

**MASTER COOPERATIVE AGREEMENT**

**FOR THE**

**DESIGN AND CONSTRUCTION OF EASTSIDE LIGHT RAIL TRANSIT PROJECT**

**BY AND BETWEEN**

**COUNTY OF LOS ANGELES**

**AND**

**LOS ANGELES COUNTY FLOOD CONTROL DISTRICT**

**AND**

**LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY**

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**MASTER COOPERATIVE AGREEMENT  
FOR  
THE DESIGN AND CONSTRUCTION OF EASTSIDE LIGHT RAIL TRANSIT  
PROJECT  
BY AND BETWEEN  
COUNTY OF LOS ANGELES  
AND  
LOS ANGELES COUNTY FLOOD CONTROL DISTRICT  
AND  
THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY**

This Agreement, dated \_\_\_\_\_ is made by and between the Los Angeles County Metropolitan Transportation Authority (“MTA”), a public entity in the State of California and the County of Los Angeles (“County”), a political subdivision of the State of California and the Los Angeles County Flood Control District (“District”). The MTA, the County and the District are referred to collectively as the “Parties” and each individually as a “Party.” As used in this Agreement, terms identified by initial capital letters shall have the meanings set forth Article 1, or as elsewhere provided in this Agreement.

**RECITALS**

- A. MTA is a public entity created by the California State Legislature for many purposes, including but not limited to, the design, construction and operation of rail and bus transit systems and other transportation facilities in Los Angeles County.
- B. MTA proposes to design, construct and operate facilities necessary and convenient for a rail transit system, which will pass in, under, over or along public streets, highways, bridges, parks and other public ways of various jurisdictions, including the County of Los Angeles, California. MTA’s proposed project is:
  - The Metro Eastside Light Rail Transit Project (the “Eastside LRT Project”), which is defined as an approximately 6 mile light rail line currently proposed to traverse portions of the City of Los Angeles and unincorporated areas of the County of Los Angeles, between Union Station and Pomona Boulevard/Woods Street.
- C. MTA historically has used the “Design/Bid/Build” method of project delivery (as defined in Section 1.3.14 below) for its rail Transit Projects. However, MTA anticipates adopting the “Design/Build” method of project delivery for the at-grade portions of the Eastside LRT Project (from Union Station to the portal at 1<sup>st</sup> and Clarence Streets and from the 1<sup>st</sup>/Lorena Station to the Beverly/Atlantic Station).
- D. From time to time, the construction, reconstruction or improvement of MTA's Transit Project will require the Rearrangement of all or portions of certain County and/or District Facilities. The Parties desire to cooperate to the end that such Rearrangements be held to a minimum consistent with MTA's requirements and that when Rearrangements are required, they be effected with the greatest expedition and least interference with the operations of either of

the Parties. Development and execution of a Project ultimately seeks to provide mobility to users of the transportation system that fully balances social, economic, and environmental effects along with technical issues. Party representatives shall exercise sound judgment and use County and/or District design criteria and policies as a guide when producing solutions to potential problems encountered throughout Project development and execution so that final decisions are made in the best overall interest of the project.

- E. The County administers all matters for the District pursuant to Section 56-3/4 of the County's charter and in accordance with an Agreement approved on December 26, 1984, between the County and the District.

**NOW, THEREFORE**, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:



## ARTICLE 1 - SCOPE, DURATION AND DEFINITION

### 1.1 Scope of Agreement

- 1.1.1 This Agreement addresses the Transit Project described in Recital B. Among other things, this Agreement specifies (a) the procedures which the Parties will follow in identifying, planning, designing and effecting Rearrangements of Facilities in order for MTA to Construct and operate the Project within the County, and (b) the manner in which the Parties will be reimbursed for their respective costs related to the activities and work it will perform pursuant to this Agreement. The Parties agree that they will each cooperate and coordinate with the other in all activities covered by this Agreement, and any other supplemental agreements hereto. This Agreement shall not negate or otherwise modify the terms and conditions of any existing agreements (e.g., joint use agreements, operation and maintenance agreements) between the Parties (either as original parties or as successors by assignment or operation of law).
- 1.1.2 Furthermore, the County agrees to assist the MTA in the areas of building and safety, landscaping, transportation, traffic, civil engineering, street lighting, public works inspection, materials testing, contract administration, police services, fire/life safety, and other appropriate areas when and as requested by MTA on the terms provided herein. Finally, the County and the District agree to designate the Project as a high priority public works project, to provide the MTA with expedited review and approval procedures in connection with design, design reviews, permitting or other authority to be exercised by the County for the Project (to the extent such authority is applicable), and to cooperate with MTA to minimize required mitigations, conditions and/or approval requirements pursuant to the provisions of this Agreement.
- 1.1.3 Additional specific terms and conditions with respect to the Project are set forth on Exhibits "A", respectively, attached hereto and made a part hereof. As the Transit Project scope development progresses, the Parties may adopt additional specific terms and conditions, which upon mutual agreement, shall be incorporated into this Agreement by Amendment. Each Party agrees to negotiate in good faith toward reaching agreement on such additional specific terms and conditions, at the other Party's request.

### 1.2 Duration of the Agreement

The term of this Agreement shall commence on the Effective Date and shall terminate on June 30, 2016, unless a Party provides written notice of termination to the other Parties.

### 1.3 Definitions

For the purpose of this Agreement, the following terms shall have the meanings set forth below:

- 1) Abandonment is defined as the permanent termination of service of an existing Facility or portion thereof, and if the Facility or portion thereof is not being removed from its existing location, the work necessary to safely permit such Facility to remain in place in accordance with applicable law.

- 2) Betterment is defined as a Replacement Facility or any component thereof, or an enhancement to an existing Facility in place at the time of the Effective Date of this Agreement, requested by the County and/or the District and agreed to by the MTA (whether constructed by MTA, County or District), that increases the service capacity, capability, appearance, efficiency, or function, except that the following shall not be considered as Betterments:
  - (a) An upgrade which the Parties mutually agree will be of direct and principal benefit to the Construction or operation of a Transit Project.
  - (b) An upgrade resulting from compliance with the applicable County Standards as set forth in Section 2.2, provided, however, that any upgrade which exceeds such applicable County Standards shall be considered a "Betterment."
  - (c) Measures to mitigate environmental impacts identified in the Transit Project's final Environmental Impact Report or Statement and which are mutually agreed to be a Transit Project responsibility; provided, however, that any upgrade beyond minimally applicable requirements shall be considered a "Betterment."
  - (d) Replacement of devices or materials no longer regularly manufactured with the next highest grade or size.

The term "Betterment" shall include any upgrade to a Conflicting Facility requested by County and/or District and agreed by MTA, in order to conform to revisions or additions to County Standards which MTA is not required to accept pursuant to Section 2.8.1 or which is not otherwise excluded from the definition of Betterment as set forth above. The term "Betterment" shall also include any new or upgraded facilities or portion thereof added to a Replacement Facility at County's and/or District's request for the purpose of the improvement of Facilities or services. A Betterment shall not be a County or District Project. Betterments shall be entirely the financial obligation of County and/or District.

- 3) Advanced Partial Design Submittal is a submittal by MTA (or its consultants or contractors) to County and/or District of the completed Design for components of a particular Rearrangement or a particular Transit Project Facility (including elements thereof) prior to completion of the Final Design for the entire Rearrangement, in order to secure County's and/or District's conditional approval of such Design as more particularly set forth in Article 2.
- 4) Conflicting Facility is defined as an existing Facility which the MTA determines is so situated as to require Rearrangement in order to construct and operate Transit Project without adversely impacting the maintenance of that Facility.
- 5) Construction is defined as the work of removal, demolition, replacement, alteration, realignment, building, fabricating and landscaping of all new facilities to be built and systems and equipment to be procured and installed that are necessary to operate and maintain the Project.
- 6) Cost is defined as all actual, allowable and reasonable direct and indirect costs incurred by the MTA, the County or the District and attributable to activity or work performed or materials acquired in performing a task pursuant to this Agreement.

Direct costs shall include allowable direct labor, equipment and materials costs spent specifically for work performed under this Agreement, and shall include but not be limited to those associated with Design, project review, construction management, permit fees, inspection, processing, remediation plan development and implementation, real property acquisition and contract administration. Indirect costs shall include reasonable administrative and overhead costs at the rate therefore established by the Party seeking indirect costs from time to time. The Parties shall maintain their standard forms of records showing actual time expended and costs incurred under each Work Order or reasonable formula from which to determine administrative and overhead costs. The term "Cost" shall also include any additional costs due from a Party to its contractors and/or consultants as a direct result of changes in design for which a Party is responsible, including, but not limited to, delay, disruption and inefficiency. If the Parties disagree with as to another Party's determination of Cost, then the dispute shall be resolved in accordance with Article 11.7.

- 7) County is defined as the County of Los Angeles, California, including, but not limited to, its officers, boards, departments, and staff.
- 8) Comment Date is defined as follows:
  - (a) For each Rearrangement as to which the Transit Project is being procured on a D/B/B basis, as the deadline scheduled by the Parties pursuant to Section 2.5.1 for delivery of County's and/or District's final comments on the Final Design for such Rearrangement, prior to issuance of the construction contract solicitation documents.
  - (b) For each Rearrangement as to which the Subject Transit Project is being procured on a D/B basis, as the deadline scheduled by the Parties pursuant to Section 2.5.1 for delivery of County's and/or District's final comments on the Design product for such Rearrangement, prior to issuance of the D/B contract solicitation documents.
  - (c) For each Rearrangement as to which the Transit Project is being designed by a D/B contractor, as the deadline scheduled by the Parties pursuant to Section 2.5.1 for delivery of County's and/or District's comments (in accordance with Section 2.5.2) on Advanced Partial Design and County's and/or District's final comments on the Final Design prior to construction.
- 9) Facility is defined as real or personal property located within the route of a Transit Project, such as structures, improvements, and other properties, which is under the ownership or the operating jurisdiction of the County or District, and shall include but not be limited to, applicable public streets, highways, bridges, retaining walls, alleys, storm drains, sanitary sewers, parking lots, parks, public landscaping and trees, traffic control devices/systems, street lighting systems, and public police and fire alarm systems.
- 10) County Representative is defined as that person or persons holding the specified position(s), designated by County pursuant to Section 1.4.1.

- 11) County Rights-of-Way is defined as public streets and public easements within the boundaries of the County and as to which County has a right of jurisdiction.
- 12) County Standards As applicable, the latest editions of the American Public Works Association (APWA) standard plans, Los Angeles County Department of Public Works (LACDPW) standard plans - 1995 edition, LACDPW Hydrology/Sedimentation Manual dated December 1991, Los Angeles County Flood Control District (LACFCD) Hydraulic Design Manual dated March 1982, LACFCD Structural Design Manual dated April 1982, Standard Specifications for Public Works Construction (Greenbook) - 1997 edition, LACDPW Additions and Amendments to the Standard Specification for Public Works Construction (Greenbook) and the Caltrans Highway Design Manual.
- 13) Design is defined as that engineering, architectural and other design work and the resulting maps, plans, specifications, special provisions, drawings, computer software, and estimates which are necessary to construct a Rearrangement and/or a Transit Project under the terms of this Agreement.
- 14) Design/Bid/Build ("D/B/B") is defined as the method of project delivery in which MTA engages a design consultant to prepare the Final Design for a project and subsequently procures a contractor to construct the project based on the Final Design.
- 15) Design/Bid/Build Design Contractor ("D/B/B Contractor") is defined as a contractor that has been engaged by the MTA to construct a Transit Project, or portion thereof, pursuant to the Design/Bid/Build procurement.
- 16) Design/Build ("D/B") is defined as the method of project delivery in which MTA engages a Design/Build Contractor to both furnish the Final Design of and Construct a project.
- 17) Design/Build Contractor is defined as a single entity or joint venture which is engaged by MTA to complete the Design of and to Construct a project pursuant to a Design/Build procurement.
- 18) Design Development is defined as the phase of the Design process which validates schematic design concepts and system criteria and develops a clear indication of design solutions for requirements outlined in the Preliminary Engineering Design phase. At the completion of Design Development, major features of the architectural, structural Design and third party interfaces have advanced in conjunction with performance specifications, thereby providing the basis for Final Design.
- 19) District Representative is defined as that person or persons holding the specified position(s), designated by County pursuant to Section 1.4.3.
- 20) Eastside LRT Project is defined with the meaning set forth in Recital B of this Agreement.
- 21) Effective Date means that date this Agreement is formally approved by the Board of Supervisors of the County of Los Angeles acting as the governing body of the

County, the Board of Supervisors of the County of Los Angeles acting as the governing body of the District, and the Board of Directors of the MTA, whichever comes later.

