



Metro

Metropolitan Transportation Authority

One Gateway Plaza
Los Angeles, CA 90012-2952

213.922.2000 T
metro.net

40

**CONSTRUCTION COMMITTEE
NOVEMBER 19, 2009**

PROJECT: I-405 SEPULVEDA PASS WIDENING PROJECT

ACTION: APPROVE MASTER COOPERATIVE AGREEMENT WITH LOS ANGELES COUNTY DEPARTMENT OF PUBLIC WORKS/LOS ANGELES COUNTY FLOOD CONTROL DISTRICT

RECOMMENDATION

Authorize the Chief Executive Officer to execute a Master Cooperative Agreement between the Los Angeles County Department of Public Works/Los Angeles Flood Control District and the Los Angeles County Metropolitan Transportation Authority (MTA).

RATIONALE

This Master Cooperative Agreement is needed to ensure overall effective development of the Los Angeles County Department of Public Works/Los Angeles County Flood Control District (County/District) design reviews pertaining to the rearrangements/modification of County/District facilities for the I-405 Sepulveda Pass Widening Project. Establishing a clear and consistent framework of roles, responsibilities, and procedures for coordination of the planning, design and construction of all facility rearrangements/modifications will facilitate the extensive coordination between MTA and County/District.

FINANCIAL IMPACT

Funding for this scope of work is included in the I-405 Project's estimated total project cost. The annual work plans associated with this Master Cooperative Agreement will be included in each fiscal year project budget. MTA has worked with the County/District to establish a FY10 budget of \$325,000 to include costs for County/District design review associated with relocation and/or modification of County/District facilities necessitated by the I-405 Sepulveda Pass Widening Project. We expect the total expenditures to be a maximum of \$1.5 million over the life of the project.

Since this is a multi-year agreement, the respective Deputy Chief Capital Management Officer and Cost Center Manager will be accountable for budgeting necessary County/District facilities relocation and/or modification review and implementation costs for each Project in future years.

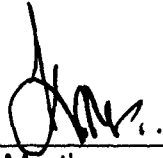
ALTERNATIVES CONSIDERED

The alternative is to proceed without a Master Cooperative Agreement for the I-405 Project. To proceed without a Master Cooperative Agreement has the potential to cause project delays and is therefore not recommended.

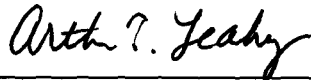
ATTACHMENT

- A. Master Cooperative Agreement

Prepared by: John C. Higgins, Third Party Administration Manager



Krishniah N. Murthy
Deputy Chief Capital Management
Officer
Executive Office, Construction



Arthur T. Leahy
Chief Executive Officer

MASTER COOPERATIVE AGREEMENT

FOR THE

DESIGN AND CONSTRUCTION OF I-405 SEPULVEDA PASS WIDENING PROJECT

BY AND BETWEEN

COUNTY OF LOS ANGELES

AND

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT

AND

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

TABLE OF CONTENTS

	<u>Page</u>
RECITALS	<u>121</u>
ARTICLE 1 - SCOPE, DURATION AND DEFINITION	<u>323</u>
1.1 Scope of Agreement	<u>323</u>
1.2 Duration of the Agreement.....	<u>323</u>
1.3 Definitions	<u>424</u>
1.4 Representatives	<u>828</u>
1.4.1 County Representative	<u>828</u>
1.4.2 LACMTA Representative	<u>929</u>
1.4.3 District Representative.....	<u>929</u>
ARTICLE 2 - DESIGN.....	<u>929</u>
2.1 Design/Build Contractor	<u>929</u>
2.2 Interpretation and Application of County or District Standards	<u>10210</u>
2.3 Coordination	<u>11214</u>
2.4 Identification of Facilities.....	<u>12212</u>
2.5 Design of Rearrangements Performed by LACMTA.....	<u>12212</u>
2.6 Design of Rearrangements Performed by County and/or District.....	<u>14214</u>
2.7 Betterments	<u>14214</u>
2.8 General Design Criteria	<u>15215</u>
2.9 Changes in Approved Plans	<u>15215</u>
2.10 Specific Design Requirements for Rearrangements.....	<u>15215</u>
2.10.1 Surface Openings	<u>15215</u>
2.10.2 Landscaping.....	<u>16216</u>
2.10.3 Traffic Control Devices.....	<u>16216</u>
2.10.4 Street Lighting.....	<u>17217</u>
2.10.5 Private Projections in Public Ways	<u>17217</u>
2.11 Construction Staging Plans	<u>18218</u>
2.11.1 Plan Requirements	<u>18218</u>
2.11.2 Assistance by County and District	<u>18218</u>

2.12	Coordination of New and Unrelated County, District and Other Facilities	19219
ARTICLE 3 - PERMITS AND PROPERTY RIGHTS		19219
3.1	Permits.....	19219
3.2	Permits for Work in Street and Public Easements	19219
3.3	Temporary and Permanent Street Closures	20220
3.4	Federal, State and Other Agency Permit and License Requirements	20220
3.5	Grant of Rights.....	20220
3.6	Replacement Rights-of-Way	21224
3.7	County Licenses Within I-405 Project Right-of-Way Owned by Caltrans	21224
3.8	County Property Required for Project Rights-of-Way	21224
3.9	Temporary LACMTA Facilities	22222
3.10	Temporary County/District Facilities	22222
3.11	Night and Weekend Work.....	22222
3.12	Right of Way Map	22
ARTICLE 4 – EFFECTING REARRANGEMENTS.....		22222
4.1	LACMTA Construction of Rearrangements	22222
4.2	Relocation of Private Utility and Other Facilities	23223
4.3	County or District Construction of Rearrangements	23223
4.4	Maintenance	23223
4.5	“As-Built” Drawings of Rearrangements	24224
4.6	Reproducible Contract Documents.....	24224
4.7	Underground Service Alert	24224
4.8	County or District Activities	24224
4.9	Inspection During Construction.....	25225
4.10	Final Inspection.....	25225
4.11	Materials Testing	26226

