (c) pay the Project Costs in their respective proportions as referred to in Clause 12.

4. (3) The State and the City shall use their best endeavours to negotiate with Australia Post for the relocation of the existing sewer.

4. (4) The City shall negotiate with each of the Interested Parties until the Due Date to agree upon the Design Drawings but only in so far as the Design Drawings directly affect each of the Interested Parties. If any of the Interested Parties do not participate in the Project then neither the State nor the City shall have any claim against the other of them arising from that non participation.

No. 106.] *Forrest Place and City Station* [1985.
Development.

4. (5) Subject to Sub-clause (8) and Clause (9) (1) the City shall consult with the State and Westrail to agree upon the Design Drawings by 31 December 1985. If the Parties have not reached agreement to the Design Drawings by 31 December 1985 then the Design Drawings shall be referred to the Project Committee for approval.

4. (6) On the Due Date—

(a) if the City has not been advised by each of the Interested Parties that they will participate in the Project then the Parties shall—

(i) proceed with the Project according to the Design Drawings and the Timetable;

(ii) subject to Sub-clause (10) execute the DPA on or before 1 March 1986; and

(iii) pay the Project Costs in their respective proportions as referred to in Clause 12;

or

(b) if the City has received advice from any of the Interested Parties that they agree to participate in the Project then the Parties and those Interested Parties shall—

(i) proceed with the Project according to the Design Drawings and the Timetable;

(ii) subject to Sub-clause (10) execute the DPA on or before 1 March 1986; and

(iii) pay the Project Costs in their respective proportions as referred in Clause 12.

4. (7) If after agreement or approval to the Design Drawings it is necessary at any time to vary the Design Drawings—

(a) to give effect to the agreement reached by the Parties pursuant to Sub-clause (5);

(b) to give effect to any agreement with any of the Interested Parties prior to the Due Date;

(c) due to the non-participation of any of the Interested Parties; or

1985.] *Forrest Place and City Station* [No. 106.
Development.

- (d) to give effect to any agreement after the Due Date between the Parties and any of the Interested Parties who have advised the City that they will participate in the Project

then the City shall forthwith instruct the Architect to so vary the Design Drawings as soon as possible prior to the execution of the DPA. If the Parties and those Interested Parties are unable to agree on any variations to the Design Drawings within seven days of the issue by the Architect of those varied Design Drawings then those varied Design Drawings shall be referred to the Project Committee for its approval which approval shall be given within fourteen days of the issue of those varied Design Drawings.

4. (8) The agreement of Westrail to the Design Drawings and any variations thereto shall only be required for the City Station Complex and its supporting columns and understructure and only in so far as the design of that Complex affects Westrail and its operations on the Westrail land.

4. (9) The Parties and the Project Committee shall have regard to the Schematics and the objectives and criteria in the Agreement in Principle in order to reach agreement or give approval to the Design Drawings and any variations thereto.

4. (10) If the Design Drawings and any variations are not agreed or approved pursuant to this Clause by 1 March 1986 then the DPA shall be executed within 30 days of agreement or approval to the Design Drawings.

4. (11) Notwithstanding that the Design Drawings have not been agreed or approved pursuant to this Clause the Parties shall proceed with the implementation of the Project on the Due Date according to the Timetable and the Design Drawings.

THE AGENCY

5. (1) The City shall act on its own behalf and also as agent for and on behalf of the State in implementing and completing the Project, and the State hereby appoints the City its agent in implementing and completing the Project and in doing so the City is authorised to—

- (a) enter into any contract arrangement or agreement necessary to give effect to this Agreement;

No. 106.] *Forrest Place and City Station* [1985.
Development.

- (b) incur and pay the Project Costs and Indirect Costs;
- (c) apply for and sign any permits authorities applications licences permissions or consents;
- (d) enter onto the Padbury Building Land and the Forrest Place Land and do all things necessary on and to that land or relating to that land or with respect to the termination of tenancies, removal of encumbrances, or abatement of nuisances thereon as though the City were the registered proprietor of an estate in fee simple in that land; and
- (e) manage superintend supervise oversee and control the implementation and completion of the Project without any undue hindrance or interference by the State.

5. (2) This agency shall expressly not apply to the obligations of the State to create and vest the Reserves pursuant to Clause 6 nor shall it make the State liable for the care control and management of the Reserved Land after completion of the Project.