- 22) Expired Service Life Value is defined with the meaning set forth in Section 8.5.
- 23) Final Design is defined as the phase of the Design process which provides the detailed design and technical specifications for all temporary and permanent project facilities. This phase addresses and resolves all Design review comments, construction issues, and third party comments and finalizes all engineering, architectural, and system designs necessary for complete construction documents. The term also includes the products of such phase of the Design process. The detailed Final Design may be furnished either by a D/B Contractor or by the MTA's design consultant (and in the latter case, some elements of the Final Design also may be furnished by the D/B/B Contractor).
- 24) Initial Term is defined with the meaning set forth in Section 1.2 of this Agreement.
- 25) Joint Development is defined as a term of partnership for many different forms of public/private sector cooperation in the development or redevelopment of structures and facilities to be built in and around Rail Transit Stations and Rail Transit Station areas.
- 26) MTA Fiscal Year shall mean each one-year period commencing on July 1 of a calendar year and terminating on June 30 of the following calendar year.
- 27) Not used
- 28) Parties are defined as MTA, County and District collectively, and a "Party" is defined as each of MTA, County and District individually.
- 29) Preliminary Engineering (PE) Design is defined as the phase of the Design process which takes a project from a conceptual state to a level of project Design definition that describes the project technical and architectural approach in order to address environmental and community impacts, interfaces with utilities and existing infrastructure/facilities, operational characteristics, an estimate of project costs and a project execution schedule. The term also includes the products of such phase of the Design process. The Preliminary Engineering Design phase is initiated at the conclusion of the Draft Environmental Impact Statement and after the selection of the locally preferred alignment.
- 30) Rearrangement is defined as the work of alteration, removal, replacement, reconstruction, support or relocation of a Conflicting Facility or portion thereof, whether permanent or temporary.
- 31) Replacement Facility is defined as a facility which may be constructed or provided under the terms of this Agreement as a consequence of a Rearrangement.
- 32) Right-of-Way (ROW) is defined as the real property required for operating and maintaining the Transit Facilities and systems that comprise the Project.

- 33) Street Lighting System is defined as a complete lighting system to illuminate County Rights-of-Way, including, but not limited to, public roadways, detour roadways, sidewalks, detour sidewalks, bridges, underpasses, overpasses, walkways and other public improvements to meet County Standards. Street Lighting System components include, but are not limited to, electroliers, foundations, luminaries, lamps, pull boxes, conduit wires, service points and other related equipment.
- 34) Subject Transit Project or Project is defined as the Eastside Light Rail Transit Project described in Recital B.
- 35) Substitute Facility is defined as a facility which is equal, in terms of service and/or capacity, to the corresponding Conflicting Facility that requires Rearrangement and which meets applicable County Standards as set forth herein.
- 36) Temporary Facility is defined as (i) a Facility constructed for the purpose of ensuring continued service while a Conflicting Facility is taken out of service, fully or partially, to undergo Rearrangement, or (ii) a facility constructed or used to facilitate or otherwise assist with a Transit Project, including but not limited to Construction staging and/or material storage areas.
- 37) Traffic Management Plan is defined as a plan that addresses traffic control requirements in Construction areas through a Worksite Traffic Control Plan (“WTCP”), and along detour routes through a Traffic Circulation Plan (“TCP”). A WTCP is a site-specific Design for temporary traffic control and diversion of vehicular and pedestrian traffic through or adjacent to a work area, incorporating base conditions, temporary conditions, construction impact areas, and all temporary/permanent traffic controls and advisory signage. On a larger scale, a TCP addresses operation along an alternate route which bypasses a work area, or multiple intersections affected by concurrent Construction, by means of striping, signing, signals, delineators, barricades, warning lights or other traffic control devices. The operation of a Traffic Management Plan is affected by Construction phasing plans and Construction schedules.
- 38) Work Order is defined as that document which the MTA will issue for a defined scope of work, direct and indirect costs to authorize the County and/or District to perform any work, and to be reimbursed therefore, on the preparation and/or review of design plans, operations plans, or other agreed to work plans, and to provide materials, construction inspection, acceptance and quality assurance testing, and/or Rearrangements under the terms and conditions of this Agreement. Work Orders shall impose schedules, which are consistent with and supportive of the Design and Construction schedule of the Transit Project.
- 39) Working Days are defined as any calendar day excluding Saturdays, Sundays and those legal holidays identified in Title 6, Chapter 12, Article 040 of the Los Angeles County Code.

## **1.4 Representatives**

### **1.4.1 County Representative**

For the Transit Project, the County Manager shall designate a person, or the holder of a specified office or position, to act as the County Representative. The County Representative shall be dedicated to his/her assigned Transit Project(s) to assist the MTA in the delivery of such Transit Project(s) and each component thereof in a timely manner. Upon request by MTA, and at the sole expense of the MTA, a County Representative shall be collocated full-time at the MTA's project office(s). The County Representative(s) will have the responsibility (i) to manage and coordinate County interaction (including without limitation County departments, bureaus, divisions, or other constituent entities) with the MTA and its contractors, (ii) to produce the necessary work documents and reports on the production, Cost and Work Order status, and (iii) to undertake reviews and make approvals as required by this Agreement. The County may change its designated County Representative by providing ten (10) Working Days prior written notification to the MTA. The County shall remove and replace any County Representative within ten (10) Working Days after MTA's reasonable written request therefore.

### **1.4.2 MTA Representative**

For each Transit Project, the Chief Executive Officer of the MTA shall designate a person, or the holder of a specified office or position, to act as the MTA's Representative. The MTA Representative will have the responsibility to manage and coordinate MTA interaction with the County and the District, and to cause the production of the necessary Design and Construction documents for County and/or District review and/or approval, issue Work Orders, and to undertake reviews and make approvals as required by this Agreement. The MTA may change its designated MTA Representative by providing ten (10) days prior written notification to the County and the District.

### **1.4.3 District Representative**

For the Transit Project, the District Manager shall designate a person, or the holder of a specified office or position, to act as the District Representative. The District Representative shall be dedicated to his/her assigned Transit Project(s) to assist the MTA in the delivery of such Transit Project(s) and each component thereof in a timely manner. Upon request by MTA, and at the sole expense of the MTA, a District Representative shall be collocated full-time at the MTA's project office(s). The District Representative will have the responsibility (i) to manage and coordinate District interaction with the MTA and its contractors, (ii) to produce the necessary work documents and reports on the production, Cost and Work Order status, and (iii) to undertake reviews and make approvals as required by this Agreement. The District may change its designated District Representative by providing ten (10) Working Days prior written notification to the MTA. The District shall remove and replace any District Representative within ten (10) Working Days after MTA's reasonable written request therefore.

## **ARTICLE 2 - DESIGN**

### **2.1 Design/Build Contractor**

The Parties acknowledge that MTA's utilization of Design/Build for a portion of the Eastside LRT Project may have an impact on the processes governed by this Agreement. Without limiting the generality of the foregoing, County and District acknowledge that development of a Design/Build Transit Project will require strict compliance with the scheduling requirements of this Agreement, and that failure to meet the deadlines set forth in this Agreement or in the applicable Work Order could cause MTA and/or its D/B Contractor to incur substantial costs as a result of such delay, or in taking measures to avoid resulting delay to the Transit Project. County and District further acknowledge that the D/B Contractor may be assigned various tasks, including certain tasks assigned to the MTA Representative hereunder (e.g. coordination of design and resolving design issues with local agencies) which would ordinarily be performed by MTA's own staff or design consultants. Accordingly, if MTA enters into a D/B Contract, the Parties agree as follows:

- 2.1.1 Without limiting MTA's right to delegate the performance of Design and Construction tasks hereunder to consultants and contractors, MTA may delegate to the D/B Contractor the duty to perform certain of MTA's obligations hereunder in lieu of MTA, as designated by MTA in the D/B Contract; provided, however, that the obligation to make payments or advance funds pursuant to Article 7 will not be delegated to the D/B Contractor, and County and District shall have no right to seek such payments from the D/B Contractor.
- 2.1.2 The D/B Contractor may exercise certain of MTA's rights hereunder, but only to the extent designated by MTA in the D/B Contract (without limiting MTA's right to exercise such rights).
- 2.1.3 MTA may add the D/B Contractor as a required notice recipient pursuant to Section 12.2 for certain notices hereunder, as specified by MTA.
- 2.1.4 The D/B Contractor has authority to provide approvals, consents, permissions, satisfactions or authorizations only where expressly permitted hereunder or pursuant to the D/B Contract.
- 2.1.5 Upon its entry into a D/B Contract, MTA agrees to notify County and District as to (a) the name of the D/B Contractor (and relevant contact information), (b) the obligations and rights hereunder that have been delegated to the D/B Contractor, and (c) any modification to the notice requirements of Section 12.2. County and District agree to coordinate its efforts and cooperate with the D/B Contractor and with MTA as reasonably requested by MTA or the D/B Contractor in light of the involvement of the D/B Contractor as described in such notification.

### **2.2 Interpretation and Application of County Standards**

- 2.2.1 With respect to both Design and Construction, in interpreting applicable County Standards, and in exercising any discretion granted to County and District staff by applicable County Standards, County and/or District shall make such interpretations and exercise such discretion in such a manner as to impose the



minimum requirements necessary to achieve reasonable goals of public health and safety, and functionality. Any Design or Construction issues which are not addressed by applicable County Standards shall be resolved in such a manner as to impose the minimum requirements necessary to make the Replacement Facility the equivalent (in terms of capability, appearance, efficiency and function) of the Conflicting Facility which it replaces.

- 2.2.2 If a disagreement arises between County and/or District and MTA (or its contractors or consultants) with respect to a Rearrangement Design issue, upon receiving notice of such disagreement from County and/or District or MTA's contractors or consultants, the MTA Representative shall promptly investigate, make a determination, and notify County and/or District, as to whether (a) County's and/or District's position is acceptable, or (b) a modification to County's and/or District's position is necessary. If County and/or District disagree with MTA's determination, then the dispute shall be resolved in accordance with Article 11.
- 2.2.3 If MTA receives from County and/or District a written nonconformance notice upon inspection of Rearrangement Construction, MTA shall promptly investigate and notify County and/or District of MTA's determination as to whether (a) correction of the completed Rearrangement is necessary in order to prevent public health and/or safety risks and/or to achieve the level of functionality required by applicable County Standards, or (b) correction is not necessary in order to achieve such purposes. If County and/or District disagree with MTA's determination, then the dispute shall be resolved in accordance with Article 11.

## **2.3 Coordination**

- 2.3.1 The MTA Representative, the County Representative and the District Representative shall establish general guidelines, working relationships, administrative policies, approval procedures with respect to Design review, and coordination of Construction, right-of-way acquisition and Rearrangement of Facilities pursuant to this Agreement in order to permit the timely design, construction and operation of Transit Project. All such guidelines, relationships, policies, procedures and coordination shall be consistent with this Agreement and, in the event of any conflict between the provisions thereof and this Agreement, the provisions of this Agreement shall prevail. MTA shall consult with the County Representative and/or District Representative in establishing the schedule for Design of Rearrangements; however, the schedule shall be consistent with MTA's Construction schedule for each Transit Project, as determined by MTA. If County and/or District disagree with MTA's determination, then the dispute shall be resolved in accordance with Article 11.
- 2.3.2 Certain components of the Transit Project Construction will require interruption of County and/or District services. Based upon an approved plan, County and District hereby consent to necessary and minimal scheduled interruption of service. MTA shall provide at least three (3) Working Days prior before County services are interrupted. MTA will notify affected Parties in advance of scheduled interruptions and will cooperate with County and/or District to minimize interruption of County and/or District service and resulting disruptions. Where

the Parties mutually agree that Temporary Facilities are necessary and appropriate, MTA shall provide such Temporary Facilities.

- 2.3.3 County and District recognize that time is of the essence for Transit Project, and that certain portions of Transit Project (whether procured on a D/B basis or on a D/B/B basis) may involve Advanced Partial Design Submittals (as further described in Exhibit A) to facilitate early Construction of components of a Rearrangement (or elements thereof) prior to completion and approval of Final Design for the entire Rearrangement. Each Advanced Partial Design Submittal will identify the particular components or elements as to which County's and/or District's review and approval for early construction is being requested. County and District agree to review and to approve for early construction (subject to Section 2.3.4 and to the timing and other requirements of this Agreement) all such Advanced Partial Design Submittals in order to facilitate such early Construction. County's and District's comments on Advanced Partial Design Submittals shall identify any aspects of the identified components or elements which do not conform to applicable County Standards, based on the information provided.
- 2.3.4 The Parties recognize that County and District approval of Advanced Partial Design Submittals might result in Design or Construction of completed Rearrangements (or components thereof) that are non-conforming to applicable County Standards. If County and/or District determine that a completed Rearrangement (or component thereof) does not conform to applicable County Standards, then County and/or District will provide verbal notice of nonconformance to the MTA Representative as soon as possible, followed by a written nonconformance notice within 24 hours after making such determination. Such written notice shall include an explanation of County's and/or District's desired resolution. Work shall not be stopped as a result of any such nonconformance unless otherwise determined by MTA, and the Parties shall proceed in accordance with Section 2.2.2.