4.12	Use of Improvements During Construction.....	262 <u>26</u>
ARTICLE 5 - PROJECT FACILITIES WORK BY COUNTY OR DISTRICT.....		262 <u>26</u>
5.1	Design and Construction by County or District.....	262 <u>26</u>
5.2	Standards	262 <u>26</u>
5.3	Requirements	272 <u>27</u>
5.4	Approval at LACMTA's Discretion	272 <u>27</u>
ARTICLE 6 - DISPOSITION OF SALVAGED MATERIALS		282 <u>28</u>
6.1	Salvage.....	282 <u>28</u>
6.2	Salvage Credits	282 <u>28</u>
ARTICLE 7 - REIMBURSEMENTS TO COUNTY AND DISTRICT		282 <u>28</u>
7.1	Reimbursement to County and District.....	282 <u>28</u>
7.2	Reimbursement for Abandoned Facility.....	282 <u>28</u>
ARTICLE 8 - REIMBURSEMENTS AND CREDITS TO LACMTA.....		292 <u>29</u>
8.1	Credits to LACMTA.....	292 <u>29</u>
8.2	Survey; Review of Records	292 <u>29</u>
8.3	Salvage.....	292 <u>29</u>
8.4	Betterments	292 <u>29</u>
8.5	Expired Service Life Value.....	292 <u>29</u>
ARTICLE 9 - INDEMNIFICATION AND WARRANTIES		302 <u>30</u>
9.1	Indemnification of the County and the District	302 <u>30</u>
9.2	Indemnification of LACMTA	302 <u>30</u>
9.3	Indemnification of Both Parties	302 <u>30</u>
9.4	Warranty (Excavations)	302 <u>30</u>
9.5	Contractor Insurance	312 <u>34</u>
9.6	Warranties (Rearrangements)	312 <u>34</u>

9.7	Contractor Bonds	<u>31234</u>
ARTICLE 10 - WORK PLANS, WORK ORDERS, BILLINGS, DEADLINES AND DELAYS		<u>31234</u>
10.1	Work Performed by the County and the District	<u>31234</u>
10.2	Work Plans	<u>32232</u>
10.3	Work Orders	<u>32232</u>
10.4	Work Order Changes	<u>33233</u>
10.5	Procedures for Payments to the County and District by LACMTA.....	<u>33233</u>
10.6	Procedures for LACMTA Billings to County and District	<u>34234</u>
10.7	Payment of Billings	<u>34234</u>
10.8	Audit and Inspection	<u>34234</u>
10.9	Delays.....	<u>35235</u>
ARTICLE 11 - RESOLUTION OF DISPUTES		<u>36236</u>
11.1	Dispute Notice	<u>36236</u>
11.2	Negotiation; Reference Proceeding	<u>36236</u>
11.3	Provisional Remedies	<u>36236</u>
11.4	Complaint.....	<u>36236</u>
11.5	Order of Reference; Selection or Appointment of Referee; Qualifications.....	<u>37237</u>
11.6	Referee	<u>37237</u>
11.7	Scope of Authority	<u>38238</u>
11.8	Governing Law; Waiver of Jury.....	<u>38238</u>
11.9	Standards for Decision	<u>38238</u>
11.10	Statement of Decision and Judgment.....	<u>38238</u>
11.11	Continuing Performance.....	<u>38238</u>
ARTICLE 12 - MISCELLANEOUS PROVISIONS		<u>40240</u>
12.1	Approvals; Further Documents and Actions	<u>40240</u>
12.2	Notices.....	<u>40240</u>

12.3	Time of Essence	<u>41241</u>
12.4	Assignment; Binding Effect.....	<u>41241</u>
12.5	Waiver.....	<u>41241</u>
12.6	Legal Rights.....	<u>41241</u>
12.7	Bonds/Fees.....	<u>41241</u>
12.8	Severability	<u>41241</u>
12.9	General and Tense	<u>42242</u>
12.10	Headings.....	<u>42242</u>
12.11	Incorporation of Exhibits	<u>42242</u>
12.12	Counterpart Originals.....	<u>42242</u>
12.13	Statutory References	<u>42242</u>
12.14	Construction.....	<u>42242</u>
12.15	Pronouns and Plurals	<u>42242</u>
12.16	Further Actions	<u>42242</u>
12.17	Third-Party Beneficiaries	<u>42242</u>
12.18	Force Majeure.....	<u>43243</u>
12.19	Entire Agreement/Amendment	<u>43243</u>
12.20	Survival	<u>43243</u>
12.21	Maintenance of Records.....	<u>43243</u>
EXHIBIT A – DESIGN AND CONSTRUCTION PROCESS		<u>45245</u>

**MASTER COOPERATIVE AGREEMENT
FOR
THE DESIGN AND CONSTRUCTION OF
I-405 SEPULVEDA PASS WIDENING 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 (“LACMTA”), 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”), a body corporate and politic. LACMTA, 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. LACMTA 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, bus and freeway transit systems and other transportation facilities in Los Angeles County.
- B. In collaboration with the State of California, Department of Transportation (“Caltrans”), LACMTA proposes to design, construct and operate facilities necessary and convenient for a freeway 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. The proposed project is:
 - I-405 Freeway Sepulveda Pass Widening Project (the “I-405 Widening Project”), which is defined as an approximately 10 mile freeway widening project which will traverse portions of the City of Los Angeles and areas of the County of Los Angeles, between Interstate 10 San Bernardino/Santa Monica Freeway and the 101 Hollywood/Ventura Freeway.
- C. LACMTA historically has used the “Design/Bid/Build” method of project delivery for its transit Projects. However, LACMTA is adopting the “Design/Build” method of project delivery (as defined in Section 1.3.14 below) for the I-405 Widening Project.
- D. From time to time, the construction, reconstruction or improvement of the I-405 Widening 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 LACMTA and County and District 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 all parties and the I-405 Widening 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 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 LACMTA to construct 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 and District agree to assist LACMTA in the areas of building and safety, landscaping, transportation, traffic, civil engineering, street lighting, public works inspection, materials testing, contract administration, and other appropriate areas when and as requested by LACMTA 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 LACMTA 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 LACMTA 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 Exhibit "A", attached hereto and made a part hereof. As the 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 December 31, 2017, unless a Party provides 30 day written notice of termination to the other Party.

