



Expo

Exposition Metro Line
Construction Authority


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Los Angeles, CA 90017

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BuildExpo.org

5.b

DATE: SEPTEMBER 7, 2006

TO: BOARD OF DIRECTORS

FROM: RICHARD D. THORPE 
CHIEF EXECUTIVE OFFICER

ACTION: APPROVE MASTER COOPERATIVE AGREEMENT (MCA)
BETWEEN THE STATE OF CALIFORNIA DEPARTMENT OF
TRANSPORTATION AND THE EXPOSITION METRO LINE
CONSTRUCTION AUTHORITY

RECOMMENDATION

1. Approve the attached Master Cooperative Agreement (MCA) between the State of California Department of Transportation (State), and the Exposition Metro Line Construction Authority (Authority); and
2. Authorize the Chief Executive Officer to execute the MCA or substantially the same, on behalf of the Authority.

SUMMARY

Support of the design and construction of the Expo LRT Project by the State is both necessary and essential for completion of the Project in accordance with the Board adopted schedule. The proposed MCA describes the roles, responsibilities, and obligations of the two parties during the design and construction of the Project.

DISCUSSION

To date, State staff has provided these support services under the terms of an existing MCA between the State and the Los Angeles County Metropolitan Transportation Authority (Metro). With the creation of the Authority, a new MCA is required. Authority representatives have met with State staff and determined

that the terms and conditions of the existing agreement with minor revisions will address the specific needs of the Project and equitably represents the interests of both parties.

FINANCIAL IMPACT

There is no financial impact by this proposed action. The MCA does not obligate the expenditure of funds. In a separate action, Authority staff will present a proposed Annual Work Plan for Board consideration which, if approved, will obligate Authority funds to pay for State support of the Project.

NEXT STEPS

Subject to the Board's approval of this action, the CEO will work with the State's designated representative to complete the execution of the MCA. Additionally, Authority staff will complete the negotiation of an Annual Work Plan with the State and present it for Board approval.

ATTACHMENT(S)

A. Master Cooperative Agreement

ATTACHMENT A

MASTER COOPERATIVE AGREEMENT

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION EXPOSITION METRO LINE CONSTRUCTION AUTHORITY

WHEREAS, this AGREEMENT (the "Agreement") is made and entered into effective as of the ___ day of ___, 2006, by and between the State of California Department of Transportation (STATE) and the EXPOSITION METRO LINE CONSTRUCTION AUTHORITY ("Authority"), a public agency duly formed and existing under the laws of the State of California. The Parties intend that Authority will accept all of the contractual rights, duties, and obligations of the LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY ("Metro") in the Agreements (the "Metro Agreements") executed as between STATE and Metro by Authority assuming responsibility and liability for all work undertaken by Authority on or adjacent to the State Highways pursuant to the terms, conditions, and provisions of the Metro Agreements referenced herein below.

WHEREAS, the Authority was established by Chapter 7 of Division 12.7 of the Public Utilities Code, commencing with section 132600, which became effective January 1, 2004. The Authority has been authorized by State Legislation to design and build the Los Angeles-Exposition Metro Line light rail project ("Project") for subsequent ownership, operation, and maintenance to be undertaken by Metro. The Parties hereby agree as follows:

1. The Authority proposes to design and construct any and all facilities necessary for the Project within the County of Los Angeles, including those that will require that portions of the Authority's facilities pass in, under, over or along public streets, highways, bridges and other public ways within STATE's jurisdiction.
2. The Authority and STATE now agree that all terms, conditions, and provisions of District Agreement 4290 executed by and between STATE and Metro, shall now apply to Authority in the same manner as if Authority were the signatory party in lieu of Metro. Furthermore, the obligations of the Authority undertaken pursuant to the MOU as between the Authority and Metro relative to the Project may be enforced by STATE. These two referenced Metro Agreements are attached as Exhibits 1 & 2 to this Agreement.
3. The Period of performance of this Agreement shall begin on the date set forth above and shall remain in effect until the earlier of June 30, 2015, or the completion of all Project work. This clause replaces section 14.3 of the District Agreement 4290.

4. The Authority shall not commence any Project work within STATE's rights of way until such time as the Authority and its contractors have applied for and been issued encroachment permits from STATE for access to those sites as specified in the Metro Agreements.
5. All correspondence shall be submitted to the STATE as follows:

Douglas Failing, District Director
Department of Transportation, District 7
100 South Main St., Suite 100
Los Angeles, CA 90012
6. All correspondence shall be submitted to the Authority as follows:
Exposition Metro Line Construction Authority
Attn: Richard D. Thorpe, Chief Executive Officer
707 Wilshire Blvd, Suite 3400
Los Angeles, CA 90017
7. Section 10.1 and 10.2 of Exhibit 1, District Agreement No. 4290 are deemed to be revised to read as follows, all other terms of that Exhibit 1 remain unchanged:

10.1 Indemnity by AUTHORITY

Neither STATE nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by AUTHORITY under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this Agreement. It is understood and agreed that AUTHORITY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injuries, damages, or losses occurring by reason of anything done or omitted to be done by AUTHORITY under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this Agreement.

10.2 Indemnity by STATE

Neither AUTHORITY nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction delegated to STATE under this Agreement. It is understood and agreed that STATE shall fully defend,

indemnify and save harmless AUTHORITY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injuries, damages, or losses occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction delegated to STATE under this Agreement.

1. This Agreement shall inure to the benefit of and shall be binding upon all the parties hereto and their respective successors.
2. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the STATE and the Authority have caused this instrument to be executed and delivered effective as of the day and year first above written.

STATE

**EXPOSITION METRO LINE
CONSTRUCTION AUTHORITY**

BY: _____
TITLE

BY _____
RICHARD D. THORPE
CHIEF EXECUTIVE OFFICER

SIGNATURE OF AUTHORIZED
OFFICIAL

DATE: _____

TITLE

APPROVED AS TO FORM:

GENERAL COUNSEL

DATE: _____

BY: _____
GEORGE JOSEPH

DATE: _____

Exposition Metro Line Construction Authority

MASTER AGREEMENTS (THIRD PARTY AGREEMENTS)

(PART OF CONFORMED DOUCMENTS - CONFORMED 03/17/06)

015578

October 18, 2002

07-LA-Various Locations
Los Angeles County
PROJECT
District Agreement 4290
EA 1035F1, 1035G, 1035H,
1035J, 23200
SFV BRT 13980
Mid-City/Wilshire 22360
Universal City IC 13990
Expo LRT 23820K

MASTER COOPERATIVE AGREEMENT

FOR THE

**LOS ANGELES FIXED GUIDEWAY (RAIL and EXCLUSIVE BUSWAY)
TRANSIT PROJECTS**

STATE OF CALIFORNIA

AND

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

DATED: March 27, 2003

2, 1, 1.

District Agreement No. 4280

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MASTER COOPERATIVE AGREEMENT

**FOR
LOS ANGELES FIXED GUIDEWAY (RAIL and EXCLUSIVE BUSWAY)
TRANSIT PROJECTS**

This Agreement, entered into effective MAR. 27, 2003, is between the Los Angeles County Metropolitan Transportation Authority, herein referred to as "AUTHORITY," a public entity of the State of California, and the State of California Department of Transportation, herein referred to as "STATE."

RECITALS

- A. STATE and AUTHORITY, pursuant to Streets and Highways Code sections 114 and 673, are authorized to enter into a Cooperative Agreement (hereinafter "Agreement") for improvements to and encroachments on State highways within the County of Los Angeles.
- B. AUTHORITY proposes to design and construct any and all facilities necessary for fixed guideway (rail and exclusive busway) transit systems (hereinafter "PROJECT") within the County of Los Angeles. PROJECT will serve, and portions of its facilities will pass in, under, over or along public streets, highways, bridges and other public ways of various governmental jurisdictions, including that of STATE. Subject to the terms of this Agreement, AUTHORITY is willing to fund one hundred percent (100%) of all PROJECT capital outlay and staffing costs, including the costs of STATE's oversight quality assurance activities. 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. STATE and AUTHORITY representatives shall exercise sound judgment and follow STATE design and construction criteria, policies and practices when producing solutions to potential problems encountered throughout PROJECT development and construction so that final decisions are made timely in the best overall interests of the PROJECT and STATE Facilities.
- C. From time to time, the construction, reconstruction or improvement of PROJECT may require the Rearrangement of portions of STATE's Facilities. The parties desire to cooperate to the end that such Rearrangements are held to a minimum, consistent with the requirements of each party, and that when Rearrangements are required, they will be made promptly with the least interference in the operations of the parties.

In view of their mutual covenants herein contained, the parties agree as follows:

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ARTICLE 1 - GENERAL

1.1 Scope of Agreement

This Agreement specifies the roles, responsibilities, and procedures which AUTHORITY and STATE will follow in identifying, planning, designing, constructing, maintaining, operating and effecting Rearrangements of STATE's Facilities in order for AUTHORITY to construct PROJECT and the manner in which the parties will be reimbursed for their respective allowable Costs related to such activities. Both AUTHORITY and STATE agree that each will cooperate and coordinate with the other in all activities covered by this Agreement and any supplemental Agreements hereto. This Agreement shall not negate or otherwise modify the terms and conditions of any prior existing agreements (e.g., easements, joint use agreements, operation and maintenance agreements) between STATE and AUTHORITY (either as original parties or as successors in interest by assignment or operation of law) with respect to the occupancy by Transit Facilities of, or any interest of AUTHORITY in, STATE Right-of-Way.

1.2 Definitions

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

- a) Abandonment is defined as the permanent termination of service of all or a part of an existing Facility, including the permanent closing of highways and other public ways, as authorized by STATE.
- b) AUTHORITY is defined as the Los Angeles County Metropolitan Transportation AUTHORITY (LACMTA), its employees, authorized agents, and successors and assignees.
- c) AUTHORITY Representative is defined as the Chief Executive Officer, Los Angeles County Metropolitan Transportation Authority or an authorized Representative who has the power to conduct reviews, issue Work Orders and make approvals as required by this Agreement. AUTHORITY may change its designated Representative by providing prior written notice of that change to STATE.
- d) Betterment is defined as any portion of a Replacement Facility requested by STATE or identified as such under the terms of this Agreement which exceeds those then current STATE Standards which are applied to STATE funded projects at that time or which will materially increase or upgrade the service capacity, capability, efficiency or function over that which was provided by the corresponding Conflicting Facility (i.e. additional lanes).
- e) Conflicting Facility is defined as that existing STATE owned Facility that is so situated as to require Rearrangement in order to construct and operate PROJECT.
- f) Construction is defined as all Construction and consequent engineering following the award of each PROJECT construction contract, including, but not limited to,

construction surveys, quantity measurements, inspection, testing, record keeping, review of progress billings, field design work and indirect charges.

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g) Cost is defined as all authorized direct and indirect costs (functional and administrative overhead assessments incurred by STATE and AUTHORITY) attributable to work performed under this Agreement when applied in accordance with that party's standard accounting practices.

h) Design Engineering is defined in the following three phases:

Preliminary Engineering (PE) Design takes a project from a conceptual state to a level of project design definition that describes the project's 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 Preliminary Engineering Design phase is initiated prior to the conclusion of the draft environmental impact statement and after the selection of the locally preferred alignment.

Design Development validates schematic design concepts and system criteria and develops a clear indication of design solutions for requirements outlined in the PE design phase. At the completion of Design Development, major features of the architectural and structural design and third party interfaces have advanced in conjunction with performance specifications, thereby providing the basis for Final Design.

Final Design provides the detailed design and technical specifications for all temporary and permanent project improvements and is equivalent to complete and final Plans, Specifications and Estimates (PS&E). This phase addresses and resolves all Design Development review comments, construction issues, and third party comments and finalizes all engineering, architectural, and system designs necessary for complete construction documents.