## **2.4 Identification of Facilities**

- 2.4.1 Within thirty (30) days after request by MTA, County and District shall identify and disclose to MTA all known Facilities which are located on, in, under, over, along or near those County Rights-of-Way which MTA indicates may be affected by a Transit Project. County and District shall allow MTA, its consultants and contractors such access to County's and District's records as is reasonably necessary to verify such information.
- 2.4.2 Within thirty (30) days after request by MTA, County and District shall provide to MTA all County and District known record information available as to all utility, cable, pipeline and other facilities (and their owners) which are not Facilities, and which are located on, in, under, over, along or near County Rights-of-Way which MTA indicates may be affected by a Transit Project. County and District shall allow MTA, its consultants and contractors such access to County's and District's records as is reasonably necessary to verify such information.
- 2.4.3 County and District agree to provide the information and access required in this Section 2.4 in a timely and cooperative manner.

## **2.5 Design of Rearrangements Performed by MTA, Its Consultants and Contractors**

Unless otherwise mutually agreed, the MTA (or its consultants and/or contractors) shall Design all Rearrangements (including Betterments thereto). MTA shall issue Work Orders for County and/or District to review plans and specifications as required, and the following procedures shall govern:

2.5.1 The Parties will develop a mutually agreeable process for submittal of plans and specifications for each Rearrangement at the Preliminary Engineering, Design Development and Final Design stages and for County and/or District review and approval or comment regarding same, consistent with the requirements of this Agreement; provided, however, that the schedule for such submittals and responses shall conform to MTA's schedule for the applicable Transit Project and to the following requirements:

(a) Within five (5) Working Days after receipt of a Advanced Partial Design Submittal or any other Design submittal for a Rearrangement,

(1) County and District shall inform MTA and the D/B contractor whether the plans and specifications are sufficiently complete for County and District review purposes, and

(2) if not sufficiently complete, County and/or District shall so notify MTA and the D/B contractor, or shall return the plans and specifications to MTA together with an identification of those portions that are not sufficiently complete and a description of the missing information listing the deficiencies. If no such notice or return is received by MTA and the D/B contractor within such seven (7) calendar days, the plans and specifications shall be deemed complete and acceptable for review purposes. For purposes of this Section 2.5.1 (a), the determination as to whether a Advanced Partial Design Submittal is sufficiently complete for County and/or District review purposes shall be based solely on whether the information provided is sufficient to review the particular components or elements as to which County's and/or District's review has been requested.

(b) Within thirty (30) calendar days after receipt of each submittal, County and District shall review and approve the plans and specifications or transmit its comments to MTA and the D/B contractor. If no comments are received within such period, the submittal shall be deemed complete and satisfactory to, and approved by, County and/or District.

(c) The provisions of this Section 2.5.1 also will apply to any resubmittal of plans and specifications by MTA or the D/B contractor, whether in response to a County and/or District notice or return of incomplete plans and specifications, or in response to substantive County and/or District comments.

2.5.2 County and District agree that during the Final Design stage, they shall refrain from raising any new issues, or make any comments which are inconsistent with its comments (or lack of comment) on earlier submittals, or with any changes thereto agreed to by County, District and MTA or the D/B contractor.

County's and District's approval of the Final Design for any Rearrangement will not be withheld if the submittal is consistent with

- (a) the most recent previous submittal for such Rearrangement, modified as appropriate to respond to County and/or District's comments on such submittal and to reflect any subsequent changes agreed to by County and/or District and MTA or the D/B contractor, or
- (b) earlier submittals for such Rearrangement which have been approved (or deemed complete and approved) by County and/or District. County and District shall have the right to comment on any material changes in Design from previous submittals.

## **2.6 Design of Rearrangements Performed by County and/or District**

If the Parties mutually agree that County and/or District (or their consultants and/or contractors) shall Design a specific Rearrangement, MTA shall issue a Work Order to County and/or District, upon receipt of which County and/or District shall proceed to perform the Design of such Rearrangement, and the activities referred to in the following subsections:

- 2.6.1 County and/or District shall perform its Design work in conformance with MTA's Design schedule and shall coordinate throughout Design with MTA as is necessary to develop plans satisfactory to both MTA and County and/or District for each Rearrangement. The schedule for County's and/or District's completion of design, coordination requirements, review procedures, and related provisions shall be included as attachments to the Work Order, which shall also include the not-to-exceed cost of completing the Design of the specific Rearrangement.
- 2.6.2 County and/or District shall submit a set of the completed Design plans and specifications, including County's and/or District's estimate of the cost of Construction and County's and/or District's estimate for the time needed to perform the required Rearrangement work, to MTA for its review and approval.

## **2.7 Betterments**

- 2.7.1 As soon as possible, preferably during the Preliminary Engineering Design phase but in any event not later than the Comment Due Date for each Rearrangement, County and District shall inform MTA what Betterments, if any, County or District desires so that MTA can review and determine the acceptability of the requested Betterment.
- 2.7.2 If MTA determines, in its sole discretion, that any proposed Betterment is not consistent or compatible with the requirements of the Transit Project, then MTA shall have the right to refuse to allow such Betterment, or to condition construction of such Betterment upon such modifications as MTA deems appropriate. If County and/or District disagree with MTA's determination, then the dispute shall be resolved in accordance with Article 11. County and/or District shall bear the Cost of all approved Betterments.

## **2.8 General Design Criteria**

2.8.1 County and/or District shall notify MTA of any revisions or additions to the County Standards, promptly after their formal issuance or adoption. The Design of each Rearrangement, whether furnished by County, District or by MTA (or by their consultants or contractors), shall conform to the County Standards identified in Section 1.3.12, together with any revisions or additions thereto which are required to be incorporated into the Design product pursuant to the following provisions:

(a) With respect to Rearrangements as to which the Subject Transit Project is being procured on a Design/Bid/Build basis, the Design product shall incorporate any revisions or additions to the County Standards of which County and/or District has notified MTA on or before the earlier of (i) thirty (30) days after their formal issuance or adoption, and (ii) the applicable Comment Due Date.

(b) With respect to Rearrangements as to which the Subject Transit Project is being procured on a Design/Build basis, the Design product shall incorporate any revisions or additions to the County Standards of which County and/or District has notified MTA on or before the earlier of (i) thirty (30) days after their formal issuance or adoption, and (ii) the applicable Comment Due Date. County and District agree that they shall not adopt any new County Standards, or otherwise amend or supplement any existing County Standards, for the sole or primary purpose of affecting the Transit Project, unless necessary to protect the public health, safety or welfare.

## **2.9 Changes in Approved Plans**

Following County and/or District approval, changes in Design shall require MTA's approval. MTA shall not unreasonably withhold its consent or approval necessary to incorporate County and/or District requested changes into approved plans or specifications. Field changes required due to different site conditions shall be made only upon the mutual agreement of MTA and County and/or District. The increased cost, if any, attributable to changes in approved plans or specifications requested by County and/or District shall be borne by County and/or District; however, changes required by different site conditions shall be borne by the Party responsible to pay for the approved Construction. Nothing contained in this Section relieves MTA or its contractors from their obligation to comply with applicable County Standards as provided in Section 2.8.

## **2.10 Specific Design Requirements for Rearrangements**

Rearrangements shall conform to the following Design requirements:

### **2.10.1 Surface Openings**

To the extent practical, MTA shall locate surface openings, if any, such as ventilation gratings, to cause the least effect on existing features of landscape and improvements and the least public disruption, and when practical they shall be located in MTA owned lands. In determining location of surface openings, health and safety concerns are paramount; however, consideration shall also be given to the effect of the location of openings on the realization of value from

MTA owned or controlled real property. Placement of ventilation gratings in sidewalks will be avoided, if practical. Other openings, such as mechanical access openings shall be permitted in sidewalks provided said openings are enclosed by a mutually acceptable method. Exact location and size of openings shall be mutually agreed upon by County and/or District and MTA.

#### 2.10.2 Landscaping

Trees and landscaped areas under ownership or daily control of County shall be preserved whenever practical. Trees in a Transit Project's construction area and which are to remain shall be adequately protected. Trees that must be removed due to Rearrangements shall be replaced in accordance with applicable County Standards and shall be coordinated with the **County's** Representative. Landscaped areas removed due to Rearrangements shall be restored to the original condition to the extent practical. Preservation and/or replacement of trees and landscaping at parks affected by Transit Project shall be coordinated with County's Department of Recreation and Parks.

#### 2.10.3 Traffic Control Devices

Certain of the contemplated Construction will require the removal and reinstallation of traffic control devices. County hereby consents to all removal, temporary installations, reinstallations and interruptions of traffic control devices deemed necessary by MTA. MTA shall temporarily assume full jurisdiction for operation and control of these traffic control devices over the duration of construction. MTA shall also post signs to inform the public that the MTA is responsible for traffic control devices, including a toll free telephone number for the public to report problems and obtain information.

Upon transferring control, MTA shall be responsible for:

- 24-hour emergency service.
- the preparation and implementation of traffic signal timing charts as needed.
- Response to public complaints.

If it is required that the County respond to any call involving maintenance matters of traffic signals which have been temporarily transferred to MTA's control, MTA will bear responsibility of the County's associated costs.

County shall transfer the physical responsibility for each traffic signal at a field meeting between the Parties. County shall send a letter confirming the mutually agreed-upon date and time of this transfer. After progression of construction activities and upon mutual concurrence that the traffic signals are returned to County standards, County shall acknowledge, by letter, the transfer back to the County.

#### 2.10.4 Street Lighting

Certain of the contemplated Construction will require the removal and reinstallation of Street Lighting Systems. Provided that MTA's plan for same has been approved by County, County hereby consents to all removals, temporary installations, reinstallations and interruptions of Street Lighting Systems in

compliance with such plan and deemed necessary by MTA and performed by MTA's contractors; however, MTA shall provide at least three (3) Working Days prior notice before service of Street Lighting Systems is interrupted. MTA will cooperate with County to minimize interruption of street lighting service. As required, MTA shall issue work orders for the Rearrangement of street lighting when required. MTA shall also post signs to inform the public that the MTA is responsible for alterations to Street Lighting Systems, including a toll free telephone number for the public to report problems and obtain information.

- (a) Any work that will affect street lights maintained by or under the jurisdiction of County must be approved for compliance with applicable County Standards by the **County** Representative. Street Lighting System Design must be forwarded for review and approval to the **County** Representative.
- (b) Except as mutually agreed by the Parties, all street lights maintained by or under the jurisdiction of County within the boundaries of a Transit Project, as well as all street lights in the direct vicinity thereof (same circuit), shall be maintained and kept in operation at all times during Construction. County shall not unreasonably withhold its approval to interrupt service as necessary for a Transit Project.
- (c) In the event of any damage caused by a MTA contractor to street lights maintained by or under the jurisdiction of County, the Bureau of Street Lighting must be contacted. All damages must be repaired as soon as reasonably possible to County's reasonable satisfaction by MTA's contractor at no expense to County. If County is performing street light Construction, then County is responsible for all repair expenses caused by County.

#### 2.10.5 Private Projections in Public Ways

Upon a determination by MTA that any private projections in, over or under, including streets, highways or other County Rights-of-Way, must be removed to accommodate a Transit Project, MTA shall issue a Work Order to County, and County shall take any and all reasonable action within its power to require the elimination of such projections prior to the scheduled start of Transit Project construction in the affected location. If County is unable to effect the removal of such projections, MTA shall make its own arrangements for removal of such projections, whether through exercise of its powers of eminent domain, through negotiation with the owner, or otherwise. If it is determined that the cost of removal is not the responsibility of the private owner, then MTA shall bear the cost of removal of said projections. County shall cooperate with MTA to minimize the cost to eliminate, move, remove or otherwise terminate projections where determined necessary by MTA.

## 2.11 Construction Staging Plans

### 2.11.1 Plan Requirements.

MTA, through its contractors, subcontractors or agents, shall develop construction staging plans. Construction staging plans shall provide, among

other things, for the handling of vehicular and pedestrian traffic on streets adjacent to Transit Project Construction with the Construction phasing showing street closures, detours, warning devices and other pertinent information specified on the plan (worksite traffic control plans). Such plans shall incorporate actions to maintain access to businesses adjacent to the Construction areas, and actions to ensure safe access and circulation for pedestrians and vehicular traffic as described in the worksite traffic control plans. MTA will ensure that the plans complement elements of public awareness as well as mechanisms to assist affected Parties in complaint resolutions. All worksite traffic control plans will be submitted to County for informational purposes only.