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 terminated 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 LACMTA (whether constructed by LACMTA, 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 the 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 Project's final Environmental Impact Report or Statement and which are mutually agreed to be a Project responsibility; provided, however, that any upgrade beyond minimally applicable requirements shall be considered a "Betterment."

The term "Betterment" shall include any upgrade to a Conflicting Facility requested by County and/or District and agreed by LACMTA, in order to conform to revisions or additions to County Standards which LACMTA 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 LACMTA (or its consultants or contractors) to County and/or District of the completed Design for components of a particular Rearrangement or a particular 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) Caltrans is defined as California Department of Transportation, LACMTA collaborator on the I-405 Widening Project.
- 5) Comment Date is defined as follows:

- (a) For each Rearrangement as to which the 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.
- (b) For each Rearrangement as to which the I-405 Widening 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.
- 6) Conflicting Facility is defined as an existing Facility which LACMTA determines is so situated as to require Rearrangement in order to construct and operate Project without adversely impacting the maintenance of that Facility.
- 7) 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.
- 8) Cost is defined as all actual, allowable and reasonable direct and indirect costs incurred by LACMTA, 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.
- 9) County is defined as the County of Los Angeles, California, including, but not limited to, its officers, boards, departments, and staff.
- 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, the California Manual on Uniform Traffic Control Devices, Illumination Engineer Society Guidelines, LACDPW Hydrology/Sedimentation Manual, Los Angeles County Flood Control District (LACFCD) Hydraulic Design Manual, LACFCD Structural Design Manual, Standard Specifications for Public Works Construction (Greenbook), LACDPW Additions and Amendments to the Standard Specification for Public Works Construction (Graybook) 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 Project under the terms of this Agreement.
- 14) Design/Build ("D/B") is defined as the method of project delivery in which LACMTA engages a Design/Build Contractor to both furnish the Final Design of and Construct the Project.
- 15) Design/Build Contractor is defined as a single entity or joint venture which is engaged by LACMTA to complete the Design of and to Construct the Project pursuant to a Design/Build procurement.
- 16) 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.
- 17) District is defined as the Los Angeles County Flood Control District including, but not limited to, its officers, boards, departments, and staff.
- 18) District Representative is defined as that person or persons holding the specified positions(s), designated by County pursuant to Section 1.4.3.
- 19) District Rights-of-Way is defined as drainage in every watershed, open channel, storm drains, and catch basins within incorporated and unincorporated areas of the County of Los Angeles and as to which District has a right of jurisdiction.
- 20) 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 LACMTA, whichever comes later.
- 21) Expired Service Life Value is defined with the meaning set forth in Section 8.5.
- 22) Facility is defined as real or personal property located within the route of the 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.

- 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, utility relocations 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 shall be furnished by a D/B Contractor.
- 24) Initial Term is defined with the meaning set forth in Section 1.2 of this Agreement.
- 25) I-405 Widening Project is defined with the meaning set forth in Recital B of this Agreement.
- 26) LACMTA 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) Parties are defined as LACMTA, County and District collectively, and a "Party" is defined as each of LACMTA, County and District individually.
- 28) 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.
- 29) 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.
- 30) 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.
- 31) Right-of-Way (ROW) is defined as the real property required for operating and maintaining the Project Facilities and systems that comprise the Project.
- 32) 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.
- 33) Project is defined as the I-405 Widening Project described in Recital B.

- 34) 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.
- 35) 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 the Project, including but not limited to Construction staging and/or material storage areas.
- 36) 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.
- 37) Work Order is defined as that document which LACMTA will issue for a defined scope of work, direct costs 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 Project.
- 38) 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 I-405 Widening Project, the Director of the County Department of Public Works 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 the I-405 Widening Project to assist LACMTA in the delivery of the Project and each component thereof in a timely manner. 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 LACMTA 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 LACMTA. The County shall remove and replace any County Representative within ten (10) Working Days after LACMTA's reasonable written request therefore.

1.4.2 LACMTA Representative

For the I-405 Widening Project, the Chief Executive Officer of LACMTA shall designate a person, or the holder of a specified office or position, to act as LACMTA's Representative. The LACMTA Representative will have the responsibility to manage and coordinate LACMTA 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. LACMTA may change its designated LACMTA Representative by providing ten (10) days prior written notification to the County and the District.

1.4.3 District Representative

For the Project, the Chief Engineer of the District 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 the Project(s) to assist LACMTA in the delivery of Project, and each component thereof, in a timely manner. The District Representative will have the responsibility (i) to manage and coordinate District interaction with LACMTA 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 LACMTA. The District shall remove and replace any District Representative within ten (10) Working Days after LACMTA's reasonable written request therefore.