- i) Facility is defined as real or personal property located within or immediately adjacent to the route of PROJECT, such as structures, improvements, and other properties under the jurisdiction of STATE and shall include, but is not limited to: roads, highways, bridges, sign standards, traffic control systems, roadway lighting, landscaping, drainage systems, conduits and maintenance facilities.
- j) Transit Project (also referred to herein as PROJECT) is defined as all or any portion of that rail or bus transit system shown on Exhibit 1 and any future Transit Project which AUTHORITY proposes to construct for the public transportation of passengers.
- k) Rearrangement is defined as the removal, replacement, alteration, reconstruction, support or relocation of a Conflicting Facility, or portion thereof, whether permanent or temporary in order for AUTHORITY to construct and operate the PROJECT.
- l) Replacement Facility is defined as that Facility which may be constructed or provided under the terms of this Agreement as a consequence of the Rearrangement of a Conflicting Facility, or portion thereof, and which meets STATE's then applicable STATE Standards as described in Section 2.5.

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- m) STATE Comment Due Date is the deadline mutually scheduled by the parties for delivery of:
- 1) STATE anticipated requirements for contract execution and deliverables prior to issuance of AUTHORITY's Design Engineering, design-build or construction contract solicitation documents
 - 2) STATE's comments on the Preliminary Engineering and Final Design for such Rearrangement.
- n) STATE Right-of-Way means any real property owned by STATE or privately owned real property in which STATE holds an interest for use as a STATE Facility. STATE Right-of-Way does not include any real property owned by another governmental entity in which STATE has installed (or has the right to install) STATE Facilities or holds a right of occupancy. Where STATE holds an interest in real property that is owned by another public or private entity, the STATE Right-of-Way excludes any portion of such real property not under STATE's jurisdiction, possession or control for use as a STATE Facility.
- o) STATE Standards are defined as those documented STATE Standards specified in Exhibit 3 which are in effect as of the date of this Agreement, together with any additions or revisions thereto which are required to be incorporated once STATE has notified AUTHORITY of any revisions or additions to these STATE Standards identified in Exhibit 3, promptly after their formal issuance and adoption, and such revisions or additions are incorporated in the STATE Standards.
- p) Temporary Facility is defined as a Facility constructed for the purpose of ensuring continued service of a Conflicting Facility during a Rearrangement.
- q) Work Order is defined as that document which one party shall issue to the other to authorize performance of Design Engineering and Rearrangement work, the use of equipment, the supply of materials, and the obligation of funds and cost limits therefore under the terms and conditions of this Agreement.

1.3 Obligation Contingency

All obligations of STATE under the terms of this Agreement are contingent upon the appropriation of resources by the Legislature and the allocation of resources by the California Transportation Commission. All obligations of AUTHORITY are contingent upon allocation of resources and the action of AUTHORITY's governing board.

1.4 STATE Representative and AUTHORITY Representative

- 1.4.1 STATE Representative - During Design Engineering, Permit and Construction phases of PROJECT, STATE shall designate a PROJECT Manager (and alternates) to act as the STATE Representative with the responsibility and authority for management and coordination of all interaction with AUTHORITY and AUTHORITY's contractors and consultants. Upon issuance of pertinent construction permits, STATE shall also designate one or more Resident Engineers directly responsible for oversight of permitted contractor construction work including, without limitation, permit issuance and administration, safety,

scheduling, inspection and acceptance of Rearrangement Construction. When structures are part of this work, STATE will also designate one or more Structure Representatives directly responsible for the oversight of permitted construction work, including, without limitation, the oversight, inspection, documentation, and field engineering of all structure items. The Structure Representative provides technical support to the Resident Engineer.

- 1.4.2 AUTHORITY Representative - AUTHORITY shall designate a person to act as the AUTHORITY Representative with the responsibility to manage and coordinate all AUTHORITY interaction with STATE, including the issuance of Work Orders and AUTHORITY reviews and approvals. Upon STATE's issuance of a pertinent construction permit, AUTHORITY shall also designate one or more Resident Engineers or Construction Managers, directly responsible for permitted construction work, including, without limitation, permit issuance and administration, safety, scheduling, inspection and acceptance of Rearrangement Construction. When structure work is part of that work, AUTHORITY will also designate one or more Structure Representatives, who shall be an engineer registered in the STATE of California, directly responsible for permitted construction work, including, without limitation, the oversight, inspection, documentation, and field engineering of structure items. The Structure Representative must be acceptable to the STATE and provides technical support to the Resident Engineer.

1.5 Betterments

As soon as possible, preferably during the PE Design phase, but in any event not later than the applicable STATE Comment Due Date for each Rearrangement, STATE shall inform AUTHORITY of any STATE requested Betterments so that AUTHORITY can review the request for Betterments and determine whether any such requested Betterments are compatible with the PROJECT and the PROJECT Schedule. AUTHORITY may also assert the presence of Betterments included in designs furnished by STATE or in comments provided by STATE on AUTHORITY furnished PS&E by giving written notice thereof to STATE during the Design Engineering review process. STATE shall be responsible for the cost of any requested or asserted Betterment. Any proposed Betterment that is inconsistent or incompatible with the requirements of the PROJECT, may not be performed or constructed by AUTHORITY or AUTHORITY may, in its discretion, choose to condition the inclusion of any such Betterment upon such modifications as AUTHORITY deems appropriate.

Measures to mitigate environmental impacts identified in a PROJECT final Environmental Impact Report or Statement and which are AUTHORITY responsibilities shall not be deemed a Betterment. A requested increase or upgrade in a Replacement Facility as a result of a change in STATE Standards after the STATE Comment Due Date for said Replacement Facility shall be a Betterment if STATE is not incorporating similar changes in STATE Facilities then in Design and STATE Facilities then in Construction.

ARTICLE 2 - DESIGN

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2.1 Planning and Programming

AUTHORITY shall coordinate with STATE during Environmental planning and PE Design phases of the PROJECT development. All PROJECT work shall be coordinated with the STATE Representative. Specifically, the Office of Public Transportation and Rail, which will coordinate Internally with STATE's Intergovernmental Review and Environmental Planning or other related offices. This described STATE coordination will not supersede any legal notification/submittal requirements for environmental or other reviews.

2.2 Design Coordination

AUTHORITY's and STATE's Representatives shall establish the general guidelines, those current STATE Standards in effect, working relationships, Design Engineering schedules, administrative policies and approval procedures with respect to Design Engineering review and coordination of any construction and Rearrangement of STATE's Facilities pursuant to this Agreement in order to permit the timely construction and operation of PROJECT. All Rearrangements, Betterments and Replacement Facilities shall be designed in accordance with applicable STATE requirements for project development, design engineering and construction as determined by AUTHORITY and STATE Representatives. This determination will address the applicability of metric units, dual units or English units. These requirements may include issuance of a Project Report, Project Traffic Management Plan, Site Specific Agreements, Environmental Evaluation, Initial Site Assessment (ISA), Site Investigation (SI), or other required documents when applicable.

2.3 Design Performed by STATE

When AUTHORITY and STATE mutually agree that design for a specific Rearrangement of Facilities to eliminate a PROJECT conflict shall be performed by STATE, the following procedures shall govern:

- a) AUTHORITY shall issue a Work Order to STATE, upon receipt of which STATE shall, in accordance with a mutually agreed upon schedule, proceed to perform the Design Engineering for said Rearrangement.
- b) Consistent with its own staffing and workload requirements, STATE shall attempt to coordinate its design schedule to meet AUTHORITY'S design schedule for the corresponding section or portion of PROJECT and shall coordinate throughout the Design Engineering process with AUTHORITY, as necessary, to develop PS&E satisfactory to both AUTHORITY and STATE for each Rearrangement.
- c) During design, STATE shall provide AUTHORITY with a list of those specific Betterments to Replacement Facilities which STATE desires in a specific section so that the design of said Betterments may be considered for inclusion in the PROJECT PS&E.
- d) STATE shall submit a set of the Final Design PS&E to AUTHORITY for review and approval. Submitted with the PS&E shall be STATE's estimate of the cost, less any applicable credits, calculated in accordance with Article 9 herein, and STATE'S estimate for the time needed to complete the required Rearrangement.

- e) If existing public and/or private utilities conflict with the construction of a Rearrangement, STATE will make all necessary arrangements with the owners of such utilities for their protection, relocation or removal in accordance with STATE policy and procedures. STATE will inspect the protection, relocation or removal of such utilities. If there are costs of such protection, relocation or removal which STATE or AUTHORITY must legally pay, AUTHORITY will pay such costs.
- f) STATE will identify and locate all high and low risk underground facilities within STATE right-of-way and protect or otherwise provide for such facilities, all in accordance with STATE then applicable "Policy on High and Low Risk Underground Facilities Within Highway Rights-of-Way." Costs of locating, identifying, protecting or otherwise providing for such high and low risk facilities shall be paid by AUTHORITY.

2.4 Design Engineering Performed by AUTHORITY

When AUTHORITY and STATE mutually agree that AUTHORITY shall perform the design of a specific Rearrangement, AUTHORITY and STATE shall perform the activities referred to in the following subparagraphs:

- a) Prior to the commencement of Design Engineering for PROJECT, STATE and AUTHORITY Representatives shall confer and reach agreement on specific STATE requirements for submission of design and technical engineering analyses.
- b) Using the PROJECT schedule as a basis, the parties will develop a mutually agreeable process for STATE review and approval of the various Design Engineering phase submittals and technical engineering analyses for each Rearrangement or for each PROJECT Facility which is subject to STATE review. Unless waived by STATE, AUTHORITY and its consultants/contractors shall meet with STATE prior to submission of STATE required Design Engineering deliverables in order to review the adequacy and completeness of each submittal. STATE shall inform AUTHORITY if the submittals are not sufficiently complete for STATE review purposes or if STATE review process is anticipated to extend beyond thirty (30) calendar days. Within thirty (30) calendar days after receipt of each sufficiently complete submittal, STATE shall review and, if satisfactory, approve the submittal or transmit its comments to AUTHORITY. Otherwise, STATE shall advise AUTHORITY that the review will require additional time.
- c) STATE review of design and technical engineering analyses will address the issue of compliance with applicable STATE Standards and any material changes from previous submittals. STATE review of interim submittals shall address design aspects as presented in order to efficiently expedite the resolution of issues and expedite Design progress.
- d) AUTHORITY shall permit STATE to monitor the selection of consultants who will PREPARE the PS&E. AUTHORITY agrees, if requested by STATE, to discontinue the services of any personnel of consultants preparing the PS&E for Replacement Facilities who are considered to be unqualified on the basis of credentials, professional expertise, failure to perform in accordance with scope of work and/or other pertinent criteria.

- e) The Final Design documents and drawings of architectural, structural, mechanical, electrical, civil and other engineering features of Rearrangements and Temporary Facilities shall be prepared by or under the direction of architects or engineers registered and licensed in the applicable professional field in the state of California. Any reports, specifications, right-of-way maps and documents and each sheet of the plans shall bear the professional seal, certificate number, registration classification, expiration date of certificate and signature of the professional responsible for their preparation. All necessary right-of-way maps and documents shall be prepared by or under the direction of a person authorized to practice land surveying in the State of California. Electronic Plans will be required for all PROJECT structures on the State Highway System that have received STATE Type Selection Approval.
- f) AUTHORITY's staff or consultant personnel who prepare the PS&E will be available to STATE, at no cost to STATE, through completion of construction of Rearrangements for reasonable consultation, as necessary, to interpret the PS&E and to review and make recommendations for change orders, required shop drawings, false-work designs and other working drawings, and the preparation of As-Built Plans.
- g) During the progress of Design Engineering, at the stages of completion mutually agreed upon, AUTHORITY shall submit to STATE for STATE'S approval, PS&E for the Rearrangement of STATE Conflicting Facilities. Within a reasonable time after receipt thereof, STATE shall review the PS&E and transmit its comments to AUTHORITY. AUTHORITY shall consider STATE comments and shall revise the PS&E in accordance with STATE comments.
- h) If existing public and/or private utilities conflict with the construction of a Rearrangement, AUTHORITY will make such necessary arrangements as can be effectuated with the owners of such utilities for their protection, relocation or removal in accordance with STATE policy and procedures. AUTHORITY will inspect the protection, relocation or removal of such utilities. If there are costs of such protection, relocation or removal which STATE or AUTHORITY must legally pay, AUTHORITY will pay such costs.
- i) AUTHORITY will identify and locate all high and low risk underground facilities within the Facility right-of-way and protect or otherwise provide for such facilities, all in accordance with STATE's current published "Policy on High and Low Risk Underground Facilities Within Highway Rights-of-Way." AUTHORITY hereby acknowledges receipt of STATE present "Manual on High and Low Risk Underground Facilities within Highway Right-of-Way." The cost of locating, identifying, protecting or otherwise providing for such high and low risk facilities shall be paid by AUTHORITY.