5. (3) The State shall indemnify and keep indemnified the City and the City shall indemnify and keep indemnified the State from all claims demands suits actions writs proceedings charges expenses and losses ("the claims") arising pursuant to this agency or pursuant to the implementation or completion of the Project other than for the Project Costs and Indirect Costs. The liability of the City and the State to indemnify the other of them shall be to indemnify the other of them for one half of the amount of the claims.

VESTING TRANSFER AND DEALING WITH LAND

6. (1) On or before 30th June 1986 the State shall cause that part of the Reserved Land shown on—

- (a) the Basement Plan to be created as an "A" Class reserve vested in the City pursuant to the Land Act 1933 for the purposes specified in Item 1 of the Second Schedule;
- (b) the Ground Level Plan to be created as an "A" Class reserve vested in the City pursuant to the Land Act 1933 for the purposes specified in Item 3 of the Second Schedule;

1985.] *Forrest Place and City Station* [No. 106.
Development.

- (c) the Upper Level Plan to be created as an "A" Class reserve vested in the City pursuant to the Land Act 1933 for the purposes specified in Item 4 of the Second Schedule; and
- (d) the City Station Complex Plan to be created as an "A" Class reserve vested in the City pursuant to the Land Act 1933 for the purposes specified in Item 2 of the Second Schedule.

6. (2) The State and the City shall use their best endeavours to ensure that the Myer W.A. Land included in the Reserved Land is revested in the Crown free of encumbrances prior to 30 November 1985.

6. (3) If the Myer W.A. Land included in the Reserved Land is not revested in the Crown prior to 30 November 1985—

- (a) if the Project proceeds after the Due Date without the participation of the Myer Joint Venture then the reserves to be created and vested pursuant to Sub-clause (1) (a) (b) and (c) shall be vested in the City pursuant to Sub-clause (1) either—

- (i) as though the Myer W.A. Land were not included in which case the Reserved Land shall be vested as reserves within the time specified in Sub-clause (1); or

- (ii) as soon as reasonably possible after the resumption by the State of that part of the Myer W.A. Land which forms part of the Reserved Land;

or

- (b) if the Project proceeds after the Due Date with the participation of the Myer Joint Venture then the State shall cause the Myer W.A. Land the subject of the Reserved Land to be revested in the Crown within 30 days after the execution of the DPA or as soon as reasonably possible thereafter.

6. (4) If the City and the State are unable to agree upon the manner in which the Myer W.A. Land included in the Reserved Land shall be revested in the Crown, within a reasonable time, then the matter shall be referred to the Project Committee for its decision.

No. 106.] *Forrest Place and City Station* [1985.
Development.

6. (5) The City shall be the respondent for and have the conduct of any claim for compensation for the resumption of that part of the Myer W.A. Land included in the Reserved Land.

6. (6) The City shall—

(a) prior to 30 July 1986 or upon any sale by the City of the Northwest Corner Land, whichever is the earlier, transfer to the Crown free of encumbrances at no cost to the State, that part of the Northwest Corner Land included in the Reserved Land;

(b) after the vesting of the City Station Complex Reserve pursuant to Sub-clause (1) and when required by Westrail enter into a lease with Westrail of Part of the City Station Complex for a Westrail Station Office at a peppercorn rental for a term of ten years together with six options to renew the term for further periods of ten years each, such lease to be in the form contained in Item 3 of the Sixth Schedule; and

(c) upon completion of the City Station Complex grant Westrail exclusive and irrevocable licences free of any fee to—

(i) attach to the soffit and the supporting columns for and understructure of the City Station Complex such things as may be required for the purposes of Westrail, which do not affect the structural integrity of the City Station Complex and which shall be first approved by the City, and in such manner and places as the City shall first approve; and

(ii) install and maintain automatic ticket vending machines and railway information and timetable boards on such parts of the concourse area of the City Station Complex and in such manner as the City shall first approve.

6. (7) If at any time that part of the Northwest Corner Land transferred to the Crown by the City pursuant to Sub-clause (6) is not required for the purpose of the Project the State shall retransfer that piece of land to the then owner of the Northwest Corner Land if required by the then owner of the Northwest Corner Land.

1985.] *Forrest Place and City Station* [No. 106.
Development.

6. (8) The State shall advise the City of any proposed or planned amendments to the reserves or the vesting orders for the reserves vested in the City pursuant to Sub-clause (1) and the State shall negotiate with the City prior to so amending or varying any of those reserves or vesting orders.