ARTICLE 2 - DESIGN

2.1 Design/Build Contractor

The Parties acknowledge that LACMTA's utilization of Design/Build for the I-405 Widening 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 the Design/Build 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 LACMTA 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 Project. County and District further acknowledge that the D/B Contractor may be assigned various tasks, including certain tasks assigned to the LACMTA Representative hereunder (e.g. coordination of design and resolving design issues with local agencies) which would ordinarily be performed by LACMTA's own staff or design consultants. Accordingly, if LACMTA enters into a D/B Contract, the Parties agree as follows:

2.1.1 Without limiting LACMTA's right to delegate the performance of Design and Construction tasks hereunder to consultants and contractors, LACMTA may delegate to the D/B Contractor the duty to perform certain of LACMTA's

obligations hereunder in lieu of LACMTA, as designated by LACMTA 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 LACMTA's rights hereunder, but only to the extent designated by LACMTA in the D/B Contract (without limiting LACMTA's right to exercise such rights).
- 2.1.3 LACMTA may add the D/B Contractor as a required notice recipient pursuant to Section 12.2 for certain notices hereunder, as specified by LACMTA.
- 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, LACMTA 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 LACMTA as reasonably requested by LACMTA 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 or District Standards

- 2.2.1 With respect to both Design and Construction, in interpreting applicable County or District Standards, and in exercising any discretion granted to County and District staff by applicable County or District 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 LACMTA (or its contractors or consultants) with respect to a Rearrangement Design issue, upon receiving notice of such disagreement from County and/or District or LACMTA's contractors or consultants, the LACMTA 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 LACMTA's determination, then the dispute shall be resolved in accordance with Article 11.
- 2.2.3 If LACMTA receives from County and/or District a written nonconformance notice upon inspection of Rearrangement Construction, LACMTA shall promptly

investigate and notify County and/or District of LACMTA'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 and/or District Standards, or (b) correction is not necessary in order to achieve such purposes. If County and/or District disagree with LACMTA's determination, then the dispute shall be resolved in accordance with Article 11.

2.3 Coordination

- 2.3.1 The LACMTA 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 the 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. LACMTA 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 LACMTA's Construction schedule for the Project, as determined by LACMTA. If County and/or District disagree with LACMTA's determination, then the dispute shall be resolved in accordance with Article 11.
- 2.3.2 Certain components of the 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. LACMTA shall provide written notice at least three (3) Working Days prior before County services are interrupted. LACMTA 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, LACMTA shall provide such Temporary Facilities.
- 2.3.3 County and District recognize that time is of the essence for the Project, and that certain portions of the Project 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 LACMTA 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 LACMTA, 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 LACMTA, County and District shall identify and disclose to LACMTA all known Facilities which are located on, in, under, over, along or near those County Rights-of-Way which LACMTA indicates may be affected by the Project. County and District shall allow LACMTA, 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 LACMTA, County and District shall provide to LACMTA 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 LACMTA indicates may be affected by the Project. County and District shall allow LACMTA, 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 LACMTA

Unless otherwise mutually agreed, LACMTA (or its consultants and/or contractors) shall Design all Rearrangements (including Betterments thereto). LACMTA 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 LACMTA's schedule for the I-405 Widening Project and to the following requirements:

(a) Within eight (8) Working Days after receipt of a Advanced Partial Design Submittal or any other Design submittal for a Rearrangement,

- (1) County and District shall inform LACMTA 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 LACMTA and the D/B contractor, or shall return the plans and specifications to LACMTA 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 LACMTA and the D/B contractor within eight (8) working 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 an 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 fifteen (15), but no later than 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 LACMTA 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 LACMTA 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.
 - (d) LACMTA understands that County and/or District staff responsible for the review and/or approval of submittals may be working on other priority projects. In order to assist County and/or District meet the timeframes established herein, LACMTA will ensure that the following procedures are followed:
 - (1) LACMTA and/or the D/B contractor shall distribute submittals directly to appropriate County and District staff responsible for the review and approval of each submittal, in electronic and/or hard copy format, as determined by County and/or District staff.
 - (2) LACMTA shall make a good faith effort to provide the County and District with at least fifteen (15) calendar days written notice of any submittals requiring the County's and/or District's review or approval. LACMTA will notify the County and District if the schedule for any submittal is expected to be delayed.
 - (3) LACMTA agrees to approve work orders for County and/or District to perform reviews on an overtime basis, if needed, to meet the established timeframes provided herein.

- 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 LACMTA 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 LACMTA 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, LACMTA 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 LACMTA's Design schedule and shall coordinate throughout Design with LACMTA as is necessary to develop plans satisfactory to both LACMTA 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 LACMTA 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 LACMTA what Betterments, if any, County or District desires so that LACMTA can review and determine the acceptability of the requested Betterment.
- 2.7.2 If LACMTA determines, in its sole discretion, that any proposed Betterment is not consistent or compatible with the requirements of the Project, then LACMTA shall

have the right to refuse to allow such Betterment, or to condition construction of such Betterment upon such modifications as LACMTA deems appropriate. If County and/or District disagree with LACMTA'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 LACMTA 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 LACMTA (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 provision:

(a) With respect to Rearrangements as to which the 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 LACMTA 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 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 LACMTA's approval. LACMTA 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 LACMTA 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 LACMTA 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, LACMTA 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 Caltrans 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 Caltrans 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 LACMTA.

2.10.2 Landscaping

Trees and landscaped areas under ownership or daily control of County shall be preserved whenever practical. Trees in a 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 County parks affected by the 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 LACMTA and its D/B Contractor. LACMTA and its D/B Contractor shall temporarily assume full jurisdiction for operation and control of these traffic control devices during construction. LACMTA and its D/B Contractor shall also post signs to inform the public that LACMTA and its D/B Contractor are responsible for traffic control devices, including a toll free telephone number for the public to report problems and obtain information.

Upon transferring control, LACMTA 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 LACMTA's control, LACMTA will bear responsibility of the County's associated costs.

If any Red Light Photo Enforcement system equipment is impacted by Project, County agrees to coordinate with their vendor that owns and operates the equipment, as requested by LACMTA and its D/B Contractor. LACMTA agrees to reimburse County for any costs associated with the removal, modification, reinstallation, and interruptions in the Red Light Photo Enforcement system as a result of Project based on actual expenses.