2.5 General Design Criteria

Rearrangement of STATE Conflicting Facilities shall conform to then applicable STATE mandatory standards, procedures and practices in effect as of the STATE Comment Due Date for design engineering or construction of the Rearrangement or Replacement Facility to the maximum extent feasible, taking into account costs, traffic and safety benefits, right-of-way, environmental and PROJECT schedule impacts, etc. However, should special situations arise in which engineering, economic, environmental, or other PROJECT constraints make it impossible or extremely impractical to provide the

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minimum elements established by STATE's mandatory standards, STATE and AUTHORITY shall consider the use of substitute or non-standard features when such use best addresses a given situation and the interests of the public. Any exceptions to applicable STATE design standards must be approved or rejected by STATE via the processes outlined in STATE Highway Design Manual and appropriate memorandums and design bulletins published by STATE.

- a) Any changes in STATE design standards, as may be required by STATE as noted above, shall be incorporated into the Design Engineering for all Rearrangements in accordance with those STATE policies in effect on the date of implementing revisions to those design or construction standards when applied to similar STATE projects under construction elsewhere.
- b) STATE shall interpret advisory STATE Standards in such a manner as to impose the minimum requirements necessary to achieve PROJECT goals. Any PROJECT development or execution issue affecting Rearrangements which are not addressed by applicable STATE Standards shall be resolved in such a manner as to impose the minimum requirements necessary to ensure that a Replacement Facility meets then current STATE Standards and is functionally equivalent to the Conflicting Facility.

2.6 Design Standards - Changes in Approved Plans

During design of a PROJECT impacting a STATE Facility by AUTHORITY or STATE, the standards of engineering and materials to be employed in the Rearrangement shall not exceed the standards then utilized by STATE in the performance of work on similar projects financed by local, STATE or Federal funds unless so agreed in writing by the parties. AUTHORITY or STATE may make material changes in previously approved PS&E prior to or during the progress of the construction work only with written concurrence of the other party, unless such change is immediately required for public safety or is required as a STATE Standard applied to STATE projects then under construction without that STATE Standard being incorporated in the awarded construction contract.

2.7 Construction Staging Plans

During the Design Engineering of a PROJECT section impacting a STATE Facility, AUTHORITY shall develop construction staging plans for each section subject to STATE'S approval. Construction staging plans shall provide for the handling of vehicular and pedestrian traffic disrupted during construction of PROJECT and shall show construction phases, road closures, detours, signs and other pertinent information. For the development of the staging plans, AUTHORITY shall identify during PE Design, the following written information:

- a) Facilities for which service must be maintained;
- b) Facilities for which service may be abandoned;
- c) Proposed sequence of construction of Facility Rearrangements;
- c) Estimates of extent and duration of highway closures or restrictions necessary to construct Facility Rearrangements.

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STATE and AUTHORITY representatives shall exercise sound judgment and use STATE design criteria and policies as a guide in the execution of construction phasing and traffic management planning during construction in order to achieve reasonable goals of public health, safety, and functionality.

2.8 General Coordination of Rearrangements

During the process of Design Engineering, AUTHORITY and STATE shall decide whether the necessary Rearrangements can best be performed by STATE prior to construction of PROJECT; by STATE concurrently with construction of PROJECT; or by AUTHORITY; or through a combination of said alternatives.

2.9 Coordination of New STATE Facilities In STATE Right-of-Way

STATE will coordinate with AUTHORITY on changes to existing STATE Facilities and on proposed new STATE improvements which might delay or otherwise conflict with construction of PROJECT in an attempt to avoid delays or conflicts. STATE shall attempt to make arrangements to design and construct such new Facilities in a manner that will minimize or avoid any impact to the PROJECT or an existing AUTHORITY Facility/Transit System. PROJECT operations should not be impacted by new STATE improvements unless those impacts are not reasonably avoidable. Where the proposed presence of PROJECT will cause additional costs to STATE to accommodate PROJECT, STATE will request that those costs be paid by AUTHORITY. AUTHORITY shall have 60 working days to agree to STATE's request and estimate of costs. Should AUTHORITY reject those estimates, STATE may proceed with its new Facilities without performing an adjustment to accommodate AUTHORITY's proposed PROJECT and AUTHORITY may thereafter proceed with a subsequent Rearrangement of these new STATE Facilities as provided herein.

2.10 Coordination of New STATE Facilities in AUTHORITY Right-of-Way

If STATE plans to construct new Facilities or alter existing STATE Facilities that cross or otherwise would occupy AUTHORITY Right-of-Way and such proposed locations conflict with construction of PROJECT or the operations of an existing AUTHORITY Facility/Transit System, STATE shall coordinate with AUTHORITY during the PE Design phase and request approval from the AUTHORITY prior to proceeding with full Design Development or construction. As a condition of approval to accommodate such proposed new STATE Facilities, STATE and AUTHORITY agree to negotiate and execute an agreement to establish scope, schedule and cost relating to proposed STATE Facilities or alterations.

2.11 Reproducible Contract Documents

AUTHORITY and STATE each agree to provide the other with suitable reproducible copies of those final contract documents they have prepared or caused to be prepared to govern the performance of a given Rearrangement by a contractor of either party so that each party may compile a complete set of contract documents.

ARTICLE 3 - PERMITS**3.1 Permits**

AUTHORITY agrees to apply for and obtain, at no issuance fee to AUTHORITY other than the administrative Expenditure Authority charge process defined herein, a standard form of STATE Encroachment Permit for all work within the existing STATE Right-of-Way or for any work that impacts the operation, integrity, and/or maintenance of a STATE Facility. It is the responsibility of AUTHORITY to obtain all other permits for work in the STATE Right-of-Way required by other agencies prior to the issuance of a STATE Encroachment Permit. A permit is required for all activities within STATE Right-of-Way not already covered in an existing maintenance agreement authorizing AUTHORITY presence there for repair or maintenance purposes.

3.2 Permits Compliance

AUTHORITY agrees to comply with all of the terms and conditions of STATE issued encroachment permits, existing California law (including statutory and case law), and all existing property rights when determining liability for utility and encroachment relocation costs within the existing or proposed STATE Right-of-Way.

3.3 Compliance with Caltrans State-Wide Storm Water Permit

AUTHORITY agrees to comply with the requirements of the National Pollution Discharge Elimination System (NPDES) Permit for General Construction Activities No. CAS000002, Order No, 99-08-DWQ, and the NPDES Permit for the state of California Department of Transportation Properties, Facilities and Activities No. CAS 000003, Order No, 99-06-DWQ issued by the State Water Resources Control Board and any applicable future permits and orders. AUTHORITY shall prepare and submit the required information for Notification of Construction or Notice of Intent as required by Region 4, Los Angeles Regional Water Quality Control Board (RWQCB) and Notification of Department of Toxic Substances Control (DTSC) Lead Variance use within STATE Rights-of-Way and shall pay the fees required to RWQCB with two (2) copies supplied to the STATE Coordinator prior to submission of an application for a STATE issued Encroachment Permit. AUTHORITY must receive approval from STATE for the Storm Water Pollution Prevention Plan or Water Pollution Control Program prior to start of construction in accordance with the conditions in the STATE issued Encroachment Permit. AUTHORITY agrees to provide a copy of all requested permits issued by STATE.

3.4 Permits for PROJECT Facilities

AUTHORITY shall submit a complete application for permits where construction of PROJECT requires work in STATE Rights-of-Way. AUTHORITY shall submit, and STATE will accept, an encroachment permit application only after review and approval of the appropriate PROJECT PS&E and other documents including, if applicable, the RWQCB approval. STATE shall issue an Encroachment Permit authorizing AUTHORITY to proceed to complete the PROJECT Facilities after review and approval of the permit application. AUTHORITY shall issue a Work Order to reimburse STATE for administrative staff costs incurred during the review of submittals, documents, PS&E, the permit process, and for all Construction Costs.

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3.5 Permits for Rearrangements

After approval of the design PS&E of Rearrangements as set forth in Article 2 herein, and upon proper application by AUTHORITY, STATE shall issue an encroachment permit authorizing AUTHORITY to proceed with the described work. AUTHORITY shall include in the Work Order, funds to reimburse STATE for Costs involved in any additional required review of PS&E, construction, and for all Construction Costs. STATE shall attempt to identify all requirements necessary for a complete application of an encroachment permit during the Design Engineering process. STATE shall respond to requests for the issuance of encroachment permits by issuing a permit or giving notice of rejection to each complete AUTHORITY encroachment permit application within ten (10) working days after receipt by the STATE Representative.

3.6 Contractor's Permits

AUTHORITY's construction contractor shall also be required to obtain a standard form of STATE encroachment permit prior to commencing any work within STATE Rights-of-Way or which affects STATE Facilities. The application by AUTHORITY's contractor for said encroachment permit shall be made without fee through the office of STATE's District Permit Engineer once said contractor has delivered proof of insurance as required by Section 10.3 and payment and performance surety bonds covering construction of PROJECT. STATE will issue said permit within ten (10) working days after receipt of that application upon its reasonable determination of the satisfaction of bond, insurance, and other requirements. STATE shall not, without safety or operational reasons, impose any condition (other than the aforesaid insurance and bonds) in any encroachment permit issued to AUTHORITY's contractors that is not already identified in the encroachment permit for the same location issued to AUTHORITY or in the design documents which were the basis for issuance of such permit.

3.7 Administrative Permit Package Submittal

As described in Article 2.2, once all applicable PS&E Special Provisions and/or STATE's Standards to be followed are incorporated within the submittals, AUTHORITY shall submit, a minimum of six sets (or as determined) of each of the following below listed submittals (if applicable) at the time of the permit application:

- a) A filled out and signed permit application by the AUTHORITY's Representative.
- b) A copy of the fully executed Cooperative Master Agreement and/or other applicable agreements.
- c) Final stamped PS&E (one original and a minimum of five (5) copies).
- d) A Water Pollution Control Plan or Storm Water Pollution Prevention Plan
- e) A Project Traffic Management Plan (TMP).
- f) Proof of compliance with DIB 82, if applicable.
- g) Environmental Documents and Clearances, including Hazardous Material Clearances.
- h) Approval Documents; Fact Sheets, PEER's, Right-of-Way Certification, ED's, PSR's, PR's, etc.
- i) Electrical Plans approved and Stamped by a STATE Electrical Reviewer.

ARTICLE 4 – ACQUISITION OF RIGHTS-OF-WAY

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4.1 Rights-of-Way; Joint Permitted Use Agreement

In those instances wherein PROJECT is permitted to traverse or cross STATE Rights-of-Way, STATE shall permit AUTHORITY or its designees such joint permitted use of STATE Rights-of-Way by separately executed Joint Permitted Use and Maintenance Agreements prior to construction commencing. Said agreements and any required encroachment permits shall apply for all purposes appurtenant to the construction, operation and maintenance of PROJECT and shall be issued at no cost to AUTHORITY or its designees provided that STATE is permitted under applicable law, regulation, agreement or State policy to contract for said joint use at no lease or use cost to AUTHORITY.