#### 2.11.2 Assistance by County

The County shall assist MTA, as requested by MTA, in the areas of fire/life safety, police security, transportation engineering, street lighting engineering, recreation and park engineering, storm drain and sanitation engineering, and other areas when mutually agreed, and in such an event, the MTA shall issue a Work Order to the County to perform some or all of the activities referred to in the following subarticles:

- (a) Fire/Life Safety. Assistance in the Design, Construction and operations planning of the Transit Project as it relates to fire prevention, fire suppression, and emergency preparedness with respect to fires or other major disasters. The assistance shall also include reviews for conformance with fire/life safety codes, standards and regulations. Fire Department representatives will be invited to participate as active members of MTA-designated committees dealing with fire/life safety issues.
- (b) Police Security. Assistance in the Design, Construction, and operations planning of Transit Project as it relates to personal and property security, deterrence and detection of criminal activity, and the apprehension of criminals. The assistance shall also include, if requested by MTA, the participation by police department representatives as active members of MTA-designated committees dealing with police security.
- (c) Transportation Engineering. Assistance in the Design, Construction and operations planning of Transit Project as it relates to facilitating the movement of automobiles, buses and pedestrians into and from Transit Project. The assistance shall also include the review and approval of worksite traffic control plans, traffic circulation plans, temporary traffic signals, geometric striping and permanent traffic signal plans and monitoring prepared by MTA's contractors and consultants. If requested by MTA through a Work Order, County will prepare plans for final geometric striping for Transit Project.
- (d) Street Lighting Engineering. Assistance in the Design and construction of Street Lighting systems affected by a Transit Project. The assistance shall include review and approval of contractor-prepared temporary street lighting and street lighting demolition plans as well as final restoration Street Lighting System Designs prepared by MTA's contractors and consultants, and



administration of Proposition 218. The MTA shall prepare the final design plans for the restoration of street lighting.

- (e) Recreation and Park Engineering. Assistance in the Design, review, Construction, and operations planning of the Transit Project as it affects recreational areas, landscaping and lakes within County parks.
- (f) All Other Areas. Assistance in the Design, Construction and operations of other County Facilities.

## **2.12 Coordination of New and Unrelated County and District and Other Facilities.**

- 2.12.1 Throughout the term of this Agreement, if County or District plan to construct or to authorize to be constructed (by issuance of a permit), new facilities unrelated to a Transit Project that would cross or otherwise occupy any portion of a Transit Project Right-of-Way or that might delay or otherwise conflict with Construction or operation of a Transit Project, County and/or District will coordinate the Design, and installation of such facilities with MTA such that these facilities will not unreasonably delay or otherwise conflict with the Transit Project.
- 2.12.2 County and District shall require all applicants for County or District permits for construction of any type within a Transit Project Right-of-Way or that might delay or otherwise conflict with Construction or operation of such Transit Project, to obtain MTA's approval of the plans and specifications therefore prior to County's or District's issuance of such permit.

## **ARTICLE 3 - PERMITS AND PROPERTY RIGHTS**

### **3.1 Permits**

#### **3.1.1 Permits for Work on Private Property**

Pursuant to State law, the MTA is not subject to zoning or building or construction permitting ordinances of the County when constructing its Transit Project on County Right-of-Way. Therefore, no County permits shall be required for Transit Project construction. However, modification of existing improvements on private property (not owned by the MTA) necessary to accommodate the construction and operation of a Transit Project shall be subject to County building ordinances. Those modifications shall include, but not be limited to alteration, construction, shoring, underpinning and demolition. After review of plans for such modifications and application by the MTA, the County shall issue all necessary permits. All such permits shall be issued by the County without any permit fee or bond requirements. However, fees for plan review and inspection may apply and shall be reimbursable through a Work Order for the subject Transit Project.

### **3.2 Permits for Work in Street and Public Easements**

3.2.1 The Parties recognize that the County has the duties of supervising, maintaining and controlling streets, and other County Rights-of-Way within the boundaries of the County and that the District has the duties of supervising, maintaining and controlling District facilities, and that MTA has a mandate under State law to timely construct Project. Accordingly, MTA shall give County and District advance written notice where Transit Project Construction requires work in County Rights-of-Way and/or District facilities and shall allow County and District adequate time for review of relevant plans for such work.

3.2.2 Contractors of the MTA performing work in County Rights-of-Way or District facilities shall take all appropriate actions to ensure safe operations of the work and the continuance of service of Facilities. Accordingly, the County and District, after consultation with the MTA, may require that, if MTA contractors fail to perform such work in the manner as called for by the Design Plans prepared hereunder and as may be required by any authorizations issued by County and/or District in connection with such work (i) upon receiving notice (non-compliance, citation) from County or District, the contractor shall promptly commence to cure its failure, and (ii) if the contractor fails to cure or is not diligently prosecuting such cure to completion, County or District shall notify the MTA. Upon receipt of notice from the County or District, the MTA shall cause the contractor to cure its failure within the requested time, or issue a Work Order to the County or District allowing the County or District to cure the contractor's failure. All work performed in a County Right-of-Way or District facilities that will control pedestrian and/or vehicular access will be in accordance with site specific work traffic control plans developed by MTA's contractor will govern as approved by the County and/or District and the MTA.

### **3.3 Temporary and Permanent Street Closures**

MTA and County may agree that a street, highway, bridge or other County Right-of-Way shall be temporarily or permanently closed for the necessity and convenience of a Transit Project. In such a case, the County, as requested by the MTA, shall initiate the appropriate notification and proceedings and shall establish the necessary conditions for the closures. The County may request that certain streets not be closed to accommodate special events, such as parades utilizing those streets, and the MTA shall reasonably cooperate with County to accommodate such requests, provided that such request does not interfere with or delay construction of a Transit Project.

### **3.4 Federal, State and Other Agency Permit and License Requirements**

Nothing in this Agreement shall be deemed to abridge any applicable federal or state law regarding permits, orders, licenses and like authorizations that may be required or available in connection with a Rearrangement or Transit Project. To the extent required by law, the State Fire Marshall and/or the County Fire Department shall review plans for and shall perform inspections as needed throughout the term of the Construction. The California Public Utilities Commission ("CPUC") has jurisdiction over establishment of street and pedestrian crossings with MTA's rail transit tracks, their subsequent maintenance or alteration, and their operation. Formal application for establishment or alteration of said crossings is required by the CPUC. The MTA may prepare, and County shall support or sponsor (as requested by the MTA), plans and applications therefore, unless otherwise agreed between County and the MTA.

### **3.5 Grant of Rights**

Prior to MTA's scheduled date of commencement of work in a section or portion of a Transit Project, County and/or District shall grant to MTA and/or its designee sufficient rights, if necessary, to allow MTA to proceed with investigation of existing conditions and the construction of that section or portion of the Transit Project in accordance with MTA's schedule; provided, however, that such grant does not unreasonably and adversely interfere with provision of County's and/or District's services to the public; and provided further, that County and/or District is permitted under applicable law to grant such right.

### **3.6 Replacement Rights-of-Way**

Replacement rights-of-way for the relocation of Conflicting Facilities shall be determined during Design and, if needed, may be acquired by MTA, County or District following approval by the Parties of the location and type of such replacement rights-of-way. It is mutually understood and agreed, however, that when reasonably possible, a Rearrangement shall be located in existing public ways where the Facilities being replaced were in public ways. If County and/or District cannot acquire necessary private rights-of-way without out-of-pocket expense to itself, they shall be acquired by MTA. Upon acceptance of a Rearrangement, which replaced a Conflicting Facility, the County and/or District shall convey or relinquish to MTA all easements and real property interests being taken out of service by the Rearrangement and located within the Transit Project Right-of-Way.

### **3.7 County Licenses Within Transit Project Right-of-Way Owned by MTA**

If a Rearrangement is made so that the Replacement Facility will be located within the Transit Project Right-of-Way owned by MTA, the MTA shall provide County and/or District with a perpetual no cost license, and in releasing its existing rights, County

and/or District shall be afforded reasonable rights to install, operate, maintain and remove Facilities within the replacement license.

### **3.8 County Property Required for Project Rights-of-Way**

At the request of the MTA, the County has provided MTA with information concerning the County's real property interests in County Rights of Way. The County does not make any representation or warranty as to the accuracy of the information nor does the County make any representation or warranty that it has and/or can transfer to MTA sufficient real property rights necessary for the Construction and/or operation of the Transit Project. MTA acknowledges that it has performed its own due diligence with respect to the real property rights possessed by the County and needed by the MTA for the Construction and/or operation of the Transit Project. At the request of the MTA, the County agrees to convey to the MTA, at no cost to the extent allowed by law, any real property interests and/or rights currently possessed by the County that may be required for Construction and/or operation of Transit Project subject to this Agreement (including both temporary and permanent easements and other interests), without requiring the MTA to go through the appraisal, negotiations, offer, closing and transfer process. The MTA will prepare or cause to be prepared, the title documents and documents of conveyance. Said documents will be transmitted by the MTA's Representative to the County's Representative who shall process them through the required departments for execution and return to the MTA, within the applicable Transit Project schedule.

### **3.9 Temporary MTA Facilities**

In the event that Temporary Facilities are necessary to facilitate Construction of a Transit Project (including Rearrangements), MTA or its designee may use, without cost, lands owned or controlled by County for any purpose consistent with this Agreement, including, but not limited to, the erection and use of Temporary Facilities thereon; provided that, County shall first approve in writing the availability, location and duration of the Temporary Facilities. Upon completion of the related Construction and MTA's determination that the Temporary Facilities no longer are needed, MTA shall remove all Temporary Facilities and restore the area as nearly as practicable to its original condition unless MTA and County mutually agree to some other arrangement.

### **3.10 Temporary County Facilities**

In the event that Temporary Facilities are necessary to effect a Rearrangement being constructed by County and/or District, County and/or District or their designee may use, without cost, lands owned or controlled by MTA for the purpose of using or erecting Temporary Facilities thereon; provided that, MTA shall first approve in writing the availability, location and duration of the Temporary Facilities. Upon completion of the Facility in its permanent location, County and/or District shall remove all Temporary Facilities and restore the area as nearly as practicable to its original condition unless County and/or District and MTA mutually agree to some other arrangement.

### **3.11 Night and Weekend Work**

County and District recognize that, in order for the MTA to meet the Construction schedule for the Transit Project, the MTA and its contractors may need to perform a significant amount of work after business hours, on weekends, and/or by multiple shifts spanning up to 24 hours per day and up to seven days per week. Accordingly, subject

to MTA's compliance with its environmental mitigation obligations, County and District hereby consent to all such work deemed necessary by MTA.

## **ARTICLE 4 – EFFECTING REARRANGEMENTS**

### **4.1 MTA Construction of Rearrangements**

Unless otherwise agreed between the Parties, the MTA shall perform all Construction of Rearrangements. If changes in the Final Design plans or specifications are necessary, the MTA shall first submit such changes to County and/or District for review and approval before Construction. County and/or District shall respond to any such submittal within thirty (30) calendar days after receipt.

### **4.2 Relocation of Private Utility and Other Facilities**

Within ten (10) days of receipt of a written request from the MTA, the County will send the written notice to all utilities whose facilities conflict with the Transit Project instructing them to relocate or remove the conflicting facilities within the time specified pursuant to applicable County Code. The County will assign to MTA County's rights under the applicable law or County Code to cause such removal or relocation to be performed in the event that the utility does not accomplish such removal or relocation within the time provided by such law. The County shall not by issuing such a written request or assigning its rights pursuant to this Section be construed as having made a determination as to the responsibility of the utility or the MTA to pay the cost of such removal or relocation. The determination of whether the MTA or the utility shall be responsible for the cost of such removal or relocation shall be a matter solely for the MTA and the affected utility to resolve. MTA shall defend and indemnify County from and against any and all claims or causes of action arising out of County's provision of notice to a utility, the assignment to the MTA of County's right to effectuate a removal or relocation pursuant to this Section or the removal or relocation of any such facility by MTA or otherwise related to MTA's actions pursuant to this clause.

### **4.3 County or District Construction of Rearrangements**

If the Parties mutually agree that the County and/or District shall perform Construction of a specific Rearrangement, the MTA shall issue a Work Order to County and/or District for such Construction and the following provisions shall govern the Construction of such Rearrangement by the County and/or District:

- 4.3.1 District or County shall commence and thereafter diligently prosecute the Construction of such Rearrangement to completion as authorized by the Work Order and in conformance with the time schedule set forth in the Work Order and in conformance with the Design plans and specifications prepared pursuant to this Agreement. Such Construction shall coincide, and be coordinated with the MTA's Construction schedule for the Project, including the schedule for Construction of Rearrangements of other utility, cable, pipeline and other Facilities in the same segment or portion of the Transit Project. County or District shall coordinate its work with other property or Facility owners and contractors performing work that may connect, complement or interfere with County's or District's work hereunder or with Facilities.
- 4.3.2 County or District shall notify the MTA at least five (5) Working Days prior to commencing each Rearrangement so that the MTA may make arrangements for such inspection and record keeping as it may desire.