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 LACMTA's plan for same has been approved by County, County hereby consents to all removals, temporary installations, and reinstallations of Street Lighting Systems in compliance with such plan and deemed necessary by LACMTA and performed by LACMTA's contractors; however, LACMTA shall provide at least three (3) Working Days prior notice before service of Street Lighting Systems is worked on. As required, LACMTA shall issue work orders for the Rearrangement of street lighting when required. LACMTA shall also post signs to inform the public that LACMTA 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 the 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. Interruptions to street lighting service is not acceptable. Approved temporary service must be in place, energized, and operational before existing street lights can be de-energized for construction purposes.
- (c) In the event of any damage caused by a LACMTA contractor to street lights maintained by or under the jurisdiction of County, the County of Los Angeles Department of Public Works Traffic and Lighting Division Street Lighting Section at (626) 458-4754 and Operational Services Division Electrical Section at (626) 458-1700 must be contacted. All damages must be repaired as soon as reasonably possible to County's reasonable satisfaction by LACMTA'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 LACMTA that any private projections in, over or under, ~~including~~ streets, highways or other County Rights-of-Way, must be removed to accommodate the Project, LACMTA 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 Project construction in the affected location. If County is unable to effect the removal of such projections, LACMTA 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 LACMTA shall bear the cost of removal of said projections. County shall cooperate with LACMTA to minimize the cost to eliminate, move, remove or otherwise terminate projections where determined necessary by LACMTA.

2.11 Construction Staging Plans

2.11.1 Plan Requirements

LACMTA, 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 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. LACMTA 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 and District

The County and District shall assist LACMTA, as requested by LACMTA, in the areas of 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, LACMTA shall issue a Work Order to the County and/or District to perform some or all of the activities referred to in the following subarticles:

- (a) Transportation Engineering. Assistance in the Design, Construction and operations planning of the Project as it relates to facilitating the movement of automobiles, buses and pedestrians into and from the 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 LACMTA's contractors and consultants. If requested by LACMTA through a Work Order, County will prepare plans for final geometric striping for the Project.

- (b) Street Lighting Engineering. Assistance in the Design and Construction of Street Lighting systems maintained by or under the jurisdiction of the County that are affected by the 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 LACMTA's contractors and consultants, and administration of Proposition 218. LACMTA shall prepare the final design plans for the restoration of street lighting.

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

2.12 Coordination of New and Unrelated County, 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 the Project that would cross or otherwise occupy any portion of the Project Right-of-Way or that might delay or otherwise conflict with Construction or operation of the Project, County and/or District will coordinate the Design, and installation of such facilities with LACMTA such that these facilities will not unreasonably delay or otherwise conflict with the Project.
- 2.12.2 County and District shall require all applicants for County or District permits for construction of any type within a Project Right-of-Way or that might delay or otherwise conflict with Construction or operation of the Project, to obtain LACMTA'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 Public Utilities Code 30631, LACMTA is not subject to zoning or building or construction permitting ordinances of the County when constructing its Project on County Right-of-Way. Therefore, no County permits shall be required for Project construction. However, modification of existing improvements on private property (not owned by LACMTA or Caltrans) necessary to accommodate the construction and operation of the 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 LACMTA, the County and/or Districts shall issue all necessary permits. All such permits shall be issued by the County and/or District 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 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 LACMTA has a mandate under State law to

timely construct the Project. Accordingly, LACMTA shall give County and District advance written notice where 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 LACMTA 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 LACMTA, may require that, if LACMTA 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 LACMTA. Upon receipt of notice from the County or District, LACMTA 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 LACMTA's contractor will govern as approved by the County and/or District and LACMTA.

3.3 Temporary and Permanent Street Closures

LACMTA 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 the Project. In such a case, LACMTA 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 LACMTA shall reasonably cooperate with County to accommodate such requests, provided that such request does not interfere with or delay construction the 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 the I-405 Widening 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.

3.5 Grant of Rights

Prior to LACMTA's scheduled date of commencement of work in a section or portion of the Project, County and/or District shall grant to LACMTA and/or its designee sufficient rights, if necessary, to allow LACMTA to proceed with investigation of existing conditions and the construction of that section or portion of the Project in accordance with LACMTA'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 LACMTA/Caltrans, 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 right of way where the Facilities being replaced were in public right of way. If County and/or District cannot acquire necessary private rights-of-way without out-of-pocket expense to itself, they shall be acquired by LACMTA/Caltrans. Upon acceptance of a Rearrangement, which replaced a Conflicting Facility, the County and/or District shall convey or relinquish to LACMTA all easements and real property interests being taken out of service by the Rearrangement and located within the Project Right-of-Way.

In the event that replacement rights of way rights are to be acquired for County and/or District, LACMTA shall ensure that the proposed replacement rights are acceptable to County and/or District, prior to acquisition. A Phase 1, and if requested by County and/or District, a Phase 2 Environmental Site Assessment shall be completed, and the findings shall be provided to the County and/or District. LACMTA shall remediate any contamination identified on the property prior to County and/or District accepting the replacement right of way. LACMTA shall prepare, or have prepared, the necessary documents to ensure clear title is conveyed to the County and/or District. A title report that is no older than 6 months shall be provided for the properties over which replacement rights of way will be acquired.

3.7 County Licenses Within I-405 Widening Project Right-of-Way Owned by Caltrans

If a Rearrangement is made so that the Replacement Facility will be located within the Project Right-of-Way owned by Caltrans, LACMTA shall arrange for Caltrans to 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

The County and District have provided, or will provide, LACMTA with information concerning the County/District real property interests within Project limits. The County does not make any representation or warranty as to the accuracy of the information nor does the County or District make any representation or warranty that it has and/or can transfer to LACMTA or Caltrans sufficient real property rights necessary for the Construction and/or operation of the Project. LACMTA acknowledges that it will exercise due diligence with respect to the real property rights possessed by the County and District and needed for the Construction and/or operation of the Project. At the request of LACMTA, the County and/or District agree to convey any real property interests and/or rights currently possessed by the County and/or District that may be required for Construction and/or operation of Project subject to this Agreement (including both temporary and permanent easements and other interests. LACMTA will prepare or cause to be prepared, the title documents and documents of conveyance. Said documents will be transmitted by LACMTA's Representative to the County and/or District Representatives who shall process them through the required departments for execution and return to LACMTA, within the Project schedule.