4.2 Future STATE Highway Uses

In conformance with Streets and Highways Code sections 670 et seq., AUTHORITY agrees that joint uses permitted to AUTHORITY on STATE Right-of-Way shall not preclude the future development by STATE of multiple use of the STATE Facilities and properties on which PROJECT Facilities will be located. AUTHORITY consents and covenants to pay, unless otherwise provided by law, all reasonably necessary Costs associated with the future relocation or protection of PROJECT Facilities to the extent that they may interfere with future extensions or enlargements of STATE Facilities. In this context, "reasonably necessary" includes STATE having explored, at AUTHORITY's expense, all other cost equivalent and reasonable alternatives for accommodating STATE proposed use(s) without requiring relocation of PROJECT Facilities. Should there be an alternative to the relocation of the PROJECT Facility acceptable to STATE, STATE may waive that relocation duty should AUTHORITY elect to fund the additional Costs incurred by STATE to effectuate that alternative in lieu of AUTHORITY relocating PROJECT Facilities.

a) Maintenance of Facilities Constructed by AUTHORITY within STATE Right-of-Way

Unless otherwise determined by STATE, AUTHORITY shall be responsible for the maintenance within STATE Right-of-Way of any and all Fixed Guideway PROJECT Facilities constructed for, and/or modified to accommodate AUTHORITY's Rail Lines or Busways, and shall include, but not be limited to, passenger access and use Facilities. STATE and AUTHORITY shall enter into separate Maintenance agreements to clarify, more fully, respective maintenance responsibilities at those locations where AUTHORITY Facilities cross STATE Right-of-Way.

b) Tunneling

In the construction of any tunneling, or other construction within or adjacent to or impacting upon STATE Right-of-Way, AUTHORITY shall be responsible for conforming to all requirements in any permit issued by STATE. AUTHORITY shall also be responsible for the structural integrity and protection of all Facilities within STATE'S Right-of Way, including, but not limited to, freeway embankments, excavated slopes, structural section and pavements of the traveled way and shoulders, all bridges, culverts, and pedestrians Facilities when such Facilities are affected by PROJECT. If catenary power sources are permitted to be placed under,

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or attached to the soffit of any STATE structures, they shall conform to all permit requirements. In addition, AUTHORITY shall be responsible for any damage to STATE structures resulting therefrom, including unanticipated emergencies.

- c) In the event of emergencies occurring within STATE Right-of-Way, all parties shall cooperate. However, STATE officials shall be primarily responsible for decisions regarding emergencies in STATE Right-of-Way.

4.3 Joint Permitted Use Agreement

STATE agrees to negotiate any subsequent Joint Permitted Use and Maintenance Agreements with AUTHORITY which will permit AUTHORITY to use portions of STATE's Rights-of-Way for the construction, operation and maintenance of future AUTHORITY Facilities on a case-by-case basis.

4.4 Approval by California Transportation Commission

AUTHORITY acknowledges that the joint permitted uses, without charge, of STATE Rights-of-Way authorized by Joint Permitted Use Agreements executed between STATE and AUTHORITY are subject to the prior approval of the California Transportation Commission and, where STATE Right-of-Way was acquired with federal funds, such agreements are subject to the prior approval of the Federal Department of Transportation and its Federal Highway Administration (FHWA).

4.5 AUTHORITY Rights-of-Way

In those instances where AUTHORITY has acquired railroad or other rights-of-way encumbered with easements for STATE highway purposes and/or encumbered with construction and maintenance agreements for a highway, nothing herein shall be construed as relieving either AUTHORITY or STATE from the rights and obligations established within those easements and/or agreements. Should STATE determine additional right-of-way is required for a STATE Facility due to PROJECT, AUTHORITY will acquire and transfer to STATE the necessary right-of-way at no cost to STATE, title free and clear of any encumbrances detrimental to STATE's present and intended uses as evidenced by a policy of title insurance paid by AUTHORITY.

4.6 Excess Land

If AUTHORITY desires to acquire any STATE Right-of-Way which is no longer required for STATE purpose, STATE agrees to convey to AUTHORITY said excess land at fair market value in accordance with section 118 of the Streets and Highway Code, subject to the prior approval by the California Transportation Commission.

4.7 Rights-of-Way Certification

STATE and AUTHORITY will meet throughout the PE Design phase of any PROJECT in order to determine if additional right-of-way is required for a STATE Facility due to PROJECT. When STATE and AUTHORITY agree that additional right-of-way is required for a STATE Facility due to PROJECT, AUTHORITY agrees as follows:

- a) To perform all right-of-way activities, including all eminent domain activities, if necessary, at no cost to STATE, in accordance with procedures acceptable to STATE. AUTHORITY shall comply with all applicable STATE and Federal laws and

regulations, subject to STATE oversight to ensure that the completed work is acceptable for incorporation into STATE Right-of-Way.

- b) To utilize the services of a qualified public agency in all matters related to right-of-way acquisition in accordance with STATE procedures as contained in STATE's current Right-of-Way Manual. Whenever personnel other than personnel of a qualified public agency are utilized, administration of the personnel contract shall be performed by a qualified right-of-way person employed or retained by AUTHORITY.
- c) To permit STATE to monitor and participate in the selection of personnel who will provide the Right-of-Way services and perform right-of-way activities. AUTHORITY agrees to consider any request by STATE to discontinue the services of any personnel considered by STATE to be unqualified on the basis of credential, professional expertise, failure to perform in accordance with the scope of the work, and/or any pertinent criteria.
- d) To deliver to STATE legal title to the right-of-way, including access rights, free and clear of all encumbrances detrimental to STATE present and future uses, not later than the day of acceptance by STATE of maintenance and operation of the highway Replacement Facility and to submit the Right-of-Way Certification to STATE for acceptance. Acceptance of said title by STATE is subject to a review of a Policy of Title Insurance in the name of the State of California to be provided and paid for by AUTHORITY.
- e) To furnish evidence to STATE, in a form acceptable to STATE, that arrangements have been made for the protection, relocation, or removal of all Conflicting Facilities within STATE Right-of-Way and that such work will be completed prior to the award of the contract to construct PROJECT or will be covered in the PS&E Special Provisions for said contract. This evidence shall include a reference to all required encroachment permits.
- f) All phases of PROJECT involving STATE Facilities, whether handled by AUTHORITY or STATE, shall be developed in accordance with all policies, procedures, practices, standards, specifications and regulations that apply to STATE.
- g) To provide, at no cost to STATE, survey and mapping services necessary to perpetuate existing land net and alignment monumentation in accordance with sections 8771 and 8765 of the Business and Professions Code; and to permanently monument the location of all roadway alignments, realignments and STATE Right-of-Way acquisitions. All of the above are to be shown on a Record of Survey filed with the County Surveyor. AUTHORITY shall deliver one copy of any field notes, file Corner Records, and the Record of Survey required for execution of the above obligation, to STATE's District 07 Survey Branch.
- h) To prepare STATE Right-of-Way engineering hard copies, right-of-way appraisal maps, monument the final STATE Right-of-Way and file a Record of Survey, and Right-of-Way Record Maps in accordance with the STATE Right-of-Way Manual; Chapter 6 – Right-of-Way Engineering, the California Drafting and Plans Manual, the State of California Survey Manual; Chapter 10, applicable state laws, and other pertinent reference materials and examples provided by STATE.

- i) To have all necessary STATE Right-of-Way maps and documents used to acquire STATE Right-of-Way by AUTHORITY prepared by or under the direction of a person authorized to practice land surveying in the State of California. Each right-of-way map and document shall bear the appropriate professional seal, certificate number, expiration date of registration certification and signature of the licensed person in "Responsible Charge of Work."
- j) To submit to STATE for review and acceptance all STATE Right-of-Way Engineering Hard Copies and Right-of-Way Appraisal Maps with appurtenant back-up and reference data prior to preparation of legal descriptions and acquisition documents.
- k) Personnel who prepared right-of-way maps, documents, and related materials shall be made available to STATE, at no cost to STATE, during and after construction of the PROJECT until acceptance by STATE of complete Right-of-Way Record Maps and Records of Surveys.

ARTICLE 5 – CONSTRUCTION OF REARRANGEMENT**5.1 STATE Performance of Rearrangement**

When AUTHORITY and STATE mutually agree, STATE will advertise, award and administer a contract(s) for the Construction of the Rearrangement of Conflicting STATE Facilities necessary to eliminate a conflict with the PROJECT. In such event:

- a) STATE shall commence work as mutually agreed and thereafter diligently prosecute such Rearrangement of STATE Facilities to completion as authorized by an AUTHORITY issued Work Order and in conformance with the PS&E.
- b) Rearrangement work shall coincide closely and be coordinated with AUTHORITY's PROJECT construction schedule as approved by STATE, including the schedule for construction or Rearrangements of other utility, cable and pipeline facilities in the same segment or portion of PROJECT. STATE shall coordinate its work with other facility owners and contractors performing work that may connect, complement or interfere with STATE work hereunder or with its Facilities. STATE shall, where requested and to the extent legally possible, include in any contracts administered by STATE for performance of Rearrangement work, provisions for liquidated damages to be made payable to STATE to discourage delays in performance and PROJECT delivery under such contracts.
- c) STATE shall not award a construction contract to construct Rearrangements until after receipt of AUTHORITY's Work Order for such Rearrangement pursuant to this Agreement.
- d) STATE will consult with and receive AUTHORITY approval on all change orders or Work Orders before implementation, except when necessary for the safety of motorists and/or pedestrians or for the protection of property, in which case AUTHORITY shall receive prompt notice of STATE's action.
- e) In the event that Temporary Facilities are necessary to effect a Rearrangement, STATE may use lands owned or controlled by AUTHORITY for the purpose of erecting such Temporary Facilities thereon, provided that AUTHORITY shall have approved in writing the location and duration of such Temporary Facilities. Upon completion of the Rearrangement Facilities in their permanent locations, STATE shall remove all such Temporary Facilities and restore the area as near as practical to its original condition (unless STATE and AUTHORITY mutually agree that STATE need not remove such Temporary Facilities), all at AUTHORITY's cost.
- f) STATE shall not order or direct work which would exceed the total Cost specified in any Work Order without the prior written approval of AUTHORITY, excepting only construction claims over which STATE has no control. STATE agrees to use its best efforts to perform the work specified in each Work Order within the cost and time frame specified therein. Should STATE at any time have reason to believe that the Costs which it expects to incur under any Work Order will be exceeded by ten percent (10%), or more than the previously specified estimate or bid Cost, STATE shall notify AUTHORITY in writing to that effect, giving the revised Cost estimate for the work authorized in said Work Order. Should AUTHORITY not authorize the additional work, STATE shall cease effort under the Work Order and AUTHORITY shall be responsible for all necessary Costs consequently incurred by STATE to

cease work and return STATE Facilities to either their prior operating condition or a safe operating condition at STATE option.

- g) "As-Built" Drawings – STATE shall maintain a set of "As-Built" drawings of Rearrangements performed by STATE during the progress of construction. Within sixty (60) calendar days following the completion and acceptance of the Rearrangement work, STATE shall furnish AUTHORITY, if requested, with full-size film positive reproducible As-Built Plans, together with electronic files, showing all Replacement Facilities installed and all contract records. Marked As-Built Plans shall be signed by a Civil Engineer licensed in the State of California, three copies of reduced 11 x 17 bridge As-Built Plans, including survey documents and copies of all structure plans shall be included. Said As-Built Plans and microfilm copies shall comply with STATE metric requirements for documents and plans.
- h) Construction by STATE of each Rearrangement will be the subject of separate future Work Orders.