4.3.3 All work by County's or District's forces or its contractors pursuant to this Article 4 shall comply with the environmental controls established for the Transit Project, including without limitation: construction noise and vibration control, pollution controls, archaeological coordination, and paleontological coordination.

#### **4.4 Maintenance**

County and District shall, to the extent possible, schedule, in concurrence with MTA, any routine maintenance of Facilities so as not to interfere with Transit Project construction or operations.

#### **4.5 "As-Built" Drawings of Rearrangements**

The Parties shall each maintain a set of "As-Built" plans of Rearrangements performed by the MTA and County and/or District, as the case may be, during the progress of Construction. After completion of the Rearrangement work, the Party that performed the work shall furnish "As Built" drawings showing all Replacement Facilities installed by the performing Party within sixty (60) calendar days of acceptance of work for each set of plans. All "As-Built" plans (whether provided by MTA or by County and/or District) shall be in a format which conforms to MTA's requirements for Transit Project, as specified in the construction contract or Design/Build contract documents for the Transit Project. If the drawings submitted by either Party are incomplete or nonconforming to such required standards, the drawings will be returned to that Party for correction at that Party's expense.

#### **4.6 Reproducible Contract Documents**

The Parties agree to provide the other with suitable reproducible copies of those final contract documents that they have prepared or caused to be prepared to govern the Construction of a given Rearrangement by their respective contractor so that each Party may compile a complete set of contract documents. Each Party shall prepare or cause to be prepared the contract documents for which it is responsible in accordance with its drafting standards.

#### **4.7 Underground Service Alert**

Prior to any commencement of underground work by either Party, Underground Service Alert shall be notified in accordance with State Law by such Party or its contractor.

#### **4.8 County or District Activities**

If County or District plans to undertake or authorize any activities within or near any portion of a Transit Project Right-of-Way (including without limitation construction of new facilities, repairs or modifications to existing facilities, parades, and similar activities) during the period of Construction of a Transit Project, County and District will coordinate such activity with MTA so that such activity will not delay or otherwise interfere with such Construction, and MTA shall reasonably cooperate with County and District with regard to same; provided, however that if MTA determines that such activity will delay or otherwise conflict with such Construction, MTA shall have the right to condition the implementation or authorization of such activity on such scheduling adjustments and/or other modifications as MTA deems appropriate, and if modification cannot resolve the delay or conflict or County or District refuses to make such modification, MTA shall have the right to refuse to allow such activity, in which case County or District shall not

implement or authorize such activity. If County and/or District disagree with MTA's determination, then the dispute shall be resolved in accordance with Article 11. The provisions of this Section 4.8 shall not apply in emergency situations.

#### **4.9 Inspection During Construction**

- 4.9.1 All work performed by either Party for Construction of the Transit Project shall be subject to MTA inspection and final approval. MTA may also inspect the Construction of Rearrangements to ensure that the work has been performed in accordance with the approved Designs.
- 4.9.2 All Rearrangement Construction of Facilities by MTA may be inspected by the County and/or District so that upon completion of Construction, County and/or District will have a basis for acceptance of the work. Such inspection services shall be authorized by MTA under an appropriate Work Order at MTA's expense. County's and District's inspectors shall cooperate and coordinate with the MTA Representative and MTA's contractors. County's or District's inspection may also include planned field reviews for compliance with construction staging plans, including the Traffic Management Plans. Inspection will involve the verification of the safety and adequacy of vehicular and pedestrian access and circulation immediately adjacent to the Construction area, and maintenance of appropriate access to directly affected businesses, as provided for in said plans. The County and/or District shall submit daily written inspection reports to MTA, each within 24 hours after the subject inspection. County and District shall remove and replace any inspector within five (5) Working Days after MTA's reasonable written request therefor.
- 4.9.3 County and/or District will provide verbal notice of nonconformance to MTA of any deficiencies or discrepancies in any work discovered in the course of any inspection as soon as possible, followed by a written nonconformance notice not later than 24 hours after discovery. Likewise, MTA will provide immediate verbal notice of nonconformance to the County and/or District Representative (or to such other staff as may be designated by the County and/or District Representative), followed by a written nonconformance notice not later than 24 hours after discovery. Each nonconformance notice shall include an explanation of the resolution desired by the notifying Party. Work shall not be stopped as a result of any such nonconformance unless otherwise determined by MTA. All nonconformances with respect to Transit Project Facilities Constructed by County and/or District or their contractors must be corrected or resolved so that the Construction conforms to the final design and other requirements of the contract documents approved by MTA (or in the case of work performed by County's or District's own forces, to the final design approved by MTA). All notices of nonconformance provided by County or District with respect to Facilities shall be addressed in accordance with Section 2.2.3.

#### **4.10 Final Inspection**

As soon as the work of any specific Rearrangement has been completed (and tested when called for by the approved Design), the Party which performed the Construction



work shall notify the other Party in writing that the Rearrangement is ready for final inspection. All final inspections by County or District will be completed within seven (7) calendar days following request for same by MTA's contractor. The final inspection of any Rearrangement shall be attended by the MTA Representative and the County and/or District Representative at MTA's expense. Parties' inspectors shall be available to observe and inspect any corrective work performed, as needed to support MTA's schedule for the Transit Project. Promptly upon completion of the Rearranged Facility (including if applicable, completion of any corrective work performed), County and/or District shall furnish its notice of completion and acceptance thereof in writing and shall assume full responsibility for the Facility.

#### **4.11 Materials Testing**

County and District shall have the right to test materials used in Construction of Facilities by MTA's contractors, upon 24 hours prior written notice to MTA and the contractor. MTA shall have the right to have its witnesses attend all such tests. County and/or District shall provide copies of the testing reports within 24 hours after each test, as well as providing to MTA access to the samples used and to the testing laboratory for inspection of its equipment.

#### **4.12 Use of Improvements During Construction**

County and District reserve the right to take over and utilize all or any completed part of any Facility ("Utilization"), unless such Utilization would interfere with Transit Project Construction or operation, as determined by the MTA. The MTA must be given reasonable advance notice thereof. Such Utilization will be deemed acceptance of that Facility or part thereof, and any subsequent damage to such Facility shall be County's or District's responsibility unless caused by the MTA's or its contractors' negligent work. Thereafter, the MTA will not be required to re-clean such portions of the Facility, except for cleanup made necessary by Transit Project Construction activities.

## **ARTICLE 5 - TRANSIT PROJECT WORK BY COUNTY**

### **5.1 Design and Construction by County**

The MTA and the County may agree that the County shall Design and Construct or cause to be Constructed certain Transit Project Facilities (or components thereof), or other specific Rearrangements. In such event, Design and Construction shall proceed pursuant to the following:

### **5.2 Standards**

All Design and Construction by County (or its consultants or contractors) shall conform to MTA's required standards and specifications as established by MTA in or pursuant to the applicable Work Order.

- 5.2.1 The MTA shall issue a Work Order to the County for the Design of such Transit Project.
- 5.2.2 Upon completion of Preliminary Engineering Design, the County shall provide the MTA with a preliminary estimate of Cost of the Construction work and the County's estimate of the MTA's share of such Cost, together with preliminary plans, specifications, and draft bid package. Upon the MTA's approval thereof, the County shall finalize all of the foregoing. The MTA reserves the right to reject the preliminary plans, specifications and draft bid package.
- 5.2.3 Upon the MTA's approval of the final plans, specifications, bid package and Construction Cost estimate, the County shall advertise the contract for bids. The County shall then inform the MTA of the Cost of the work and the MTA's share of the Cost based upon the winning bidder's unit prices, and shall furnish the MTA with copies of the extract of bids, together with final plans and specifications. The MTA shall have the right to require a minimum number of bids, to specify certain of the parties to whom bid requests are submitted, to review the bids, and to approve the contract award recommendation prior to award of the contract. MTA reserves the right to reject all bids.
- 5.2.4 After the MTA's review and approval of the bids, MTA shall issue a Work Order to the County. The County shall thereafter obtain the MTA's approval for any modifications to the contract which will affect such Construction work. Further, the County shall inform the MTA promptly when the County has reason to believe that the Cost estimate is likely to be exceeded.
- 5.2.5 Should the MTA agree that Construction work can be performed by County personnel, the County shall be allowed to do so subject to the MTA's approval of the County's Cost estimate. MTA reserves the right to reject such Cost estimate at its sole discretion. Upon approval by the MTA of the Cost estimate and Design, the MTA shall issue a Work Order to County. County shall obtain the MTA's prior written approval for any changes from the approved Design or any increase to the approved Cost estimate.

### **5.3 Requirements**

5.3.1 All Design, Construction and other activities to be performed by County pursuant to this Article 5 shall be carried out in conformance with the time schedule(s) set forth in the applicable Work Order(s). Such time schedule(s) shall coincide closely and be coordinated with MTA's schedule for the Transit Project. County shall coordinate its work with other facility owners and contractors performing work that may connect, complement or interfere with County's work pursuant to this Article 5 or with the Transit Project Facilities (or components thereof) being constructed by County.

### **5.4 Approval at MTA's Discretion**

Notwithstanding Article 12 below, all approvals or decisions to be made by the MTA under this Article shall be at the MTA's sole discretion, but in the event any disapproval or decision hereunder terminates any work in progress by County, the MTA shall reimburse County for any Costs already incurred by County for Work performed in accordance with this Agreement.

## **ARTICLE 6 - DISPOSITION OF SALVAGED MATERIALS**

### **6.1 Salvage**

The Parties may salvage certain materials belonging to the County or District during the course of Rearrangement as mutually agreed by the Parties during the Design stage. If they are to be reused, such materials shall be stored until such time as the progress of work allows the reinstallation of such materials. Materials which are not to be reused in a Rearrangement but which County or District desires to reclaim may be recovered by County or District forces within a mutually agreed upon time frame or shall be returned to the County or District by the MTA to a location proximate to the salvage site and suitable to County or District. Subject to acceptance by MTA, all materials removed by the MTA and not desired by County or District shall become the property of the MTA, unless otherwise mutually agreed.

### **6.2 Salvage Credits**

MTA shall receive a credit for salvage, storage and transporting of such materials for County or District use, as provided in Article 8.

## **ARTICLE 7 - REIMBURSEMENTS TO COUNTY AND DISTRICT**

### **7.1 Reimbursement to County and District**

Except with respect to Betterments, the issuance of a Work Order shall obligate MTA to reimburse County and District in the manner provided by this Agreement. Unless the Internal Revenue Service and the California Public Utilities Commission issue regulations or rulings to the contrary, reimbursable costs will not include taxes purportedly arising or resulting from MTA's payments to County or District under this Agreement. A fixed price for certain Design and/or Construction by County or District may be established upon mutual agreement of the Parties, as set forth in the applicable Work Order. Any such fixed price shall include all applicable credits due pursuant to Article 8 with respect to such work.

### **7.2 Reimbursement for Abandoned Facility**

In those cases in which MTA and County and/or District agree that the construction of a Transit Project will eliminate the service need for a specific Conflicting Facility, MTA shall not be required to replace or compensate County or District for the Conflicting Facility, in which case MTA shall compensate County or District only for necessary Costs incurred in Abandoning the Conflicting Facility; provided, however, that under no circumstances shall MTA be responsible for any Abandonment or other Costs relating to the presence or existence of any environmental hazard on, in, under or about a Conflicting Facility or other Facility, including but not limited to any "hazardous substance" as that term is defined under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601(14)), or any "hazardous waste" as that term is defined under the Solid Waste Disposal Act (42 U.S.C. § 6903(5)) or any comparable state or local laws, ordinances, or regulations.

## **ARTICLE 8 - REIMBURSEMENTS AND CREDITS TO MTA**

### **8.1 Credits to MTA**

MTA shall receive a credit under this Agreement for salvage, Betterments, and Expired Service Life Value of Facilities. The amount of such credits shall be determined as provided below in this Article 8. All credits pertaining to a particular Rearrangement or other item of work hereunder shall be reflected on the applicable invoice(s) submitted by County or District.

### **8.2 Survey; Review of Records**

The amount of credits or payments, as applicable, due MTA for salvage and Expired Service Life Value shall be determined by MTA and confirmed by County or District based upon applicable books, records, documents and other data of County or District. To assist in the determination of credits or payments due MTA under this Agreement, MTA and County or District may conduct an inspection survey of each Conflicting Facility during the Design stage. Pursuant to a Work Order, County or District shall provide MTA with drawings, plans or other records necessary to conduct such survey. The survey shall describe the physical attributes, date of construction or installation and present condition of each Conflicting Facility; shall report the expected service life of each Conflicting Facility as derived from County's or District's records; and shall state whether the materials contained in each Conflicting Facility are reusable or salvageable. The results of such survey shall also be applied in the determination of Betterments, as necessary.