6. (9) Westrail shall immediately upon—

(a) execution of the DPA grant the City or the State or both an easement of support over the Westrail land for the support of the City Station Complex in the form of the Deed in the Item 4 of the Sixth Schedule over the areas therein defined;

(b) execution of this Agreement enter into a lease with the City of part of the Westrail land at a peppercorn rental for a term of ten years together with six options to renew the term for further periods of ten years each on the terms and conditions and in the form contained in Item 5 of the Sixth Schedule;

and

(c) execution of the DPA grant the City such rights of support as are within its power to grant and as may be required for the purposes of the Design Drawings over—

(i) the Beaufort Street Bridge for the City Station Complex; and

(ii) over the Horseshoe Bridge for the West Pedestrian Overpass.

6. (10) The Minister for Railways hereby approves the granting of the easements referred to in Sub-clause (9).

6. (11) Westrail shall do all things within its power necessary to enable the State to vest in the City the City Station Complex Reserve and Westrail shall not do anything which may hinder prevent or impede the State from so vesting that Reserve.

6. (12) Within a reasonable time after the vesting of the reserves pursuant to Sub-clause (1) the State shall grant and obtain easements as may be required by the DPA.

No. 106.] *Forrest Place and City Station* [1985.
Development.

6. (13) The State hereby grants the City a licence to enter onto the Padbury Building Land and to—

- (a) demolish the buildings fences and other constructions on that land;
- (b) relocate any services on that land; and
- (c) implement that part of the Project which involves that land in accordance with the Timetable,

by its employees agents workmen licensees and contractors with any vehicles equipment plant and machinery as may be required to implement and complete the Project.

6. (14) The Minister for Railways and Westrail hereby grant the City a licence to enter onto the Westrail Land by its employees agents workmen licensees and contractors to enable the City to implement and complete that part of the Project which relates to the City Station Complex and the City shall ensure that persons entering onto the Westrail Land pursuant to this licence or authorised by the City to enter onto the Westrail Land pursuant to this licence comply with paragraph (c) of Item 7 of the Sixth Schedule and do not interfere with the operations of Westrail on the Westrail Land without Westrail's prior approval.

6. (15) The licences granted pursuant to this Clause shall be irrevocable until they are no longer necessary for the purposes for which they are granted.

IMPLEMENTATION

7. (1) The City shall on or before the time specified in the Timetable invite tenders for and execute all building contracts and agreements necessary to implement and complete the Project.

7. (2) The City shall co-ordinate and manage the Project on its own behalf and as agent for the State pursuant to Clause 5.

1985.] *Forrest Place and City Station* [No. 106.
Development.

7. (3) The City shall, in implementing the Project, to the extent that is reasonable and economically practicable give preference to ratepayers of the City in letting contracts and purchasing materials and where that is not possible the City shall to that same extent—

- (a) use or ensure the use of the services of engineers, surveyors, architects and other professional consultants resident and available within Western Australia;
- (b) use or ensure the use of labour available within Western Australia; and
- (c) in respect of the preparation of specifications, calling for tenders and letting contracts for or in relation to the Project and materials, plant, equipment and supplies, ensure that Western Australian suppliers, manufacturers and contractors are given a fair and reasonable opportunity to tender or quote, and ensure proper consideration is given to Western Australian suppliers, manufacturers and contractors when letting contracts or placing orders for or in relation to the Project where price, quality, delivery and service are equal to or better than that obtainable elsewhere.

7. (4) Subject to Clause 16 the Parties shall do all things reasonably necessary to ensure that the Project is completed on or before 31 December 1987.

7. (5) The Parties shall use their best endeavours to comply with and permit the other Parties to comply with the Timetable and the Westrail Timetable.

7. (6) The City shall provide and maintain temporary pedestrian accessways during the implementation of the Project over such parts of the Reserved Land as may be required.

PROJECT COMMITTEE

8. (1) The Project Committee shall consist of the Minister, the Lord Mayor or the Deputy Lord Mayor of the City and the Chairman or Acting Chairman of the Metropolitan Region Planning Authority from time to time.

No. 106.] *Forrest Place and City Station* [1985.
Development.

8. (2) The quorum for a meeting of the Project Committee shall be three and no member of the Project Committee may abstain from voting upon any matter referred to the Project Committee for its approval or decision.