5.2 AUTHORITY Performance of Rearrangement

When AUTHORITY and STATE Mutually agree, AUTHORITY may advertise, award and administer the construction of any Rearrangement of Conflicting Facilities. In such event:

- a) All work by AUTHORITY and AUTHORITY's contractors shall conform to the PS&E agreed to by AUTHORITY and STATE during the Rearrangement design. If changes in the PS&E of a Rearrangement are necessary, AUTHORITY shall submit such changes to STATE for prior review and approval prior to construction of the affected change. AUTHORITY shall notify STATE at least (5) five working days prior to commencing the work of the Rearrangement so that STATE can make arrangements for construction oversight.
- b) Rearrangement work shall coincide closely and be coordinated with AUTHORITY's construction schedule for the PROJECT Rearrangement as approved by AUTHORITY, including the schedule for construction or a rearrangement of other utilities, cable and pipeline facilities in the same segment or portion of PROJECT. AUTHORITY shall coordinate its work with other facility owners and contractors performing work that may connect, complement or interfere with STATE work hereunder or with its Facilities. AUTHORITY shall, where required, and to the extent legally possible, include in any contract AUTHORITY lets for performance of Rearrangement work, provisions for liquidated damages to discourage delays in performance and PROJECT delivery under such contracts.
- c) AUTHORITY will consult with and seek STATE approval on all change orders, within thirty (30) calendar days or as otherwise provided by a Work Order, before implementation except when necessary for the safety of motorists and pedestrians or for the protection of property, in which case AUTHORITY shall provide prompt notice to STATE of AUTHORITY action.
- d) "As-Built" Drawings - AUTHORITY shall maintain a set of "As-Built" drawings of Rearrangements performed by AUTHORITY during the progress of construction. Within sixty (60) calendar days following the completion and acceptance of the Rearrangement work, AUTHORITY shall furnish STATE with full-size film positive

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reproducible As-Built Plans, three copies of reduced 11 x 17 bridge As-Built Plans, including survey documents and copies of all structure plans together with electronic files, showing all Replacement Facilities installed and all contract records. A civil engineer licensed in the State of California shall sign marked As-Built plans. Said As-Built plans and corrected original tracing Bridge As-Built Plans shall comply with STATE metric requirements for documents and plans.

5.3 High and Low Risk Policy

AUTHORITY agrees to construct the Rearrangement in accordance with STATE then current "Policy on High and Low Risk Underground Facilities Within Highway Rights-of-Way."

5.4 Stop Notices

AUTHORITY shall be responsible for all claims and stop notices or mechanics' liens filed by AUTHORITY's contractor, sub-contractors, and material and labor providers for PROJECT work performed on STATE Facilities.

ARTICLE 6 - INSPECTION

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6.1 Inspection During Construction

- a) Construction related work for Rearrangement of STATE Facilities to be administered by STATE shall be inspected by STATE at STATE's sole discretion. Such STATE inspection will be authorized and reimbursed by AUTHORITY under an appropriate Work Order. Upon completion of the Rearrangement of STATE's Facilities, STATE will accept the work in accordance with STATE's construction procedures and guidelines. AUTHORITY may perform construction oversight for such Rearrangement of STATE Facilities. STATE's Resident Engineer will coordinate with AUTHORITY's Representative to provide safe access to PROJECT sites to AUTHORITY's Representative for observing construction activities and progress of Rearrangement of STATE Facilities. Upon request, the STATE Resident Engineer will make available a copy of construction daily reports to AUTHORITY's Representative.
- b) All Construction related work for Rearrangement of STATE Facilities to be administered by AUTHORITY shall be inspected by AUTHORITY with STATE oversight of construction activities and progress. AUTHORITY shall use STATE Standards as construction procedures and guidelines when administrating the construction work. AUTHORITY's Resident Engineer will coordinate with STATE Representative to provide safe access to PROJECT sites to STATE Representative for performing oversight of construction activities and progress of Rearrangement of STATE Facilities. Upon request, AUTHORITY's Resident Engineer will make available a copy of construction daily reports to STATE's Representatives.
- c) When any deficiencies and discrepancies are discovered by either STATE's Representative or AUTHORITY's Representative during inspection or oversight of construction work for a Rearrangement of STATE Facilities, a Notice of Nonconformance or Notice of Noncompliance shall be issued in written form no later than 24 hours after discovery of an obvious or admitted deficiency or discrepancy.

6.2 Daily Written Inspection Reports by STATE

Where it is agreed by both parties that STATE will perform full time inspection of STATE Facility Rearrangement by AUTHORITY's Contractor, STATE inspectors shall make available daily written inspection reports to AUTHORITY when requested by AUTHORITY.

6.3 Daily Written Inspection Reports by AUTHORITY

Where it is agreed by both parties that AUTHORITY will perform full time inspection of a STATE Facility Rearrangement by AUTHORITY's Contractor, AUTHORITY inspectors shall maintain daily written inspection reports to be made available for STATE duplication.

6.4 Oversight Field Review by STATE

- a) Prior to the usual pre-construction conference, AUTHORITY shall contact STATE's Resident Engineer and Structure Representative and hold an initial meeting. In this meeting, STATE and AUTHORITY Representatives shall discuss the contract requirements and enforcement procedures shall be reviewed and special attention

given to traffic control, notification of impaired clearance and other features involving public safety, False-work review and approval, trenching and shoring review approval, welding procedure, material inspection, testing procedures, and unusual foundation types shall be discussed at this time.

- b) AUTHORITY Resident Engineer shall send notification inviting the STATE Resident Engineer and/or Structure Representative to attend the normal pre-construction conference with the construction contractor.
- c) When construction work starts, the STATE Resident Engineer and/or Structure Representative may review the progress of the PROJECT at any time.

6.5 Deficiencies or Nonconformance Notice

Each party shall immediately inform the other of any deficiencies or discrepancies in any work by completing a written Noncompliance or Nonconformance Notice not later than 24 hours after discovery. Each Noncompliance or Nonconformance Notice shall include an explanation of the resolution desired by the notifying party. Should STATE and AUTHORITY determine that work within STATE Right-of-Way: a) jeopardizes the structural integrity of any new or existing facility, b) poses an imminent danger, c) is not in conformance with Stormwater permit requirements and aerial deposited lead variance, or d) construction of falsework, or trenching and shoring is being constructed without approved plans or is not in conformance with approved PS&E, AUTHORITY shall stop such non-conforming work. Work will resume only when STATE and AUTHORITY agree on proper procedures to be followed and that remedial work is completed.

6.6 Final Inspection

As soon as the work performed by AUTHORITY on any specific Rearrangement of STATE Facilities has been completed, AUTHORITY shall notify STATE in writing that said Rearrangement is ready for final inspection. The final inspection of any Rearrangement to be maintained by STATE shall be attended by Representatives of both AUTHORITY and STATE. At such inspections, STATE will inform AUTHORITY of any deficiencies or discrepancies in any work discovered in the course of such final inspection. AUTHORITY shall then direct the affected contractor to proceed with all necessary corrective work to conform to the approved PS&E and approved changes. Upon acceptance of the Rearrangement by STATE, STATE shall assume full responsibility for the Facility except for hidden defects not discovered by STATE within ten (10) years of that final inspection.

6.7 Material Testing

All material testing and quality control for STATE Facilities shall conform to the STATE Construction Manual, the STATE Material Testing manual and be performed at AUTHORITY expense, by STATE or by a certified material test firm acceptable to STATE. When STATE and AUTHORITY determine that additional independent assurance testing, specialty testing, and off-site source inspection and testing is necessary, such inspection and testing shall be at AUTHORITY's Cost. AUTHORITY shall reimburse STATE for any travel expenses incurred by STATE for off-site inspection and testing performed by STATE. STATE shall approve, at AUTHORITY expense, asphalt and concrete plants that supply materials for construction of a STATE facility.

ARTICLE 7 -- DISPOSITION OF SALVAGED MATERIALS

7.1 Salvage by AUTHORITY

AUTHORITY may salvage certain materials belonging to STATE during the course of a Rearrangement of STATE Facilities. Where AUTHORITY provides STATE with a Replacement Facility (including all necessary equipment and materials), the equipment or materials at the Conflicting Facility may be salvaged by AUTHORITY. If salvage is to be reused, subject to consent of STATE, materials removed shall be stored by AUTHORITY until such time as the progress of work allows the reinstallation of such materials. Materials which are not to be reused and which STATE desires to retain shall be returned by AUTHORITY to a mutually suitable location. If the materials removed by AUTHORITY are not reusable and are not desired by STATE, such materials shall become the property of AUTHORITY unless applicable contract special provisions provide otherwise.

ARTICLE 8 - REIMBURSEMENTS

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8.1 Reimbursement to STATE

The issuance of a Work Order by AUTHORITY shall obligate AUTHORITY to reimburse STATE up to that agreed upon monetary Cost for all activity or work performed or materials acquired for each Rearrangement and for STATE design and construction, oversight, review of PS&E and inspection work as described in this Agreement. AUTHORITY shall pay STATE the balance of any required payment due STATE within thirty (30) calendar days after AUTHORITY receives that actual Cost billing. Such reimbursement shall be for all actual Costs incurred by STATE for such activities or work performed or materials acquired under the terms of this Agreement, including reimbursements for construction contractor claims allowed under STATE contract claims determination process or resulting from an award in arbitration or Superior Court, and including claims-related defense Costs, less credits to AUTHORITY as provided for in Article 9 of this Agreement. STATE shall maintain its standard forms of records showing actual time spent and Costs incurred under each Work Order. Actual Costs reimbursed, direct and indirect, shall be in conformance with Cost Principles and Procedures set forth in Chapter 1, Part 31, CFR 48 and all applicable STATE regulations.

8.2 Reimbursement to AUTHORITY

In those cases in which a Rearrangement, Betterment or other work not included in the PROJECT is performed by AUTHORITY for the benefit of STATE, STATE shall reimburse AUTHORITY by way of credits, as defined in Article 9 of this Agreement. In the event that those Betterment Costs exceed STATE Costs for said design engineering and construction, STATE will pay those Costs, after offset of STATE incurred Costs, to AUTHORITY, as provided in Article 9 herein below by separate invoiced payment.

8.3 Reimbursement for Abandoned Facility

In those cases wherein AUTHORITY and STATE agree that the construction of AUTHORITY's PROJECT will eliminate the service need for all or part of a specific Conflicting STATE Facility, such Conflicting STATE Facility may be abandoned by STATE, and AUTHORITY shall not be required to replace or compensate STATE for such Conflicting STATE Facility, except for reasonable Costs incurred in severing and demolishing such Facility and to restore and remediate the underground and ground surfaces as appropriate and as required by any resource agency having jurisdiction over Hazardous Materials discovered as a consequence of that abandonment.

ARTICLE 9 - CREDITS

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9.1 Credits to AUTHORITY

- a) AUTHORITY shall receive a credit from STATE for Betterments against work performed by STATE under this Agreement. The amount of credits shall be determined by mutual agreement of the parties based upon applicable laws, policies, books, records and documents of STATE.
- b) To assist in the determination of credits due AUTHORITY under this Agreement, if any, AUTHORITY and STATE may conduct an inspection survey of each Conflicting Facility during the Design Engineering stage. Pursuant to a Work Order, STATE shall provide AUTHORITY, to the extent such exist and are known and available, with drawings, plans or other records necessary to conduct such survey. The survey shall describe the physical attributes of the Conflicting Facility such as number, length, diameter, dimensions, type of material, and type of service connections. The survey shall further describe, for each Conflicting Facility, the date of construction or installation; the present condition; and whether materials contained therein are believed to be salvageable.

9.2 Credit for Betterments

Credit for Betterments shall be allowed as defined in this Agreement. The amount of a Betterment credit shall be the estimated Cost to construct the Replacement Facility with those agreed Betterments, minus the estimated cost to construct a Replacement Facility essentially equivalent in size and capacity (conforming to current STATE Standards) to the Conflicting Facility but without those Betterments. Said estimated Costs shall be based on the unit price schedules agreed to by the parties or the unit prices bid, whichever is less, and shall include all Costs incurred by the contracting party for said Design Engineering and Construction as agreed to by the parties. The estimated amount of Betterment credit, if any, shall be preliminarily determined by the parties during the Design Engineering phase and shall be subject to future adjustment after bid opening, the express authorization of sufficient funds by the California Transportation Commission, and the encumbrance of available funding by STATE, as appropriate.

ARTICLE 10 – INDEMNITY AND INSURANCE

10.1 Indemnity by AUTHORITY

Neither STATE nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by AUTHORITY under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, AUTHORITY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in government Code Section 810.8) occurring by reason of anything done or omitted to be done by AUTHORITY under or in connection with any work, authority or jurisdiction delegated to AUTHORITY under this Agreement.

10.2 Indemnity by STATE

Neither AUTHORITY nor any officer or employee thereof is responsible for any damage or liability occurring by reasons of anything done or omitted to be done by STATE under or in connection with any work, AUTHORITY or jurisdiction delegated to STATE under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, STATE shall defend, indemnify and save harmless AUTHORITY from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction delegated to STATE under this Agreement.