3.9 Temporary LACMTA Facilities

In the event that Temporary Facilities are necessary to facilitate Construction of the Project (including Rearrangements), LACMTA or its designee may use 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 and/or District shall first approve in writing the availability, location and duration of the Temporary Facilities. Upon completion of the related Construction and LACMTA's determination that the Temporary Facilities no longer are needed, LACMTA shall remove all Temporary Facilities and restore the area as nearly as practicable to its original condition unless LACMTA and County and/or District mutually agree to some other arrangement.

3.10 Temporary County/District 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 LACMTA for the purpose of using or erecting Temporary Facilities thereon; provided that, LACMTA 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 LACMTA mutually agree to some other arrangement.

3.11 Night and Weekend Work

County and District recognize that, in order for LACMTA to meet the Construction schedule for the Project, LACMTA 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 LACMTA's compliance with its environmental mitigation obligations, County and District hereby consent to all such work deemed necessary by LACMTA.

3.12 Right of Way Map

LACMTA shall provide County and District with a right of way map and spreadsheet of all the rights of way to be transferred, exchanged, and/or quitclaimed to and from the County and/or District.

ARTICLE 4 – EFFECTING REARRANGEMENTS

4.1 LACMTA Construction of Rearrangements

Unless otherwise agreed between the Parties, LACMTA shall perform all Construction of Rearrangements. If changes in the Final Design plans or specifications are necessary, LACMTA 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 fifteen (15), and no later than 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 LACMTA, the County will send the written notice to all utilities whose facilities conflict with the Project instructing them to relocate or remove the conflicting facilities within the time specified pursuant to applicable County Code. The County will assign to LACMTA 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 LACMTA to pay the cost of such removal or relocation. The determination of whether LACMTA or the utility shall be responsible for the cost of such removal or relocation shall be a matter solely for LACMTA and the affected utility to resolve. LACMTA 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 LACMTA of County's right to effectuate a removal or relocation pursuant to this Section or the removal or relocation of any such Facility by LACMTA or otherwise related to LACMTA'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, LACMTA 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 LACMTA'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 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 LACMTA at least five (5) Working Days prior to commencing each Rearrangement so that LACMTA 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 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 LACMTA, any routine maintenance of Facilities so as not to interfere with 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 LACMTA 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 LACMTA or by County and/or District) shall be in a format which conforms to LACMTA’s requirements for Project, as specified in the construction contract or Design/Build contract documents for the 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. LACMTA shall provide County with copies of "As-Built" plans of all County and/or District facilities impacted by Project.

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 the 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 the Project, County and District will coordinate such activity with LACMTA so that such activity will not delay or otherwise interfere with such Construction, and LACMTA shall reasonably cooperate with County and District with regard to same; provided, however that if LACMTA determines that such activity will delay or otherwise conflict with such Construction, LACMTA shall have the right to condition the implementation or authorization of such activity on such scheduling adjustments and/or other modifications as LACMTA deems appropriate, and if modification cannot resolve the delay or conflict or County or District refuses to make such modification, LACMTA 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 LACMTA’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 any Party for Construction of the Project shall be subject to LACMTA inspection and final approval. LACMTA 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 LACMTA 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 LACMTA under an appropriate Work Order at LACMTA's expense. County's and District's inspectors shall cooperate and coordinate with LACMTA's Representative and LACMTA'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 LACMTA, each within 24 hours after the subject inspection. County and District shall remove and replace any inspector within five (5) Working Days after LACMTA's reasonable written request therefor.
- 4.9.3 County and/or District will provide verbal notice of nonconformance to LACMTA 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, LACMTA 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 LACMTA. All nonconformances with respect to 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 LACMTA (or in the case of work performed by County's or District's own forces, to the final design approved by LACMTA). 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 LACMTA's contractor. The final inspection

of any Rearrangement shall be attended by the LACMTA Representative and the County and/or District Representative at LACMTA's expense. Parties' inspectors shall be available to observe and inspect any corrective work performed, as needed to support LACMTA's schedule for the 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 LACMTA's contractors, upon 24 hours prior written notice to LACMTA and the contractor. LACMTA 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 LACMTA 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 Project Construction or operation, as determined by LACMTA. LACMTA 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 LACMTA's or its contractors' negligent work. Thereafter, LACMTA will not be required to re-clean such portions of the Facility, except for cleanup made necessary by Project Construction activities.

ARTICLE 5 - PROJECT FACILITIES WORK BY COUNTY OR DISTRICT

5.1 Design and Construction by County or District

LACMTA and the County and/or District may agree that the County and/or District shall Design and Construct or cause to be Constructed certain 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 District (or its consultants or contractors) shall conform to LACMTA's required standards and specifications as established by LACMTA in or pursuant to the applicable Work Order.

5.2.1 LACMTA shall issue a Work Order to the County for the Design of such Project Facilities.

5.2.2 Upon completion of Preliminary Engineering Design, the County and/or District shall provide LACMTA with a preliminary estimate of Cost of the Construction work and the County and/or District estimate of LACMTA's share of such Cost, together with preliminary plans, specifications, and draft bid package. Upon LACMTA's approval thereof, the County and/or District shall finalize all of the foregoing. LACMTA reserves the right to reject the preliminary plans, specifications and draft bid package.