8. (3) A resolution in writing signed or assented to by letter, telegram, or telex by each member of the Project Committee shall be as valid and effectual as if it had been passed at a meeting of the Project Committee.

8. (4) Westrail shall be entitled to make submissions to the Project Committee where the matter referred to the Project Committee affects railway property, Westrail's operations on the Westrail Land, Westrail's obligations and obligations to Westrail hereunder or Westrail's contribution to the Project Costs and the Project Committee shall give due consideration to any such submission made by Westrail.

8. (5) Where any of the Parties is of the opinion that any of the other Parties has acted unreasonably or capriciously or where the Parties cannot agree upon any matter hereunder or agree any matter hereunder within the specified time or prior to the specified date, then any of the Parties may refer the matter to the Project Committee for its decision and the Parties agree to abide by its decision.

8. (6) The Project Committee shall promptly give its approval or make any decision as to the matter referred to it and the Parties agree to abide by any approval or decision of the Project Committee.

CITY STATION COMPLEX

9. (1) The City shall instruct the Architect in producing the Design Drawings to comply with the requirements set out in Item 6 of the Sixth Schedule and those requirements shall bind the Parties.

9. (2) From execution of this Agreement until completion of the City Station Complex the City shall—

- (a) cause the least possible disturbance to Westrail's rail passenger operations;
- (b) minimise inconvenience to Westrail's business and passengers;

1985.] *Forrest Place and City Station* [No. 106.
Development.

- (c) provide adequate temporary storm water drainage;
 - (d) prevent dazzle, or confusion in or obstruction to the sighting of railway signals by train operating staff;
 - (e) comply with the matters referred to in Item 7 of the Sixth Schedule and ensure that any contract arrangement or agreement entered into by it for the construction of the City Station Complex includes the requirements contained in Item 7 of the Sixth Schedule; and
 - (f) provide details to Westrail, obtain its prior approval and comply with the conditions of that approval with respect to any matter which may involve interference with or alteration to or removal or relocation of any Westrail property, services or operations or which may affect the safety of Westrail's passenger operations on the Westrail Land.
9. (3) Any breach of the matters and requirements contained in Items 6 and 7 of the Sixth Schedule shall not enable any Party to rescind this Agreement.
9. (4) Westrail shall complete the removal and relocation where necessary of tracks, signals and platform canopies required by the Project in accordance with the Westrail Timetable.

CARE CONTROL AND MANAGEMENT OF
CITY STATION COMPLEX

10. (1) Subject to Sub-clause (2) and after completion of the City Station Complex the City shall—
- (a) be responsible for the care, control and management of the City Station Complex;
 - (b) pay the costs of lighting and power to the public areas and fuel and electricity for the operation of the ventilation in the City Station Complex;
 - (c) maintain the City Station Complex in a good and safe structurally sound and proper condition and state and maintain the structural integrity of the supporting columns and understructure;

No. 106.] *Forrest Place and City Station* [1985.
Development.

- (d) maintain and keep free from obstruction the public pedestrian thoroughfares as shown in the Design Drawings;
- (e) control and manage access to the public car park situated in the City Station Complex;
- (f) provide and maintain such measures for the security of the City Station Complex as the City thinks fit;
- (g) obtain the approval of Westrail before commencing any repairs or maintenance to the City Station Complex and the supporting columns and under-structure which will interfere with Westrail's operations on the Westrail Land and ensure that the repairs and maintenance are carried out in a workmanlike manner; and
- (h) assign to Westrail the benefit of all warranties and maintenance obligations in respect of the escalators and lifts the cost of which Westrail is liable to pay to the City pursuant to Clause 12 (3) immediately upon receipt by the City of such warranties and maintenance obligations and give notice of assignment to any person liable thereunder.

10. (2) Westrail shall—

- (a) maintain and manage all railway property associated with the Project including the Westrail Station Office, steps, escalators, lifts, platforms and other railway facilities and pay all costs including power electricity and operating costs associated therewith and shall subject to Sub-clause (1) (c) execute repairs and maintenance to the structural elements and lighting beneath the City Station Complex which is necessary for the safe and proper working of Westrail's operations on the Westrail land PROVIDED THAT the City shall be liable for the maintenance of the structural integrity of the City Station Complex; and
- (b) maintain manage keep in proper working order and carry out reasonable repairs and replacements as are reasonably necessary to the ventilation plant equipment and system in the City Station Complex and the City shall allow Westrail by its employees agents and contractors access at all reasonable times to carry out such maintenance, repairs and replacements.