10.3 Insurance

To the extent that a party requires any of its contractors performing work on any portion of a STATE Facility to provide personal injury and property damage insurance, that party shall require that contractor to include the other party, its officers and employees as additional named insureds not subject to any premiums or assessments and submit a certificate evidencing said coverage, to be provided directly by the insured to the additional insured party, providing that said coverage shall not be terminated or reduced without thirty (30) days prior written notice.

ARTICLE 11 – WORK ORDERS AND BILLINGS

11.1 Work Performed by STATE

All work performed by STATE under the terms of this Agreement shall be initiated by Work Orders as provided herein. STATE shall have no obligation to perform work hereunder, except to the extent AUTHORITY has committed to furnish those funds.

11.2 Work Orders

Once a Locally Preferred Alternative is selected by AUTHORITY or the PROJECT is approved by AUTHORITY, AUTHORITY agrees to fund one hundred percent (100%) of PROJECT including, but not limited to, all Design Engineering, right-of-way, and construction required for the satisfactory completion of PROJECT. AUTHORITY shall issue Work Orders to STATE to authorize STATE performance of all work and/or the purchase of all materials and equipment required under the terms and conditions of this Agreement. STATE or STATE's contractors or STATE's subcontractors may perform any work so authorized. Each Work Order issued under the terms of this Agreement shall specify the work to be performed and any materials or equipment to be acquired, the maximum amount of money which STATE may expend therefore and the estimated starting and finishing dates for work so authorized. STATE and AUTHORITY shall agree upon document retention requirements for the authorized work and said requirements shall be stipulated in each Work Order. Should STATE refuse or be unable to perform the work as required in a Work Order, AUTHORITY may perform said work and STATE shall cooperate with and assist AUTHORITY as herein provided.

11.3 Preliminary Work Plans

Based on information provided by AUTHORITY with respect to anticipated PROJECT requirements, STATE shall submit to AUTHORITY a preliminary annual work plan for each PROJECT requiring work by STATE during the upcoming AUTHORITY Fiscal Year. STATE shall submit a Form 60 (Exhibit 2) that will include task descriptions by functions and estimated manhours and Costs. Upon agreement with the proposed annual work plan, AUTHORITY shall issue the Work Order to STATE authorizing the work to be performed, any materials or equipment to be acquired, and the maximum amount of money which STATE may expend.

11.4 Work Order Changes

- a) Any proposed changes in an annual Work Order issued under this Agreement shall be submitted in writing to AUTHORITY for its prior approval; provided, however, that any proposed change occasioned by field construction difficulties may be submitted to AUTHORITY orally, by telephone, and later confirmed in writing by STATE; and in such event, AUTHORITY agrees to act on such oral request immediately. STATE shall notify AUTHORITY if, at any time, STATE reasonably expects to incur Costs that will exceed authorized Work Order amounts. STATE may request written revisions of Work Orders to increase the authorized maximum Costs or cease PROJECT support work, however, STATE shall not order or direct work which would cause Costs to exceed the maximum amount allowable in any Work Order without the prior written approval of AUTHORITY.

- b) AUTHORITY and STATE may terminate any Work Order at any time, but AUTHORITY shall be liable to STATE for reimbursement of Costs in accordance with this Agreement, if any, already incurred, and Costs, if any, necessary to restore STATE's Facilities in the process of Rearrangement to a permanent condition suitable for the provision of service to the public. STATE will bill AUTHORITY for all actual Costs incurred and AUTHORITY agrees to pay said Costs within thirty (30) calendar days or STATE may demand payment of those sums owed by AUTHORITY from the State Controller, the State Treasurer or any other source of AUTHORITY funding. Should AUTHORITY fail to correct terminated Work Orders, STATE shall be reimbursed for all Costs expended, including those in excess of the maximum Cost specified in the Work Order, to return a STATE Facility to operable public service or restore those Facilities to their original condition at the sole option of STATE.

11.5 Procedures for STATE Billings to AUTHORITY

The parties agree that the following procedures will be observed for submission of monthly billings by STATE to AUTHORITY on a progress basis for work performed by STATE under a specific Work Order.

- a) STATE shall submit to the AUTHORITY, within thirty (30) days after the end of each month, a Project Expenditure Report (STATE Q 41 Report) identifying all then known Project Costs.
- b) STATE'S billings shall be in an electronic format where possible and begin as soon as practicable following the commencement of a specific Rearrangement or other work under a given Work Order and shall be addressed to the AUTHORITY Representative. Billings shall specify Costs incurred for that billing, shall bear AUTHORITY's Work Order number, will be supported by a STATE Q 41 Expenditure Report and itemized monthly labor report and shall be maintained for audit on file in STATE's Accounting Center. STATE shall provide, within thirty (30) days, copies of invoices and other Cost data, including any labor charges during the billing period that were not identified in the monthly incurred labor report, if requested by the AUTHORITY, in order to resolve any questionable STATE charges. Each billing shall be noted as either in-progress or as final and shall include a certification that the charges were appropriate and necessary to performance of the referenced Work Order and have not previously been billed or paid. The final billing, with a recapitulation of prior progress billings and a notation that all work covered by a given Work Order has been performed, shall be submitted to AUTHORITY within one hundred twenty (120) days after completion and acceptance of the work covered by the Work Order.

11.6 Procedures for AUTHORITY Billings to STATE

In those cases in which AUTHORITY performs Rearrangement Betterments or other work payable by STATE under the terms of this Agreement, AUTHORITY shall submit regular monthly progress billings, including agreed upon detailed Cost documentation, to STATE indicating actual work. AUTHORITY shall obtain consent by STATE and an encumbrance document from STATE establishing a fund limit for STATE payments. AUTHORITY billing shall begin as soon as practicable following the commencement of a specific Rearrangement or other work. Each billing shall be noted as either in-progress or as final. The final billing, with a notation that all Betterment work covered thereby has

been performed and shall be submitted to STATE as soon as practicable following the completion of said Rearrangement or other work.

11.7 Payment of Billings

The parties shall pay each billing presented under the foregoing procedures within thirty (30) days of receipt thereof, provided however, that such payments shall be conditional, subject to post-audit adjustments, and that AUTHORITY may withhold agreed credit amounts due AUTHORITY as described in Article 9 if STATE has not posted such credits within sixty (60) days after submittal of written requests for same by AUTHORITY. STATE will bill AUTHORITY for all actual Costs incurred under the applicable Work Order and AUTHORITY agrees to pay said Costs within thirty (30) days or STATE may demand payment of those sums owed by AUTHORITY from the State Controller, the State Treasurer, or any other source of AUTHORITY funding. While AUTHORITY may withhold payment of any questionable charges pending resolution, AUTHORITY shall proceed with payment of all other charges invoiced by STATE billing as described herein.

11.8 Document Retention

STATE and AUTHORITY will maintain all accounting documents for audit purposes in accordance with respective documentation retention requirements for each party. Prior to disposal of any accounting documents, STATE and AUTHORITY shall notify each other so that AUTHORITY or STATE may retain these records for future audit purposes. The transferal and maintenance of Cost accounting records will be paid for by the originating party.

11.9 Payment Control

This Agreement shall provide the sole authority and guidance for PROJECT Cost reimbursements, credits and payments.

ARTICLE 12 – HAZARDOUS MATERIALS

12.1 Investigation of Sites

As between STATE and AUTHORITY, AUTHORITY shall be responsible, at AUTHORITY expense, for the investigation of potential Hazardous Materials waste sites both within and outside of existing STATE Right-of-Way that would impact PROJECT and STATE Right-of-Way or future property required for a Rearrangement.

12.2 Responsibility for Remediation

As between the parties, AUTHORITY shall be responsible, at no cost to STATE, for the remedy or remediation of Hazardous Materials in the area of direct construction impaction on right-of-way to be acquired or used for PROJECT, including that located on STATE Right-of-Way.

12.3 Responsibility for Remedial Action

If a finding is made that Federal and STATE regulations do require protection, management or remediation of Hazardous Material or a protected cultural material in its present condition within the existing STATE Right-of-Way utilized for PROJECT, AUTHORITY shall be responsible, at AUTHORITY expense, for any protective, managerial, custodial or remedial action required as a result of proceeding with PROJECT. Locations subject to protection or remediation include any utility relocation work undertaken by AUTHORITY within STATE Rights-of-Way required for PROJECT.

12.4 Development of Remedial Plans

As between STATE and AUTHORITY, AUTHORITY shall be responsible for protective remedial action and responsible for all development of the necessary PROJECT mitigation and remedial plans and designs, at no cost to STATE. Remedial or protective actions proposed by AUTHORITY on STATE Rights-of-Way shall be pre-approved by STATE and shall be performed in accordance with standards and practices of STATE and other Federal and state regulatory agencies having jurisdiction.

12.5 Acquisition of Lands

Any transfer of STATE excess lands to AUTHORITY which are located within the existing prior STATE Right-of-Way shall be transferred at fair market value in an "As Is" condition and subject to CTC approval. AUTHORITY shall accept these parcels in their present condition and fully indemnify and save harmless STATE against any future Costs in connection with said acquisition, including, but not limited to, the presence of Hazardous Materials not directly generated by STATE.

12.6 Initial Site Investigation

Unless agreed otherwise, AUTHORITY shall provide an Initial Site Assessment and Preliminary Site Investigation (ISA/PSI) at AUTHORITY expense for all parcels within the existing STATE Rights-of-Way conveyed as noted in Article 4 and shall fully protect, indemnify and save harmless STATE in connection with the possible presence of Hazardous Materials in or under those parcels.

ARTICLE 13 – RESOLUTION OF DISPUTES

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13.1 Attempts to Resolve

In the event of a claim or dispute between the parties arising out of this Agreement, both parties shall make good faith efforts to resolve said dispute. The parties acknowledge and agree that delays that may threaten PROJECT or a Rearrangement Construction resulting from any disagreement or dispute are avoidable and the parties agree to meet immediately in order to obtain prompt and expeditious resolution of any such dispute.

13.2 Arbitration - Where No Work Stoppage

- a) Failing a dispute resolution through these good faith efforts, or in the absence of good faith efforts to resolve the dispute, either party may serve upon the other a written demand for arbitration. The parties within thirty (30) days thereafter, or within such extended period as the parties agree to in writing, shall attempt to agree upon a mutually satisfactory arbitrator. If they are unable to agree, each party, prior to the expiration of said time period, shall designate one person to act as arbitrator. The two designated arbitrators shall promptly select a third arbitrator (hereinafter "neutral arbitrator").
- b) If either party fails to designate its arbitrator within the thirty (30) days after the date of delivery of the demand for arbitration for the agreed extended period, or if the two designated arbitrators are unable to select a neutral arbitrator within five (5) days after their appointment, a neutral arbitrator shall be designated pursuant to Section 1281.6 of the California Code of Civil Procedure. Section 1283.05 of the California Code of Civil Procedure is specifically made applicable to this Agreement, but only with respect to those issues not involving work stoppage. The arbitrator's award, whether under this section or Section 13.3, shall be supported by law and substantial evidence, and further, the arbitrator shall issue written findings of fact and conclusions of law. The making of an award failing to comply with the requirements of the immediately preceding sentence shall be deemed to be in excess of the arbitrator's powers and the court shall vacate the award if after review it determines that the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.

13.3 Arbitration - Work Stoppage

In no event shall work be stopped in the event of a claim or dispute except where it is absolutely necessary to first resolve the dispute in order to be able to continue work. In the event that work is stopped, a neutral arbitrator shall be immediately designated pursuant to section 1281.6 of the Code of Civil Procedure. No neutral arbitrator shall be selected who is unable to hear the dispute within five (5) days after being selected. Notwithstanding sections 1282.2(b) and 1286.2(e) (regarding postponement of the hearing) of the Code of Civil Procedure, where work is stopped, the neutral arbitrator may not adjourn the hearing except upon the stipulation of all parties to the arbitration. In addition to all other issues, the neutral arbitrator shall also determine whether it was necessary to stop work. The other party shall be entitled to damages arising out of any unnecessary work stoppage.