- 5.2.3 Upon LACMTA's approval of the final plans, specifications, bid package and Construction Cost estimate, the County and/or District shall advertise the contract for bids. The County and/or District shall then inform LACMTA of the Cost of the work and LACMTA's share of the Cost based upon the winning bidder's unit prices, and shall furnish LACMTA with copies of the extract of bids, together with final plans and specifications. LACMTA 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. LACMTA reserves the right to reject all bids.
- 5.2.4 After LACMTA's review and approval of the bids, LACMTA shall issue a Work Order to the County and/or District. The County and/or District shall thereafter obtain LACMTA's approval for any modifications to the contract which will affect such Construction work. Further, the County or District shall inform LACMTA promptly when the County and/or District has reason to believe that the Cost estimate is likely to be exceeded.
- 5.2.5 Should LACMTA agree that Construction work can be performed by County or District personnel, the County or District shall be allowed to do so subject to LACMTA's approval of the County/District Cost estimate. LACMTA reserves the right to reject such Cost estimate at its sole discretion. Upon approval by LACMTA of the Cost estimate and Design, LACMTA shall issue a Work Order to the County and/or District. The County and/or District shall obtain LACMTA'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 and/or District 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 LACMTA's schedule for the Project. The County and/or District shall coordinate its work with other Facility owners and contractors performing work that may connect, complement or interfere with County or District work pursuant to this Article 5 or with Project Facilities (or components thereof) being constructed by County or District

5.4 Approval at LACMTA's Discretion

Notwithstanding Article 12 below, all approvals or decisions to be made by LACMTA under this Article shall be at LACMTA's sole discretion, but in the event any disapproval or decision hereunder terminates any work in progress by County and/or District, LACMTA shall reimburse County and/or District for any Costs already incurred by County and/or District 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 LACMTA to a location proximate to the salvage site and suitable to County or District. Subject to acceptance by LACMTA, all materials removed by LACMTA and not desired by County or District shall become the property of LACMTA, unless otherwise mutually agreed.

6.2 Salvage Credits

LACMTA 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 LACMTA to reimburse County and District, without any profit, 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 LACMTA'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 LACMTA and County and/or District agree that the construction of the Project will eliminate the service need for a specific Conflicting Facility, LACMTA shall not be required to replace or compensate County or District for the Conflicting Facility, in which case LACMTA shall compensate County or District only for necessary Costs incurred in Abandoning the Conflicting Facility; provided, however, that under no circumstances shall LACMTA 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 LACMTA

8.1 Credits to LACMTA

LACMTA 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 LACMTA for salvage and Expired Service Life Value shall be determined by LACMTA 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 LACMTA under this Agreement, LACMTA 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 LACMTA 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

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 LACMTA in performing a Betterment including mutually agreed to delay and disruption costs.

8.5 Expired Service Life Value

LACMTA 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 LACMTA and the County or the District in the appropriate Work Order, in accordance with the foregoing calculation. LACMTA 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

LACMTA 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 LACMTA's performance hereunder.

9.2 Indemnification of LACMTA

The County and the District, each in proportion to their individual responsibilities agree to indemnify, defend and hold harmless LACMTA, 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 and/or District relating to excavations in, or adjacent to, County and/or District Rights-of-Way, LACMTA warrants that any work performed by LACTMA affecting the structural stability of County and/or Districts 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, LACMTA, at its sole expense, shall remedy any damage to County and/or District Rights-of-Way and/or facilities to the extent caused by a failure of such structural support installed by LACMTA during the warranty period.

9.5 Contractor Insurance

Any Design or Construction contract entered into by LACMTA or County and/or District in connection with a Rearrangement or with work on 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 LACMTA as additional insureds. The policy shall insure the County, District and LACMTA, its officers, employee, and agents, while acting within 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 LACMTA, whether liability is attributable to the contractor or the County, District or LACMTA. No insurance shall be reduced in scope or cancelled without thirty (30) days prior written notice to LACMTA, County, and District. County recognizes and agrees that insurance can be provided by LACMTA through an owner-controller insurance program.

9.6 Warranties (Rearrangements)

In connection with Rearrangements performed by LACMTA or its contractors hereunder, warranties supplied by contractors shall be made for the benefit of the County, the District and LACMTA. 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 LACMTA each warrant to the other for a period of one (1) year from and after acceptance of 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 LACMTA, and, pursuant to this warranty, and for the warranty period only, the County, District or LACMTA, 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 LACMTA may require their respective contractors to secure payment and performance bonds, or other equivalent sureties, naming the County, District and LACMTA 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 LACMTA's Design and Construction schedule for the 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 issued by LACMTA. 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 the 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 the Project for each LACMTA 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 LACMTA with respect to anticipated Project requirements, County and District shall submit to LACMTA a preliminary annual work plan for the Project which is anticipated to require work by County or District during the upcoming LACMTA 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 LACMTA anticipates will be requested of County or District with respect to the Project during the upcoming LACMTA 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 LACMTA Fiscal Year, following LACMTA'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 LACMTA Fiscal Year.
- 10.2.3 For each LACMTA Fiscal Year, as soon as possible after County's and District's submittal to LACMTA of the final annual work plans agreed upon by the Parties, LACMTA shall issue to County and/or District Work Orders identifying each item of work LACMTA anticipates County and District will perform through the end of LACMTA's Fiscal Year, the amount of money LACMTA estimates County and/or 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 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 LACMTA's Fiscal Year as deemed appropriate by LACMTA for its Project.

10.3 Work Orders

LACMTA shall issue Work Orders to County and District, following County's and District's submittal of an estimate in the form required by LACMTA, 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 LACMTA Design and Construction schedule. County and District shall not be authorized to do any work, and shall not be paid, credited or reimbursed Costs or expenses associated with any work, not requested by Work Order, unless otherwise mutually agreed to 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 LACMTA for its prior approval. However, any proposed change occasioned by emergency field construction difficulties may be submitted to LACMTA orally or by telephone/fax and shall later be confirmed in writing by the County or District. In such event, LACMTA agrees to act on such a request immediately.