1985.] *Forrest Place and City Station* [No. 106.
Development.

10. (3) The City shall—

- (a) notify Westrail of any damage to the ventilation equipment in the City Station Complex of which the City becomes aware and Westrail shall forthwith attend to repairing such damaged equipment; and
- (b) pay Westrail's reasonable costs incurred in carrying out the matters referred to in Sub-clause (2) (b) and (3) (a) within 30 days of each quarterly account for such costs being rendered by Westrail.

10. (4) Westrail shall be entitled to control and close access to the railway platforms without notice.

NORTHWEST CORNER LAND

11. (1) Upon the land beneath a depth of 12.19 metres beneath the surface of the Northwest Corner Land being transferred to the Crown by the Commonwealth of Australia, the Crown shall within a reasonable time after demand by the City cause the Department of Lands and Surveys to issue a Crown Grant for the land beneath the Northwest Corner Land to a depth of 30 metres and shall cause the Registrar of Titles to issue a Certificate of Title for that land and the Northwest Corner Land in the name of the City.

11. (2) Upon the settlement of the sale of the Northwest Corner Land the purchaser thereof shall be deemed to be an Interested Party for the purposes of this Agreement.

COST ALLOCATION AND CONTRIBUTIONS

12. (1) If the Project proceeds with the participation of all of the Interested Parties then the proportion of Project Costs payable by each of the Parties to the DPA shall be as specified in the Fourth Schedule as may be varied or added to in the DPA.

12. (2) If the Project proceeds with either some or none of the Interested Parties then the City and the State shall increase or decrease (as the case may be) their cost contributions in respect of each area of development of the Project in proportion to their respective contributions for each area of development of the Project as specified in the Fourth Schedule as may be varied or added to in the DPA.

No. 106.] *Forrest Place and City Station* [1985.
Development.

12. (3) Westrail shall pay the costs incurred by the City for the escalators, steps and lifts as shown in the Design Drawings for movement between the City Station Complex and Westrail Land and all associated mechanical electrical and building works necessary for their operation less SIXTY THOUSAND DOLLARS (\$60,000.00), within 21 days after demand by the City, which demand shall only be made upon receipt by the City of each invoice for the escalators, steps and lifts.

12. (4) The City shall pay to Westrail the reasonable costs incurred by Westrail for—

- (a) the agreed alterations and changes to Westrail's signalling system required by reason of the Project;
and
- (b) the construction of facilities to replace the existing ground floor staff and first floor toilet and wash facilities which are to be demolished at the eastern end of the railway station building

within 21 days after demand by Westrail which demand shall only be made for an item of cost after that cost has been incurred by Westrail. Any such demand shall be accompanied by the invoices rendered to Westrail for those goods or that work and any demand for the cost of work carried out by Westrail or for goods manufactured by Westrail shall be accompanied by Westrail's own invoice.

12. (5) To compensate Westrail for the loss of its right to the future use of the air space the subject of the City Station Reserve, the City shall pay Westrail—

- (a) ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) within seven days of the Bill referred to in Clause 3 (1) coming into operation; and
- (b) fourteen equal annual payments of ONE HUNDRED AND THIRTY NINE THOUSAND TWO HUNDRED AND EIGHTY DOLLARS (\$139,280.00) due and payable on each anniversary of the date referred to in paragraph (a) of this Sub-clause.

12. (6) Indirect Costs shall be payable by the City and the State in equal proportions.

1985.] *Forrest Place and City Station* [No. 106.
Development.

12. (7) The State shall pay each part of its proportion of the Project Costs and the Indirect Costs to the City within twenty-one days after each demand being made by the City.

12. (8) If any payment to be made by any of the Parties pursuant to this Clause is not made within the time specified interest shall be payable from the date of demand until the date of payment, by the Party liable to make such payment to the Party that made demand, at the daily rate payable by the City on overdraft accounts of that amount as specified by the Commonwealth Trading Bank at the rate applicable on the date of demand.

12. (9) The Parties acknowledge that the Commonwealth Government has contributed TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000.00) to the Project indexed from the date of allocation and the City undertakes that such funds and any interest earned thereon shall be expended on or towards the Project.