### **8.3 Salvage**

As applicable, salvage credit shall be allowed or County or District shall pay for salvage, for items of materials and equipment recovered from existing Facilities in the performance of Construction specified herein. The amount of salvage credit or payment, if any, shall equal the value of like or similar materials as determined by mutual agreement, plus storage and transportation Costs.

### **8.4 Betterments**

8.4.1 For each Betterment included in a Rearrangement, the amount of a Betterment credit shall be the incremental additional Cost of the Rearrangement resulting from such Betterment, calculated by subtracting the estimated costs of the Substitute Facility from the estimated costs of the Replacement Facility. For purposes of the foregoing calculation, the term "Cost" shall mean the reasonable direct and indirect costs necessarily incurred by MTA in performing a Betterment including mutually agreed to delay and disruption costs.

### **8.5 Expired Service Life Value**

MTA shall receive a credit for the Expired Service Life Value of each Conflicting Facility being replaced (or payment for the Expired Service Life Value, as applicable), if the Replacement Facility will have an expected period of useful service greater than the period which the existing Conflicting Facility would have had, had it remained in service and the Rearrangement not been made. For purposes of this Agreement, "Expired Service Life Value" shall mean the amount calculated by multiplying the Cost of the Replacement Facility by a fraction, the numerator of which is the age of the Conflicting

Facility and the denominator of which is the estimated overall service life of the Conflicting Facility. The amount of credit or payment for Expired Service Life Value shall be agreed upon by the MTA and the County or the District in the appropriate Work Order, in accordance with the foregoing calculation. MTA shall not receive a credit or payment for Expired Service Life Value for street pavements, curbs, gutters, sidewalks, traffic signals, traffic control devices, and street lights.

## **ARTICLE 9 - INDEMNIFICATION AND WARRANTIES**

### **9.1 Indemnification of the County and the District**

The MTA agrees to indemnify, defend and hold harmless the County, its special districts including the District, and their respective officers, agents and employees from and against any and all liability, expenses (including engineering and defense costs and legal fees), claims, losses, suits and actions of whatever kind, and for damages of any nature whatsoever, including but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with MTA's performance hereunder.

### **9.2 Indemnification of the MTA**

The County and the District, each in proportion to their individual responsibilities agree to indemnify, defend and hold harmless the MTA, its members, agents, officers and employees from and against any and all liability, expenses (including engineering and defense costs and legal fees), claims, losses, suits and actions of whatever kind, for damages of any nature whatsoever, including but not limited to, bodily injury, death, personal injury or property damage arising from or connected with County's or District's performance hereunder.

### **9.3 Indemnification of Both Parties**

The Parties' obligations under Sections 9.1, 9.2 and 9.3 shall survive the termination of this Agreement. In contemplation of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities solely by reason of such entities being Parties to an agreement as defined by Government Code Section 895 of said Code, the Parties hereto, as between themselves and pursuant to the authorization contained in Government Code Sections 895.4 and 895.6 of said Code, will each assume the full liability imposed upon it, or any of its officers, agents or employees, by law for injury caused by negligent or wrongful act or omission occurring in the performance of this Agreement to the same extent that such Party would be responsible under Sections 9.1 and 9.2 hereof. The provisions of Section 2778 of the California Civil Code are a part hereof as if fully set forth herein.

### **9.4 Warranty (Excavations)**

In lieu of providing a bond normally associated with the permit authority of County relating to excavations in, or adjacent to, County Rights-of-Way, MTA warrants that any work affecting the structural stability of County Rights-of-Way shall be free from defect. Said warranty is for a period of one (1) year after acceptance of the work. Pursuant to this warranty and for the warranty period only, MTA, at its sole expense, shall remedy any damage to County Rights-of-Way or District facilities to the extent caused by a failure of such structural support installed by MTA during the warranty period.

### **9.5 Contractor Insurance**

Any Design or Construction contract entered into by MTA or County and/or District in connection with a Rearrangement or with work on Transit Project Facilities performed by County pursuant to Article 5, shall contain a provision which requires the general contractor, as part of the liability insurance requirements, to provide an endorsement to each policy of general liability insurance which names County, District and MTA as additional insureds. The policy shall insure the County, District and MTA, its officers, employee, and agents, while acting with the scope of their duties with respect to the



work being performed by the contractor, against all claims arising out of or in connection with the work being performed by the contractor. The policy shall cover the County, District and MTA, whether liability is attributable to the contractor or the County, District or MTA. No insurance shall be reduced in scope or cancelled without thirty (30) days prior written notice to MTA and County. County recognizes and agrees that insurance can be provided by MTA through an owner-controller insurance program.

**9.6 Warranties (Rearrangements)**

In connection with Rearrangements performed by the MTA or its contractors hereunder, warranties supplied by contractors shall be made for the benefit of the County, the District and the MTA. Additionally and again in connection solely with Rearrangements and any work performed by the County or District and their contractors, the County, the District and the MTA each warrant to the other for a period of one (1) year from and after acceptance of the work that any work performed by or for them shall be free from defect; this limited warranty is the sole warranty given by the County and/or the District and/or the MTA, and, pursuant to this warranty, and for the warranty period only, the County, District or the MTA, as the case may be, shall remedy any such discovered defect at its sole expense. Said remedy will be commenced and completed, if reasonably feasible, within ten (10) Working Days of written notice to the warranting Party.

**9.7 Contractor Bonds**

In connection with Rearrangements and County or District Projects and any work performed by the County or District or their contractors, the County, District and the MTA may require their respective contractors to secure payment and performance bonds, or other equivalent sureties, naming the County, District and the MTA as an additional obligee or co-beneficiary, as appropriate. Such bonds shall be issued by a California licensed surety.

## **ARTICLE 10 - WORK PLANS, WORK ORDERS, BILLINGS, DEADLINES AND DELAYS**

### **10.1 Work Performed by the County and the District**

Work to be performed by the County or the District under this Agreement will coincide, as closely as possible, with the MTA's Design and Construction schedule for each Transit Project. Consistent with its own staffing and workload requirements, the County and District agree to allocate sufficient resources necessary to provide the level of service required to meet the scope of work and said schedules, as identified in Work Orders submitted by MTA. Each Party and its contractors shall timely commence, diligently prosecute and complete Construction and other activities for each Rearrangement on or before the applicable deadlines established in Work Orders. If a Party or its contractor fails to meet such deadline, then any affected time deadlines for the non-delaying Parties' Construction or other activities in any Work Order shall be revised accordingly.

### **10.2 Work Plans**

To assist the Parties in estimating the level of service to be provided for each Transit Project which will require work by County or District pursuant to this Agreement, the Parties will cooperate to develop a mutually agreeable annual work plan for each such Transit Project for each MTA Fiscal Year for which such work by County or District will be required, in accordance with the following provisions:

- 10.2.1 Not later than March 31 of each calendar year during the term of this Agreement, based on information provided by MTA with respect to anticipated Transit Project requirements, County and District shall submit to MTA a preliminary annual work plan for each Transit Project which is anticipated to require work by County or District during the upcoming MTA Fiscal Year. County and District shall allocate sufficient staff and other resources as reasonably necessary to develop the preliminary annual work plans in a timely manner. Each preliminary annual work plan shall set forth each item of work that MTA anticipates will be requested of County or District with respect to the subject Transit Project during the upcoming MTA Fiscal Year, the estimated amount of money County or District will be reimbursed therefor, and the estimated start and finish dates for the anticipated work by County or District.
- 10.2.2 For each MTA Fiscal Year, following MTA's receipt of the preliminary annual work plans pursuant to Section 10.2.1, the Parties shall negotiate in good faith such issues as are necessary in order to finalize such annual work plans prior to the commencement of such MTA Fiscal Year.
- 10.2.3 For each MTA Fiscal Year, as soon as possible after County's and District's submittal to MTA of the final annual work plans agreed upon by the Parties, MTA shall issue to County and District Work Orders identifying each item of work MTA anticipates County and District will perform through the end of the MTA Fiscal Year, the amount of money MTA estimates County and District will be reimbursed therefor, and the anticipated schedule County and District will be required to meet in its performance of such work. For funding purposes, such Work Orders may be made effective as of the estimated work start date for the described activities. Regardless, the County and District acknowledge that, due to the dynamics of the Transit Project and related Construction, such

Work Orders will be subject to amendments (including additions, deletions and modifications), and additional Work Orders may be issued throughout the MTA Fiscal Year as deemed appropriate by MTA for its Transit Project.

### **10.3 Work Orders**

MTA shall issue Work Orders to County and District, following County's and District's submittal of an estimate in the form required by MTA, to authorize the performance of all work and the purchase of all materials and equipment required under the terms and conditions of this Agreement. County or District or their contractor and subcontractor may perform any work so authorized. Each Work Order shall specify the work to be performed and any materials or equipment to be acquired, the maximum amount of money which County or District will be reimbursed therefor, and a schedule, including the estimated starting and finishing dates for work so authorized. Work Orders shall impose schedules which are consistent with and supportive of the MTA Design and Construction schedule. County and District shall not be authorized to do any work, and shall not be paid, credited or reimbursed for Costs or expenses associated with any work, not requested by Work Order, unless otherwise mutually agreed in writing.

### **10.4 Work Order Changes**

10.4.1 Any proposed changes to a Work Order issued under this Agreement shall be submitted in writing to the MTA for its prior approval. However, any proposed change occasioned by emergency field construction difficulties may be submitted to the MTA orally or by telephone/fax and shall later be confirmed in writing by the County or District. In such event, the MTA agrees to act on such a request immediately.

10.4.2 MTA may terminate any Work Order at any time at its sole discretion, but MTA will reimburse County or District in accordance with this Agreement for Costs, if any, already incurred by County or District. County and District agree to notify MTA if at any time County or District has reason to believe that the total Costs under said Work Order will exceed the authorized amount or that the estimated finishing date will be later than the date stated in the Work Order. County and District will request written revisions of Work Orders in the event of anticipated cost overruns or completion delays. Without MTA's prior approval, County and District will not be reimbursed for Costs expended in excess of maximum amounts stated in a Work Order.

### **10.5 Procedures for Payments to the County and District by the MTA**

The Parties agree that the following procedures shall be observed for County's and District's submission to MTA of monthly billings, on a progress basis, for work performed by County or District under a specific Work Order.

10.5.1 County's and District's billings shall begin as soon as practicable following the commencement of a specific Rearrangement or other work under a given Work Order, and shall follow County's and District's standard billing procedures. Invoices and other data to document costs incurred shall be provided to the MTA. Each billing shall be noted as either "progress" or "final," shall be addressed to the MTA Representative, and shall include a certification that the charges identified in such billing were appropriate and necessary to

performance of the referenced contract, and have not previously been billed or paid. The final billing with a notation that all work covered by a given Work Order has been performed, shall be submitted to the MTA as soon as practicable following the completion of the Rearrangement or other work, shall recapitulate prior progress billings, and shall show inclusive dates upon which work billed therein was performed, and shall include a certification that the charges identified in such billing were appropriate and necessary to performance of the referenced contract, and have not previously been billed or paid.

- 10.5.2 The County and District, their contractors and subcontractors agree to comply with State and Federal procedures in accordance with the following: (a) Office of Management and Budget Circular A-87, Cost Principles for State and Local Governments; (b) 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; and (c) Title 21, California Code of Regulations, Section 2500 et seq, when applicable, and other matters connected with the performance of County's contracts with third parties pursuant to Government Code Section 8546.7. Any costs for which County or District has received payment that are determined by subsequent audit to be unallowable under the Office of Management and Budget Circular A-87 or 49 CFR, Part 18 shall be repaid by County or District to the MTA.

## **10.6 Procedures for MTA Billings to County and District**

In those cases in which MTA performs Rearrangement or other work which is reimbursable to MTA in whole or in part under the terms of this Agreement, MTA shall submit to County and/or District monthly progress statements indicating actual work performed during the billing period, the direct and indirect Costs thereof, and County's or District's share of such Costs. MTA billing shall begin as soon as practicable following the commencement of a specific Rearrangement or other work, and shall follow MTA's standard billing procedures. Each billing shall be noted as either progress or final, shall be addressed to the County and/or District Representative, and shall include a certification that the charges identified in such billing were appropriate and necessary to performance of the referenced contract, and have not previously been billed or paid. The final billing, with a notation that all work covered thereby has been performed, shall be submitted to County and/or District as soon as practicable following the completion of said Rearrangement or other work, shall recapitulate prior progress billings, shall show inclusive dates upon which work billed therein was performed, and shall include a certification that the charges identified in such billing were appropriate and necessary to performance of the referenced contract, and have not previously been billed or paid.