13.4 Impartiality of Arbitrator

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No person shall act as neutral arbitrator who in any way has any material, financial or personal interest in the results of the arbitration or has any past or present relationship with any of the parties or their counsel unless such interest or relationship is disclosed to both parties and each consents to the use of that arbitrator. Failure to disclose any such interest or relationship shall be grounds for vacating the award.

13.5 Compensation of Arbitrator

AUTHORITY shall pay the expenses and fees of all arbitrators as a PROJECT Cost.

13.6 Other Governing Provisions

Except as otherwise provided herein, any arbitration under this section shall be governed by the California Arbitration Act, Code of Civil Procedures Section 1280 et seq.

ARTICLE 14 – MISCELLANEOUS PROVISIONS

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14.1 Notices

14.1.1 Correspondence

All written correspondence between the parties and any notices required or permitted to be given under the terms of this Agreement shall be in writing and shall be deemed to be given as of the time of hand delivery to the addresses set forth below or three (3) business days after deposit in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed as follows:

To STATE:

State of California
Department of Transportation
120 South Spring Street,
Los Angeles, California 90012
Attention: Chief, Office of Public Transportation & Rail

To AUTHORITY:

Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, California 90012-2952
Attention: Mr. Dennis Mori, Interim Executive Officer

14.1.2 Alternate Notice

The parties may also designate other procedures for the giving of notice as required or permitted under the terms of this Agreement, but each such alternate procedure shall be described in writing and signed by a designated Representative of the parties.

14.2 Entire Agreement, Modifications

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

14.3 Termination

This Agreement shall terminate upon completion and acceptance of the construction contracts for PROJECT or by mutual agreement or on July 1, 2009, whichever is earlier in time; however, the ownership, operation, maintenance, claims and indemnification clauses shall remain in effect until terminated or modified in writing by mutual agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

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"STATE"

"AUTHORITY"

STATE OF CALIFORNIA
Department of Transportation

LOS ANGELES COUNTY METROPOLITAN
TRANSPORTATION AUTHORITY

JEFF MORALES
Director of Transportation

By:


DOUGLAS FAILING
District Director

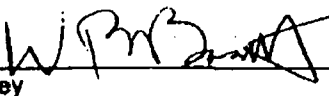
By:


ROGER SNOBLE
Chief Executive Officer

Approved as to Form and Procedure:

Approved as to Form:

By:


Attorney
Department of Transportation

By:

Lloyd W. Pellman
County Counsel


Deputy

Certified as to Funds:

By:

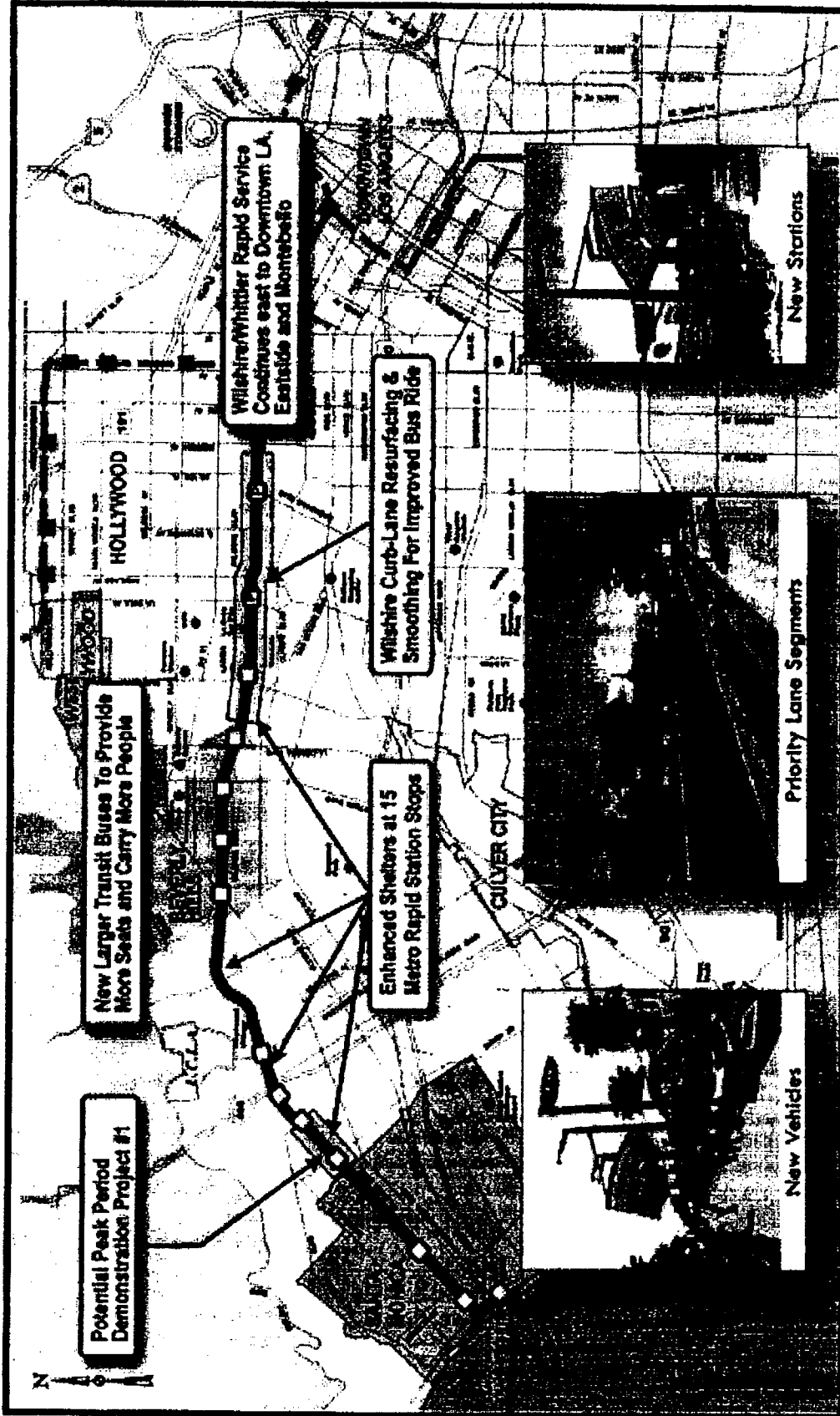

Manager, Office of Budget

Certified as to Financial Terms and Conditions:

By:


Accounting Administrator

EXHIBIT 1 - MAPS



M MIDCITY/WESTSIDE TRANSIT CORRIDOR

WILSHIRE BUS RAPID TRANSIT (BRT) PROJECT



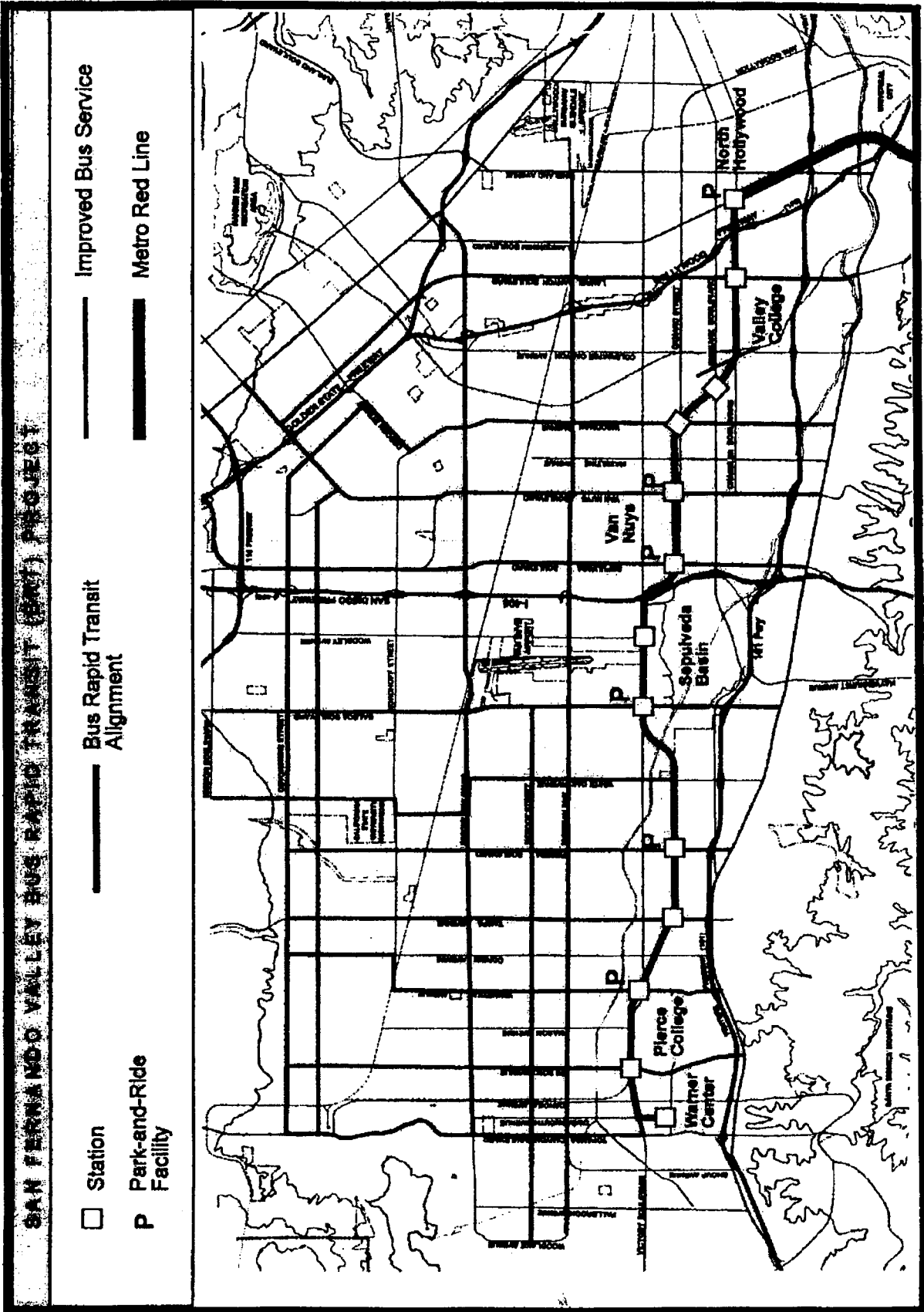


EXHIBIT 2 - FORM 60

CONTRACT PRICING PROPOSAL (Services)		MTA "Form 60"	Page _____ of _____	
Name of Proposer		DIVISION(S)/LOCATION(S) WHERE SERVICES ARE TO BE PERFORMED		
Home Office Address		CONTRACT NO.		
Services to be Performed		TOTAL AMOUNT OF PROPOSAL \$		
DETAILED DESCRIPTION OF COST ELEMENTS				
1. Direct Labor (Specify)	Estimated Hours	Rate/Hour	Est. Cost (\$)	Total Est. Cost
Total Direct Labor				
2. Labor Overhead	O.H Rate	X Base =	Est. Cost	
Total Labor Overhead				
3. Travel*			Est. Cost	
a. Transportation				
b. Per Diem or Subsistence				
Total Travel				
4. Subcontractors/Suppliers**			Est. Cost	
Total Subcontractors/Suppliers				
5. Other Direct Costs*				
6. General & Admin. Expense (_____ % of Item Nos. _____)				
7. Fee				
TOTAL ESTIMATED COST AND FEE				
* Itemize on second page of "Form 60"				
** Attach MTA "Form 60" for all proposed subcontractors				

FORM 60 INSTRUCTIONS**CONTRACT PRICING PROPOSAL****INSTRUCTIONS TO PROPOSERS**

1. The purpose of this form is to provide a standard format by which the Proposer submits to the MTA a summary of incurred and estimated costs (and attached supporting information) suitable for detailed which are review and analysis.
2. In addition to the specific information required by this form, the Proposer is expected, in good faith, to incorporate in and submit with this form any additional data, supporting schedules, or substantiation reasonably required for the conduct of an appropriate review and analysis in the light of the specific facts of this procurement. For effective negotiations, it is essential that there be a clear understanding of:
 - A. The existing, verifiable data,
 - B. The judgmental factors applied in projecting from known data to the estimate, and
 - C. The contingencies used by the Proposer in his proposed price.