12. (10) During the implementation of the Project the City shall not, without the prior approval of the State, agree to any variation of any contract entered into by the City in the implementation of the Project where the variation will increase the existing contribution of the State to that part of the Project which is subject to the variation by an amount in excess of 2%, but notwithstanding the foregoing, any variation which affects or involves an alteration to the Design Drawings, whether or not the variation involves any increase or decrease to the State's contribution to the Project Costs or Indirect Costs shall be first approved by the State. If the State does not approve a variation within 10 days of the City submitting the variation to the State, the variation shall be referred to the Project Committee for its approval.

12. (11) Project Costs shall be subject to escalation in accordance with the Rawlinson Australian Construction Hand Book Price Index as published by Rawlhouse Publishing Pty. Ltd. or such index as may be published in substitution for it from time to time.

12. (12) Project Costs shall be verified and adjusted in line with quantities and normal cost variations.

CARE CONTROL AND MANAGEMENT

13. (1) Subject to Clause 10 (2) upon completion of the Project the City shall care for control and manage the Reserved Land.

13. (2) The City shall maintain the buildings and developments on the Reserved Land in a safe and structurally sound state of repair and shall use its best endeavours to ensure that all works and maintenance to be carried out on the Reserved Land will be done in a workmanlike manner.

13. (3) The City shall keep the Reserved Land clean and free from rubbish.

13. (4) The City shall pay the cost of repairs, lighting and power for the Reserved Land other than those costs for which Westrail is liable pursuant to this Agreement.

13. (5) The City may levy charges for the use of the service depot storage areas and other facilities located in the Basement Reserve.

INSURANCE

14. (1) The City shall—

(a) ensure that any builder engaged by the City for the implementation of the Project or any part thereof is required by its contract of appointment to maintain policies of insurance during the implementation of the Project for such risks as a builder would usually insure against for an undertaking such as the Project and ensure that those policies are duly obtained and maintained;

(b) ensure that any consultants to the Project have and maintain throughout the term of their appointment current policies of insurance with respect to professional liability.

14. (2) Before the commencement of implementation of the Project the City shall effect, through its insurance broker, and keep current until the completion of the Project

1985.] *Forrest Place and City Station* [No. 106.
Development.

those policies of insurance which that broker advises are usual and prudent in respect of an undertaking such as the Project, and which have been approved by the State, including policies with respect to—

- (a) contract works;
- (b) public liability for bodily injury and property damage which shall—
 - (i) be in the joint names of the Parties and all contractors subcontractors and shall include directors employees and joint venturers and affiliated or subsidiary firms or companies of those persons (“the insured”) for their respective rights and liabilities;
 - (ii) include an insurers waiver of subrogation in favour of each party insured thereunder;
 - (iii) cover liability to the public for an amount of not less than TWENTY MILLION DOLLARS (\$20,000,000.00) in respect of any one occurrence arising out of or in the course of or caused by or connected with the Project;
- (c) project professional indemnity which insurance shall require the City in the event of any claim being made to have recourse first to the separate policies of professional indemnity insurance held by each of the consultants engaged for the Project.

14. (3) The City shall after the completion of the Project maintain adequate insurance with respect to public liability and property damage with respect to the Reserved Land.

14. (4) Nothing in this clause nor in this Agreement nor in any of the required policies of insurance shall limit the liability of any builder or consultant to the Project to the proceeds of insurance received by any builder or consultant or the proceeds of any of the policies contemplated or effected pursuant to this Clause. Any party named in any of those policies shall be named without prejudice to their and each of their rights or to any right of action they or any of them might otherwise have or acquire either in contract or in tort against the builders or consultants arising out of this Agreement or any matter incidental thereto or out of any act or matter incidental to the Project but none of the insured shall be deemed to have consented to any tortious act nor to any act which but for this Clause might have constituted a breach of contract.

CONSENTS AND APPROVALS

15. (1) Any consent, act, matter of thing required to be provided, obtained, executed, carried out or performed by any Party shall be given, done, executed, carried out or performed as expeditiously as possible and in any event so as not to unreasonably delay the implementation of the Project or the performance of any builder or contractor appointed by the City hereunder.

15. (2) Any consent, approval, permission, authority, decision, requirement or condition shall not be capriciously or unreasonably withheld or given, and the obligations and performance of any Party shall be carried out and performed in a reasonable manner.