## **10.7 Payment of Billings**

Payment of each bill properly submitted pursuant to Sections 10.5 or 10.6 shall be due within sixty (60) days of receipt thereof; provided, however, that (a) all such payments shall be conditional, subject to post-audit adjustments, (b) final payment for each Rearrangement shall be contingent upon final inspection (and acceptance, where applicable) of the work by the Party billed for such work, which inspection (and acceptance, where applicable) will not be unreasonably withheld or delayed, and (c) MTA may withhold credit amounts due MTA if County or District has not posted such credits within sixty (60) days after submittal of requests for same by MTA.

## **10.8 Audit and Inspection**

Upon reasonable notice, each Party (and its authorized representatives) shall have reasonable rights to inspect, audit and copy, during normal business hours, the other's records relating to its performance hereunder (and all costs incurred with respect thereto) for each Transit Project, from the date hereof through and until expiration of three (3) years after the accepted completion of all Rearrangements for such Transit Project, or such later date as is required under other provisions of this Agreement. Examination of a document or record on one occasion shall not preclude further reexamination of such document or record on subsequent occasions. By providing any of its records to the other Party for examination, the Party providing such records represents and warrants that such records are accurate and complete. The Parties shall insert into any contracts they may enter into for the performance of work on Rearrangements hereunder the above requirements and also a clause requiring their respective contractors to include the above requirements in any subcontracts or purchase orders. In the case of such contractors, subcontractors and suppliers, the records subject to the above requirements shall include, without limitation, any relevant records as to which a tax privilege might otherwise be asserted.

## **10.9 Audit and Inspection**

Upon receipt of reasonable notice, each Party shall have the right to inspect and audit, during normal business hours, the other Party's business and accounting records pertaining to this Project. The contractors and subcontractors connected with the performance of this Agreement shall maintain all supporting documentation for a minimum of four years from the date of project completion and shall be held open for inspection and audit by representatives of the Parties, the California State Auditor, representatives of the State and auditors of the Federal Government.

## **10.10 Delays**

Each Party shall perform its work under this Agreement in accordance with the deadlines and schedules established in the Work Order. If an action or inaction of the County or District threatens a substantial delay to the Project, the County or District, in its sole discretion, may temporarily or permanently transfer to the MTA the jurisdiction of the specific facility or right of way associated with the delay. In order to pursue such action, MTA shall deliver written notice to the County or District specifying the nature of the delay and the specific facility or section of the right of way associated with the delay. Said notice from MTA shall also indicate an effective date, which shall be no less than fifteen (15) working days subsequent to the date of the notice, that MTA determines to be the deadline for the resolution of the action or inaction of the County or District that threatens a substantial delay to the Project. MTA shall incur no delay costs, as defined in this Agreement, that it would attribute to the County or the District prior to the effective date provided in said notice. The Parties shall attempt to resolve the circumstances concerning the delay as soon as possible. If such a resolution to the action or inaction of the County or District is not achieved within ten (10) working days of the County's or District's receipt of the MTA notice, then the County or District shall take the necessary action to temporarily or permanently transfer the jurisdiction of the specific facility or right of way to the MTA. Once the jurisdiction is transferred, MTA shall assume all obligations and responsibilities associated with the facility or right of way, including those obligations and responsibilities that would have been performed had the jurisdiction not been

transferred. MTA shall perform all work within the transferred facility or right of way consistent with applicable federal, state and local law as well as with the plans, designs and specifications approved by the Parties. In the event that the County temporarily transferred jurisdiction for a facility or right of way to the MTA, then at the end of the work that was threatened by the delay or the end of the Project, whichever is earlier, MTA shall transfer jurisdiction back to the Party that originally had the jurisdiction.

## **ARTICLE 11 - RESOLUTION OF DISPUTES**

### **11.1 Dispute Notice**

In the event of any dispute, claim, or controversy arising out of or relating to this Agreement ("Dispute"), the complaining Party shall provide a notice of the Dispute ("Dispute Notice") to the other Party. The Dispute Notice shall describe the facts surrounding the Dispute in sufficient detail to apprise the other Party of the nature of the complaint. The complaining party may, but will not be required to, aggregate the Dispute with other Disputes into one Dispute Notice; provided, however, except with respect to Design and Construction defects which manifest themselves following the conclusion of the Transit Project, the Dispute Notice must be delivered to the other Party no later than 90 calendar days after the conclusion of the Transit Project within the County.

### **11.2 Negotiation; Reference Proceeding**

The Parties shall attempt to settle all Disputes. To this effect, the Parties shall conduct at least one face-to-face meeting in which they shall consult and negotiate with each other, and, recognizing their mutual interests, attempt to reach a solution satisfactory to both Parties. Such meeting shall take place within seven (7) calendar days following delivery of a Dispute Notice. Except with respect to Provisional Relief (as defined below), compliance with the Dispute Notice and negotiation provisions hereof shall be a condition precedent to the filing of any action involving a Dispute.

### **11.3 Provisional Remedies**

Notwithstanding the requirements of Sections 11.1 and 11.2 hereof, a Party may seek from a Competent Court (as defined below) any interim or provisional relief that may be necessary to protect the rights or property of that Party ("Provisional Relief") without first serving a Dispute Notice or first attempting to settle the Dispute. Notwithstanding the foregoing, no provisional remedy of any type or nature shall be available to stop or otherwise interfere with any Construction relating to the Transit Project, or any portion thereof, unless requested by MTA, or required to prevent imminent danger to public health or safety. Following the appointment of a Referee pursuant to Section 11.5 thereof, any Provisional Relief which would be available from a court of law shall be available from the Referee subject to the limitations set forth in Section 11.7 hereof.

### **11.4 Complaint**

If the Parties do not reach a resolution of their Dispute within seven (7) calendar days following service of a Dispute Notice, then either Party may file in a State Court of competent jurisdiction located in the County of Los Angeles, Central Judicial District, (a "Competent Court") and serve upon the other in the manner prescribed by law, a complaint concerning and limited to the Dispute as described in the Dispute Notice (the "Complaint"); all Dispute resolution must take place in, or by reference from, a Competent Court. Concurrently with the service of the Complaint, the complaining Party shall serve a list of five acceptable "Referees," each of whom must be qualified as described below.

## **11.5 Order of Reference; Selection or Appointment of Referee; Qualifications**

Upon the application of any Party, a Dispute shall be heard, determined and brought to judgment in the County of Los Angeles, State of California, by a referee (the "Referee") appointed by a Competent Court pursuant to California Code of Civil Procedure Section 638(1) in accordance with the following guidelines.

## **11.6 Referee**

Following the filing of a Complaint, either Party may seek the appointment of a Referee in accordance with the terms hereof and pursuant to California Code of Civil Procedure, section 638(1). At the hearing thereon, the non-complaining Party may select one of the Referees from the list of referees served concurrently with the Complaint, and that Referee shall be appointed as the Referee for the Dispute. Should the non-complaining Party not select one of the Proffered Referees, or should it reject the proffered Referees, the court shall select one of the proffered Referees, or should it reject the proffered Referees, the court shall select a Referee, qualified as described below, in accordance within California Code of Civil Procedure Section 640.

11.6.1 Qualification. The Referee shall be a retired judge having significant general civil trial experience as an active trial judge for the Los Angeles County Superior Court or the United States District Court, Central District of California. For purposes of this section, family law, probate, child custody, criminal and/or traffic law experience shall not be considered "civil trial experience".

11.6.2 Peremptory Challenge. In addition to the grounds set forth in Code of Civil Procedure sections 170.1, et seq., and 641, each Party shall have the right to exercise one peremptory challenge, without cause, to any appointed Referee; provided, however, such challenge must be exercised within 10 calendar days of notice of the appointment.

11.6.3 Judge Pro Tem. The Parties hereby stipulate that the Referee shall be appointed as a temporary judge, subject to approval of the court pursuant to Article VI, Section 21, of the California Constitution and California Rules of Court, Rule 244.

11.6.4 Impartiality. Prior to the commencement of hearings, the Referee shall provide a statement signed under penalty of perjury establishing his or her qualifications as provided herein, identifying any possible basis for objection to his appointment as set forth in California Code of Civil Procedure Section 170.1 or 641, and disclaiming any partiality as to the outcome of the proceeding. Any objection to the appointment of a Referee on the basis of any fact or matter disclosed in the foregoing statement shall be heard by the referring Court, raised in accordance with California Code of Civil Procedure Section 642, and filed with the referring Court within 10 calendar days of the service of the statement or shall be deemed waived.

## **11.7 Scope of Authority**

The Referee shall have the authority to award any remedy or relief that a court of this State could order or grant; except that, the Referee shall have no power or authority to



award any injunctive or other relief which would stop or otherwise interfere with any Construction relating to the Transit Project, or any portion thereof, unless such relief is requested by MTA or required by reason of imminent danger to public health or safety. The Referee shall be empowered to impose sanctions and to take such other actions with regard to the Parties as the Referee deems necessary to the same extent such actions could be take by a judge of this State pursuant to the California Rules of Civil Procedure or other applicable law.

#### **11.8 Governing Law; Waiver of Jury**

The Referee shall try and decide the Dispute according to all of the substantive, procedural and evidentiary laws of the State of California, unless the Parties stipulate to the contrary. The Parties hereby waive their right to a trial by jury.

#### **11.9 Standards for Decision**

The provisions of the California Code of Civil Procedure, Part 2, Title 8, Chapter 6, shall be applicable to Dispute resolution by reference hereunder. In an effort to clarify and amplify the provisions of California Code of Civil Procedure Sections 644 and 645, the parties agree that the Referee shall decide issues of fact and law submitted for decision in the same manner as required for a trial court as set forth in the California Code of Civil Procedure, Part 2, Title 8, Chapter 5, and California Rules of Court Rule 232, except that, a statement of decision and judgment shall be prepared as set forth below.

#### **11.10 Statement of Decision and Judgment**

The Referee shall issue a statement of decision, which shall explain the factual and legal basis for the decision as to each of the principal controverted issues at trial, and contain findings of fact and conclusions of law. The Referee also shall issue a judgment based upon the statement of decision. The Referee may direct a prevailing Party to prepare a proposed statement of decision and/or judgment to which any opposing Party may file objections. Unless good cause is shown, the statement of decision and form of judgment each must be finally resolved and signed by the Referee within 15 days of the conclusion of the trial. The judgment signed by the Referee shall be entered by the petitioned Competent Court, and shall be appealable in the same manner as if the judge signing the judgment and tried the case.

#### **11.11 Continuing Performance**

No Construction or other work or activity relating to the Transit Project shall be stopped, or interfered with in any manner, by reason of a Dispute or otherwise, except the direction of MTA in MTA's sole discretion, or for reasons of imminent danger to public health or safety. Without limiting the generality of the foregoing, the Parties agree that they will continue their respective performance required hereunder notwithstanding any Dispute, and that such continued performance shall not be construed as a waiver of any rights or defenses.

##### **11.11.1 Injunctive Relief**

In the event that work is stopped, slowed or interfered with other than at the direction of MTA, MTA may apply ex parte to a Competent Court, or, if

previously appointed, to a Referee, on 24 hour notice, or such shorter notice as may be necessary under the circumstances, for injunctive relief mandating that work resume or continue at such level as MTA deems necessary and appropriate in its sole discretion. In such circumstances, an order shall issue mandating the resumption or continuance of work within 24 hours unless the Party having stopped, slowed or interfered with work carries the burden of proving that such action was required for reasons of imminent danger to public health or safety. Violation of a court order requiring resumption of work shall be punishable as contempt.

#### 11.11.2 Legal Remedy Inadequate

The Parties agree that MTA's legal remedy for any delay in the Construction of the Transit Project will be inadequate, and, accordingly, that mandatory injunctive relief is appropriate. Among other things, delay in the Construction of the Transit Project will impact the public convenience, safety and welfare, which cannot be adequately compensated by monetary damages.

#### 11.11.3 Compensation of Referee

The expenses and fees of the Referee shall be equally divided by the Parties. The Referee shall have no power or authority to allocate fees and costs, including attorneys fees, among the parties regardless of the outcome of the reference proceeding.

#### 11.11.4 Failure to Appear

The reference proceeding may proceed in the absence of a Party who, after due notice, fails to appear.

#### 11.11.5 Implementation

Each Party promptly will take any action required of it in order to implement as agreed upon Dispute resolution, or a final judgment entered pursuant to the provision of this Agreement.

#### 11.11.6 Cooperation

The Parties shall diligently cooperate with each other and the Referee, and shall perform such acts as may be necessary, to ensure an efficient and expeditious resolution to each Dispute. If either Party fails to cooperate diligently, the other Party shall give notice of that fact to the non-cooperating Party, setting forth the Party's basis for its contention of non-cooperation and requesting specific action. Upon a determination that the noticed Party thereafter failed to act with substantial justification, the Referee may sanction the noticed party for its non-cooperation. Sanctions may include, but are not limited to, the payment of another Party's attorneys' fees and costs incurred to secure the required cooperation.