10.4.2 LACMTA may terminate any Work Order at any time at its sole discretion, but LACMTA 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 LACMTA 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 to the Work Orders in the event of anticipated cost overruns or completion delays. Without LACMTA'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 LACMTA

The Parties agree that the following procedures shall be observed for County's and/or District's submission to LACMTA 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 Design, 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 LACMTA. Each billing shall be noted as either "progress" or "final," shall be addressed to LACMTA Representative, and shall include a certification that the charges identified in such billing were appropriate and necessary to performance of the referenced Work Order, 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 LACMTA as soon as practicable following the completion of the Design, 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 LACMTA.

10.6 Procedures for LACMTA Billings to County and District

In those cases in which LACMTA performs Design, Rearrangement or other work which is reimbursable to LACMTA in whole or in part under the terms of this Agreement, LACMTA 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. LACMTA's billing shall begin as soon as practicable following the commencement of a specific Design, Rearrangement or other work, and shall follow LACMTA'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 Work Order 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 Design, 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) LACMTA may withhold credit amounts due LACMTA if County or District has not posted such credits within sixty (60) days after submittal of requests for same by LACMTA.

10.8 Audit and Inspection

10.8.1 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 this Project, from the date hereof through and until expiration of four (4) years after the accepted completion of all Rearrangements

for the 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.

10.8.2 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.

10.9 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 LACMTA the jurisdiction of the specific Facility or right of way associated with the delay. In order to pursue such action, LACMTA 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 LACMTA shall also indicate an effective date, which shall be no less than fifteen (15) working days subsequent to the date of the notice that LACMTA 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. LACMTA 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 LACMTA 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 LACMTA. Once the jurisdiction is transferred, LACMTA 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. LACMTA 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 or District temporarily transferred jurisdiction for a Facility or right of way to LACMTA, then at the end of the work that was threatened by the delay or the end of the

Project, whichever is earlier, LACMTA 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 Project, the Dispute Notice must be delivered to the other Party no later than ninety (90) calendar days after the conclusion of the Project within the County or District jurisdiction.

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 LACMTA and County and/or District. 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 Project, or any portion thereof, unless requested by LACMTA, or required to prevent imminent danger to public health or safety. Following the appointment of a Referee pursuant to Section 11.5 hereof, 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 with 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 ten (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, Rules 3.900 to 3.910.
- 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 ten (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 Design or Construction relating to the Project, or any portion thereof, unless such relief is requested by LACMTA 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 taken 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 3.1590, 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 fifteen (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 Project shall be stopped, or interfered with in any manner, by reason of a Dispute or otherwise, except the direction of LACMTA in LACMTA'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 LACMTA, LACMTA 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 LACMTA 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 LACMTA's legal remedy for any delay in the Construction of the Project will be inadequate, and, accordingly, that mandatory injunctive relief is appropriate. Among other things, delay in the Design or Construction of the 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 **LACMTA**:

Mr. K.N. Murthy, Deputy Chief Capital Management Officer
Construction Project Management Division
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza, MS 99-17-1
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, District or LACMTA 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 LACMTA Representative and County and District Representatives.

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, LACMTA 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 LACMTA 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 and District agree, if requested by LACMTA, to accelerate its efforts hereunder if reasonably feasible in order to regain lost time, so long as LACMTA agrees to reimburse County and District 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 supersedes 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 Parties 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 four (4) years after the accepted completion of all Rearrangements for the 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, LACMTA , 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: _____
Chief Executive Officer

LOS ANGELES COUNTY
FLOOD CONTROL DISTRICT

By: _____
Chairman, Board of Supervisors

APPROVED AS TO FORM:

ROBERT E. KALUNIAN
Acting County Counsel

By: _____

ATTEST:

SACHI A. HAMAI
Executive Officer of the
Board of Supervisors of
the County of Los Angeles

By _____

EXHIBIT A – DESIGN AND CONSTRUCTION PROCESS

1. **Preliminary Engineering (PE Part 1)** – This portion completed with the issuance of the EIR/FEIS and Record of Decision (ROD) of the Project by Caltrans.
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 and District. This phase will involve as many as two submittals that allow the County, District and LACMTA to establish design, construction standards and permit requirements, as well as review of designs of Project Facilities and their relation to storm drains, sewers, street lights, traffic signals, ATSAC and other County and District 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 and District for review and comment. The comment review period for the County and District is fifteen (15), but no later than thirty (30), calendar days. When comments are received, LACMTA 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 or concurrent 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 Project. All addendums must be reviewed by County and District staff relative to County or District facilities. County and District 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, District and LACMTA simultaneously to ensure timely reviews. The design effort is advanced from the Pre-Final Design (PE part 2 above) through two submittals a 60% and 100% to obtain a set of documents that are ready for construction. 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 and District 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 documentation of existing conditions, work site traffic control plans, temporary street closures and haul route permits.

Following the review of a submittal 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, LACMTA and the County and District for each submittal. The comment review period for the County and District is fifteen (15), but no later than thirty (30), calendar days and all County and District comments will be sent directly to the Design/Build contractor with a copy to LACMTA. LACMTA 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/or District and LACMTA, the County and/or District 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/or District and LACMTA.

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, LACMTA 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 and District recognize that certain portions of LACMTA projects may involve Partial Design Submittals to facilitate Construction of Components of LACMTA Facilities prior to final Design approval of the entire Facility. County and District agree to review and to approve (subject to the timing and other requirements of this Agreement 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 and District Standards and design requirements. Notwithstanding, no construction shall commence until the County and District approve the design submittal for any portion or segment, including Partial Designs. Construction without prior approval or not conforming to County and District standards shall be at the risk of removal and replacement by LACMTA and/or its contractor.