FORCE MAJEURE

16. (1) *Force majeure* means events or occurrences and the effects thereof beyond the reasonable control of the Party claiming *force majeure* which affects the ability of that Party to observe and perform its obligations hereunder including war, invasion, riot, civil or military disturbances, sabotage, strikes, picketing or other labour disputes or disturbances, expropriation, lightning, fire, flood or threat of floods, earthquake, storm, cyclone, explosion, governmental restrictions or other governmental actions or inactions (unless such restrictions, actions, or inactions arise out of the failure of the Party affected to comply with any governmental requirement), and orders or temporary or permanent injunctions of any duly constituted court of competent jurisdiction or any duly authorised administrative agency or officer (unless any such order or injunction was imposed by reason of the failure of the Party affected to observe and obey any legal requirement or obligation under this Agreement).

16. (2) If any Party is unable, wholly or in part, by reason of *force majeure* to carry out any obligation on it, and notifies the other Parties that it wishes to claim that it is affected by *force majeure*, the obligation shall be suspended so far as it is affected by the *force majeure* during the period from the giving of the notice that *force majeure* is claimed until the *force majeure* and the effects of the *force majeure* cease. The notice claiming *force majeure* shall contain the particulars of the *force majeure*, and so far as is known, the extent to which the Party claiming *force majeure* considers that it will be unable to perform or be delayed in performing its obligations.

16. (3) A party affected by *force majeure* shall take all necessary steps to remedy or remove the *force majeure* and the effect of it as quickly as possible but this shall not require the settlement of strikes, picketing, or other labour disputes or disturbances on terms other than in accordance with proper legal and industrial procedures.

16. (4) Where a Party gives a notice pursuant to this Clause it shall thereafter during the continuance of the *force majeure* at least every five days give notice to the other Parties of the then probable extent to which it will be unable to perform or be delayed in performing its obligations and of any significant changes relative to the *force majeure* since it gave its last notice to the other Parties.

16. (5) If any Party disputes that the Party who has given a notice pursuant to this Clause is entitled to claim *force majeure* then that Party may refer the matter to the Project Committee for its decision.

NOTICES

17. (1) Any notice or other communication to be given or made under this Agreement shall be signed by the Party giving it or that Party's representative and shall be in writing and may be served or sent by telex or prepaid post addressed as follows:

The State—

Minister for Planning
Town Planning Department
22 St. George's Terrace
Perth

The City—

Town Clerk
City of Perth
27 St. George's Terrace
Perth
Telex: Percit AA94452

Westrail—

The Chief Civil Engineer
Westrail Centre
West Parade
East Perth
Telex: WARAIL 92879

or such other address or telex number as the Parties may from time to time by notice designate.

17. (2) Notice to Westrail shall constitute notice to the Minister for Railways.

17. (3) Time shall not commence to run in respect of any notice before receipt by the addressee.

17. (4) In the case of personal delivery of any notice such notice shall be deemed to have been received by the Party on which it was served upon the date of its service.

17. (5) Any notice mailed as herein provided shall be deemed to have been served upon the Party to which it is addressed on the second day following the date of mailing.

17. (6) A telex shall be deemed to have been received by the Party to which it is addressed on the first business day following the day of sending provided that the receipt of a jumbled telex shall not cause time to run. Production of the relevant telex showing receipt by the sender of a Party's telex answer back code at its head prior to despatch of the message and contained in the telex at the end following such despatch shall be evidence of receipt of a telex message.

EXECUTED ON THE DATE MENTIONED ON PAGE 1.

SIGNED by THE HONOUR-
ABLE BRIAN THOMAS
BURKE M.L.A. for and on
behalf of the State of Western
Australia in the presence of—

BRIAN BURKE

MIKE BALFE
Classified State Civil
Servant Premiers
Department

THE COMMON SEAL of CITY
OF PERTH was hereunto
affixed in the presence of:

(C.S.)

M. A. MICHAEL
Lord Mayor
R. F. DAWSON
Town Clerk

SIGNED by the MINISTER
FOR WESTERN AUSTRALIAN
GOVERNMENT RAILWAYS in
the presence of:

JULIAN GRILL

P. MIDDLETON

THE COMMON SEAL of the
THE WESTERN AUSTRALIAN
GOVERNMENT RAILWAY
COMMISSION was hereunto
affixed in the presence of—

(C.S.)

B. M. SUTHERLAND
D/Commissioner
K. DONNELLY
Secretary