## ARTICLE 12 - MISCELLANEOUS PROVISIONS

### 12.1 Approvals; Further Documents and Actions

12.1.1 Any acceptance, approval, consent, permission, satisfaction, agreement, authorization or any other like action (collectively, "Approval") required or permitted to be given by any Party hereto pursuant to this Agreement or any Work Order:

- (a) must be in writing to be effective (except if deemed granted pursuant hereto);
- (b) shall not be unreasonably withheld, conditioned or delayed; and if Approval is withheld, such withholding shall be in writing and shall state with specificity the reasons for withholding such Approval, and every effort shall be made to identify with as much detail as possible what changes are required for Approval; and
- (c) shall be deemed granted if no response is provided to the Party requesting an Approval within the time period prescribed by this Agreement or the applicable Work Order (or if no time period is prescribed, then fourteen (14) calendar days) commencing upon actual receipt by the Party from which an Approval is requested or required.

### 12.2 Notices

Except as otherwise expressly provided herein, all notices or communications pursuant to this Agreement shall be in writing and shall be sent or delivered to the following:

To the **County** and to the **District**:

Assistant Division Head  
Programs Development Division  
Post Office Box 1460  
Alhambra, CA 91802-1460

To the **MTA**:

Mr. Dennis Mori Executive Officer (Interim),  
Construction Project Management Division

Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza  
Los Angeles, CA 90012

Any notice or demand required shall be given (a) personally, (b) by certified or registered mail, postage prepaid, return receipt requested, (c) by confirmed fax, or (d) by reliable messenger or overnight courier to the address of the respective Parties set forth above. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the

received facsimile, and served by certified or registered mail or by reliable messenger or overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. County or MTA may from time to time designate any other address or addressee or additional addressees for this purpose by written notice to the other Party. The Parties may also designate other procedures for the giving of notice as required or permitted under the terms of this Agreement, but each alternate procedure shall be described in writing and signed by the MTA Representative and the County Representative.

### **12.3 Time of Essence**

In accomplishing all work required under this Agreement, time is of the essence.

### **12.4 Assignment; Binding Effect**

Neither Party shall assign its interest in this Agreement without prior consent of the other Party. Any permitted assignment shall bind and inure to the benefit of the respective successors and permitted assigns of the Parties. Notwithstanding the foregoing, MTA shall have the right to act pursuant hereto by and through its contractors.

### **12.5 Waiver**

The failure of any Party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any Party of any condition, or of any breach of any term, covenant, representation, or warranty contained herein, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach or waiver of any other condition or of any breach of any other term, covenant, representation or warranty.

### **12.6 Legal Rights**

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California. The rights and remedies of the Parties for default in performance under this Agreement or any Work Order are in addition to any other rights or remedies provided by law.

### **12.7 Bonds/Fees**

Except as specifically agreed to in this Agreement and to the extent allowed by law, the County and District waive and relinquish all of their rights, if any, to seek or obtain bonds, fees or other security or payments from the MTA or its contractors.

### **12.8 Severability**

In the event that any portion hereof is determined to be illegal or unenforceable, such determination shall not affect the validity or enforceability of the remaining provisions hereof, all of which shall remain in full force and effect.

### **12.9 General and Tense**

As used in this Agreement, the masculine, feminine and neuter genders, and the singular and plural numbers shall each be deemed to include the other or others whenever the context so indicates.

#### **12.10 Headings**

The headings that appear at the commencement of each article and section are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between any heading and the article or section itself, the article or section itself and not the heading shall control as to construction.

#### **12.11 Incorporation of Exhibits**

Every exhibit to which reference is made in this Agreement is hereby incorporated in this Agreement by this reference.

#### **12.12 Counterpart Originals**

This Agreement may be executed in any number of counterparts, each of which shall be deemed the original and all of which together shall constitute one and the same instrument.

#### **12.13 Statutory References**

All statutory references in this Agreement shall be construed to refer to that statutory section mentioned, related successor sections, and corresponding provisions of subsequent law, including all amendments.

#### **12.14 Construction**

The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the Parties.

#### **12.15 Pronouns and Plurals**

Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine and neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

#### **12.16 Further Actions**

The Parties hereby agree to execute, acknowledge and deliver such additional documents, and take such further actions, as may reasonably be required from time to time to carry out each of the provisions, and the intent, of this Agreement.

#### **12.17 Third-Party Beneficiaries**

It is not intended by any of the provisions of this Agreement to create any third-party beneficiary hereunder, or to authorize anyone not a party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the indemnity provisions) identify third parties and state that they are entitled to benefits hereunder.

#### **12.18 Force Majeure**

Neither Party shall be held liable for any loss or damage due to delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence; such cases may include acts of God, acts of civil or military authority, government regulations (except those promulgated by the Party seeking the benefit of this Article), embargoes, epidemics, war, terrorist acts, riots,

insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, other major environmental disturbances or unusually severe weather conditions; provided, however, lack of funds or funding shall not be considered to be a cause beyond a Party's control and without its fault or negligence. The foregoing events do not constitute force majeure events where they are reasonably foreseeable consequences of Construction. If any of the foregoing events occur, County agrees, if requested by MTA, to accelerate its efforts hereunder if reasonably feasible in order to regain lost time, so long as MTA agrees to reimburse County for the incremental actual costs of such efforts.

#### **12.19 Entire Agreement/Amendment**

This Agreement constitutes the entire agreement of the Parties with respect to the matters addressed herein and supercedes all prior written and oral agreements, understandings and negotiations with respect to the subject matter hereof. Any and all prior agreements, understandings or representations relating to the transactions referred to herein are hereby terminated and canceled in their entirety and are of no further force and effect. This Agreement may not be amended, modified, superseded or canceled, nor may any of the terms, covenants, representations, warranties or conditions hereof be waived, except by a written instrument executed by the Party against which such amendment, modification, supersedure, cancellation or waiver is to be charged.

#### **12.20 Survival**

The representations, warranties, indemnities and waivers set forth in this Agreement shall survive the termination, for any reason whatsoever, of this Agreement.

#### **12.21 Maintenance of Records**

The Parties agree to keep and maintain (and to require all contractors and subcontractors connected with performance of this Agreement to keep and maintain) records showing actual time devoted and all Costs incurred in the performance of all work subject to a Work Order under this Agreement until three (3) years after the accepted completion of all Rearrangements for such Transit Project, or until such later date as is required under other provisions of this Agreement; provided, however, that if any actions brought under the dispute resolution provisions of this Agreement have not been finally resolved by the foregoing deadline, then any records which pertain to any such actions shall be maintained until such actions have been finally resolved.

IN WITNESS WHEREOF, MTA , County and District have caused this AGREEMENT to be executed as of the date first set forth above.

COUNTY OF LOS ANGELES

LOS ANGELES COUNTY METROPOLITAN  
TRANSPORTATION AUTHORITY

By \_\_\_\_\_  
Chairman, Board of Supervisors

By \_\_\_\_\_  
Roger Snoble,  
Chief Executive Officer

LOS ANGELES COUNTY  
FLOOD CONTROL DISTRICT

APPROVED AS TO FORM

By \_\_\_\_\_  
Chairman, Board of Supervisors

By \_\_\_\_\_  
General Counsel

APPROVED AS TO FORM:

LLOYD W. PELLMAN  
County Counsel

By

ATTEST:

VIOLET VARONA-LUKENS  
Executive Officer of the  
Board of Supervisors of  
the County of Los Angeles

## EXHIBIT A - ADVANCED PARTIAL DESIGN PROCESS

1. **Preliminary Engineering (PE Part 1)** - This is the design development phase that follows the selection of the preferred investment strategy for an overall project and advances the project scope from a conceptual state to a level of schematic design, that describes the project technical and architectural approach in order to address environmental and community impacts, interfaces with significant utilities and existing infrastructure/facilities, and operational characteristics to support environmental approvals. This phase will involve as many as two submittals to allow the County to verify existing roadways, sewers, storm drains, traffic control and traffic management systems, as well as other facilities and the interface with the proposed Transit Facilities. Completion of Preliminary Engineering Part 1 brings a project to approximately 30% overall level of engineering design and allows a realistic estimate of project costs, construction schedule and may include definition of the basis for design/build contracts.

This will be submitted to the County for review and comment. The comment review period for the County is 30 calendar days. When comments are received, MTA and its consultant will disposition all comments and make the agreed upon changes. For those comments not initially agreed upon, Comment Resolution Meetings will be held with each commenter following these meetings. All comments will be dispositioned and sent to the commenter. This will occur prior to the next submittal.

2. **Preliminary Engineering (PE Part 2)** - Validates schematic design concepts and system criteria and develops a clear indication of design solutions for requirements outlined in the initial Preliminary Engineering Design phase. This design phase provides the route and station geometry along with an Initial Site Assessment for all structures to be demolished and other Real Estate requirements. Utility and structure conflicts will be identified and necessary relocation concept plans developed. The design criteria, performance specifications, technical provisions and a Statement of Work for the D/B Contract solicitation documents are finalized in conjunction with all necessary reviews by the County. This phase will involve as many as two submittals that allow the County and MTA to establish design, construction standards and permit requirements, as well as review of designs of Transit Facilities and their relation to storm drains, sewers, street lights, traffic signals, ATSAC and other County facilities. At the completion of Preliminary Engineering Design (Part 2), major features of design will have advanced and most drawings and other documents will be approximately 50% complete overall.

These will be submitted to the County for review and comment. The comment review period for the County is 30 calendar days. When comments are received, MTA and its consultant will disposition all comments and make the agreed upon changes. For those comments not initially agreed upon, Comment Resolution Meetings will be held with each commenter following these meetings. All comments will be dispositioned and sent to the commenter. This will occur prior to the contract advertisement.

3. **D/B Contract Solicitation Phase** - Commences with the issuance of bid or proposal solicitation documents for design and construction of a transit facility. All addendums must be reviewed by County staff relative to County facilities. County staff may be involved in evaluation boards for these proposals. This process concludes with award of a Design/Build contract.



4. **Final Design and Construction Phase** – Commences with Notice to Proceed (NTP) to the Design/Build contractor. The Design/Build contractor may submit designs to the County and MTA simultaneously to ensure timely reviews. The Design effort is advanced to the Pre-Final Design through as many as two submittals and reviews and reach a level reflecting approximately 85% completion with the drawings and specifications essentially complete. The plans show all the details necessary for construction and have been coordinated among the various disciplines prior to submittal.

This phase will produce all facility and system drawings and specifications required for County review and approval, including permit applications. Final documentation of all design calculations, Title 24 calculations, complete specifications, geotechnical Design Summary Report, Environmental Design Summary Report, verification of existing facilities/utilities through site surveys, maps, dig alert, possible potholing, photo log and monumentation of existing conditions, work site traffic control plans, temporary street closures and haul route permits.

Following the review of the 85% submittals and receipt of comments, the Design/Build contractor will revise the drawings to reflect the necessary corrections to comply with standards, permits, and other requirements of the contract and conduct comment resolution meeting(s) with the Design/ Build contractor, MTA and the County for each submittal. The comment review period for the County is 30 calendar days and all County comments will be sent directly to the Design/Build contractor with a copy to MTA. MTA will ensure comments have been resolved before design advances to next level. The Design/Build contractor will then revise and advance the design to complete 100% Final Design plans and submit for final approval. Upon final approval by the County and MTA, the County will issue the necessary permits for construction to the Design/Build contractor. The approved contract documents will be stamped "For Construction" and will be furnished to the County and MTA.

5. **Advanced Partial Design** – This is a submittal of a portion of the project scope that, upon approval, will allow a portion of the construction to begin prior to completion of the final design of the project scope. The Advanced Partial Design Submittal shall consist of detailed Design Drawings and Project Specifications together with supporting reports, notes, conversation/meeting records, and calculations to support the scope of work planned and verification of integration with overall project, to be released for construction. This may include information indicating that existing field conditions have been properly identified and are being addressed, that coordination has occurred within the design disciplines, MTA and appropriate Third Parties have been achieved so as to eliminate or minimize any possible inconsistency with the final design of the overall scope of work planned for construction.

Acceptance of the scope designated in an Advanced Partial Design submittal shall not constitute approval of the Final Design scope. County recognizes that certain portions of MTA projects may involve Partial Design Submittals to facilitate Construction of Components of MTA Facilities prior to final Design approval of the entire Facility. County agrees to review and to approve (subject to the timing and other requirements of this MCA) all such Partial Design Submittals in order to facilitate early Construction of such Facility components. Advanced Partial design and subsequent Final Design of an entire Facility shall conform to applicable County Standards and design requirements. Notwithstanding, no construction shall commence until the County approves the design submittal for any portion or segment, including Partial Designs. Construction without prior approval or not conforming to County standards shall be at the risk of removal and replacement by MTA and/or it's contractor.