In short, the Proposer's estimating process itself needs to be disclosed.

3. When attachment of supporting cost or pricing data to this form is impracticable, the data will be described (with schedules as appropriate) and made available to the Contract Administrator or representative upon request.
4. The formats for the "Cost Elements" and the "Proposed Contract Estimate" are not intended as rigid requirements. These may be presented in different format with the prior approval of the Contract Administrator if required for more effective and efficient presentation. In all other aspects this form will be completed and submitted without change.
5. By submission of this Proposal the Proposer grants to the MTA, the right to examine, for the purpose of verifying the cost or pricing data submitted, those books, records, documents and other supporting data which will permit adequate evaluation of such cost or pricing data, along with the computations and projections used therein. This right may be exercised in connection with any negotiations/discussions prior to contract award.

**ADDITIONAL INSTRUCTIONS
"FORM 60"**

1. Direct Labor

This category covers all of the types of labor – engineering (delineating different levels as appropriate), support staff, etc. – that will be directly charged to the Contract. (The Proposer is free to group labor in any categories that assist in managing the Statement of Work as long as the costs are accumulated for the same categories that are used for estimating purposes. A "time-phased breakdown" of labor hours and rates reflects the fact that the process of estimating and analyzing labor costs normally considers hours and rates separately).

A. Labor Hours

In cases where the Proposer has performed the same or similar Work in the past, the number of labor hours incurred will be considered factual data and must be presented in the proposal. When the Proposer has no previous experience in performing the Work to be procured, the estimate of labor hours must be made by breaking down the projected Work into its constituent parts and projecting the labor hours necessary to perform each part of the Work. In most cases, each part of the Work can be compared to similar Work that the Proposer has performed in the past and this data can be used to support the estimate.

B. Labor Rates

Even if the Proposer has never performed the specific Work to be contracted for, there will be factual (auditable) information regarding the labor rates that have been paid to the various categories of employees to be used on the contract. This information must be included as part of the Proposer's cost or pricing data."

*Note: Another factor that is assessed is the number of workers the Proposer expects to employ during the contract performance period. If the number is increasing, average labor rates will normally go down while a reduction in the number of employees will normally increase the rate.

2. Labor Overhead

Indicate the rates used and provide an appropriate explanation. Where agreement has been reached with the Contract Administrator the use of forward pricing rates, describe the nature of the agreement. Provide the method of computation and application of Proposer's overhead expenses, including cost breakdown and showing trends and budgetary data as necessary to provide a basis for evaluation of the reasonableness of proposed rates. Provide the rationale for use of overhead rates which depart significantly from actual rates (reduced volume, a planned major rearrangement, etc.).

3. Travel

Travel shall be itemized to include the number of trips, the number of people traveling, the estimated cost of the transportation (including mode), the per diem cost of each traveler, etc. Provide itemized supporting data on the second page of "Form 60". Travel costs shall be limited to costs consistent with MTA Travel Policy which is summarized in Section 4.1.

4. Subcontractors

Identify and provide total estimated cost for each subcontractor. Attach individual MTA "Form 60(s)" for all proposed subcontractors.

5. Other Direct Costs (ODC)

Proposers charge a variety of costs directly to contracts to obtain more accurate cost allocation. Such costs are frequently sporadic in nature varying greatly from contract effort to another; however, Proposers must submit past data on such costs. (The Contract Administrator/Evaluation Team will assess each type of direct cost in terms of its relationship to the Work on the contract to determine if the Proposer is estimating a level of cost that is reasonable in the circumstances.) (Material costs, if any, shall be itemized and supported on the basis for pricing materials such as vendor quotes, shop estimates, or invoice prices, etc.) Provide itemized supporting data related to ODC on the second page of the "Form 60".

6. General & Administrative (G & A)

If applicable, the allocation base for general and administrative expense is total expense before G & A. Identify the percentage used for G & A and the item numbers to which it is applied. Provide estimated cost.

7. Fee/Profit

Proposer shall provide the estimated fee/profit that is expected to be earned.

The cost and pricing data must be accurate, complete and current, and the judgment factors used in projecting from the data to the estimates must be stated in sufficient detail to enable the MTA to evaluate the proposal.

EXHIBIT 3 - STATE Standards

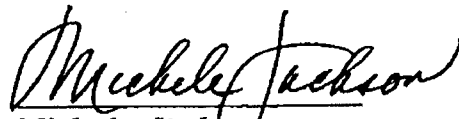
1. **Bridge Design Specifications, April 2000 (Addenda as of date of signing)**
2. **CalTrans Standard Plans, July 1999 (Addenda as of date of signing)**
3. **CalTrans Seismic Design Criteria, Version 1.2, December 20, 2001**
4. **Bridge Design Aids (Content and Addenda as of date of signing)**
5. **Bridge Design Details (Content and Addenda as of date of signing)**
6. **Bridge Design Practice Manual (Content and Addenda as of date of signing)**
7. **Bridge Memo to Designers (Content and Addenda as of date of signing)**
8. **Bridge Standard Details (Content and Addenda as of date of signing)**
9. **CalTrans PROJECT Development Procedures Manual, July 10, 2001**
10. **CalTrans Highway Design Manual, 5th Edition, 1999; Addenda as of date of signing**
11. **False-work Manual**
12. **Trenching and Shoring Manual**
13. **Bridge Construction Records and Procedures Manual**
14. **Standard Specification**
15. **Construction Manual**
16. **Construction Procedure Bulletins and Directives**
17. **CalTrans Right-of-Way Manual**

CERTIFICATION

The undersigned, duly qualified and acting as Board Secretary of the Los Angeles County Metropolitan Transportation Authority, certifies that the following is a true and correct copy of an excerpt from the Minutes of a regular meeting of the Board of Directors of the Los Angeles County Metropolitan Transportation Authority held on March 27, 2003.

10. **APPROVED ON CONSENT CALENDAR** execution of:

- A. Overall Master Cooperative Agreement with the State of California for Design and Construction of Bus and Rail Transit Projects;
- B. Design Supplemental Cooperative Agreement with the State of California for the 101 Freeway Overcrossing at Union Station; and
- C. Construction Supplemental Cooperative Agreement with the State of California for the 101 Freeway Overcrossing at Union Station.


Michele Jackson
MTA Board Secretary

DATED: April 1, 2003

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
AND THE
EXPOSITION METRO LINE CONSTRUCTION AUTHORITY**

This Memorandum of Understanding (MOU) dated as of this 5th day of May, 2006, is by and between the Los Angeles County Metropolitan Transportation Authority ("Metro") and the Exposition Metro Line Construction Authority ("Expo"), and constitutes the agreements between the parties hereto required under Public Utilities Code ("P.U.C.") Sections 132625 and 132635.

RECITALS

WHEREAS, Metro is a public entity existing pursuant to P.U.C. section 130050.2, et seq. for, among other purposes, the planning, design, construction and operation of a multi-modal transit system including rail and bus facilities in Los Angeles County, and

WHEREAS, Expo is a public entity existing pursuant to P.U.C. Sections 132600, et seq., for the exclusive purpose of awarding and overseeing all design and construction contracts for completion of the Exposition Metro Line Light Rail Project ("Project") and has all of the powers necessary for planning, acquiring, leasing, developing, jointly developing, owning, controlling, using, jointly using, disposing of, designing, procuring, and building the project as defined under PUC Sections 132600(e) and 132610, and

WHEREAS, the Project has been divided into two phases with Phase I extending from downtown Los Angeles to Culver City, and Phase II continuing to Santa Monica, and

WHEREAS, Metro shall assume responsibility for operation of the Project, and as such has an interest in ensuring that the Project will be compatible, functionally connected and operative within Metro's existing metro rail system. Accordingly, the Project is being designed and constructed so as to comply with Metro's design criteria, all applicable laws and regulations, and operate safely within the existing metro rail system, and

WHEREAS, the primary funding for the Project will be provided to Expo through Metro, and Metro has already adopted a funding plan of \$640 million for Phase I of the Project, and

WHEREAS, from time to time, as the Project progresses, Expo may utilize the services of personnel employed by Metro if authorized by Metro, and

WHEREAS, Metro currently owns or has an interest in certain real property necessary for the completion of the Project and shall grant Expo access to said real property during the design and construction of the Project.

AGREEMENT

NOW, THEREFORE, Metro and Expo hereby agree as follows:

SECTION 1 METRO'S DIRECT ROLE IN THE REVIEW OF THE PROJECT

a. As set forth in P.U.C. Section 132625(b), Metro and Expo agree that Metro has a direct role in the review of the Project to ensure that the Project will be compatible, functionally connected and operative within the Metro's existing metro rail system.

b. To facilitate this role, Expo shall timely afford Metro the opportunity throughout the Project to review and comment on design, construction and testing of the Project so as to ensure Metro that the Project complies with Metro's design criteria, all applicable laws and regulations, and that the Project will be able to be safely operated by Metro within the existing metro rail system.

If Metro has reason to believe that any aspect of the design, construction or testing of the Project as planned by Expo or its contractor will fail to provide, or will prevent, necessary compatibility, functional connectivity or operations of the Project within Metro's existing metro rail system, Metro shall communicate that concern to Expo's Director of Engineering and Construction.

c. If Metro's concern is not timely resolved at that level, the matter shall be referred in writing to Metro's Chief Executive Officer, or his designee, and Expo's Chief Executive officer, or his designee, for final resolution. Except for work that must be performed immediately to avoid an imminent threat to public health or safety, any work that is the subject matter of Metro's concern regarding necessary compatibility, functional connectivity or operations of the Project within Metro's existing metro rail system, shall not continue until a final resolution is reached between Metro's Chief Executive Officer, or his designee, and Expo's Chief Executive Officer, or his designee. Metro and Expo acknowledge that delay in resolution of such matters may impact the Project schedule, and therefore each party agrees that time is of the essence for purposes of reaching such final resolution.

SECTION 2. SIGNIFICANT CHANGES

a. Pursuant to P.U.C. Section 132635, Metro shall have the right to review any significant changes in the scope of the design or construction, or both the design and construction, of the Project.

b. The term "significant changes" means any change of a mode or technology, or any other substantive change that affects the connectivity and

operation of the Project as part of the overall transit system operated by Metro, or any combination of those things.

c. A significant change shall not be allowed without the prior written concurrence of Metro. Such written concurrence shall acknowledge that the change is a "significant change" and shall be signed by Metro's Chief Executive Officer, or his designee.

d. Design and construction of a light rail project that is consistent with the current scope of the Project (as defined in the Project Final EIS/EIR and/or in Metro funding agreements with its grantors) shall not be deemed to be a significant change in the scope of the Project and shall not require concurrence by the Metro.

e. Any dispute between the parties concerning whether a change is a "significant change" will be resolved by the Metro Chief Executive Officer, or his designee, and the Expo Chief Executive Officer, or his designee. .

SECTION 3. FUNDING AGREEMENT

a. Metro has approved a full funding plan for Phase 1 of the Project in the sum of \$640 million and has programmed planning and development funds for Phase 2 of the Project. Metro commits to allocate funds to the Authority per the terms in the approved funding plan, the approved budget or as otherwise mutually agreed upon.

b. Expo shall utilize the funds solely for the furtherance of the Project. The Funds provided hereunder shall be subject to audit by Metro or any of its funding partners, in accordance with Metro policies and procedures and state or federal guidelines. Expenditures must be incurred within the period the Funds were authorized or appropriated by the funding agencies. Reimbursements and payments under this MOU will be based upon actual eligible costs incurred and paid.

c. The Funds referred to herein come from multiple sources of funding to Metro. Such sources are identified in Attachment B. As such, Metro may be subject to various obligations concerning the use and handling of such Funds imposed by those funding sources. Therefore, in consideration of the reimbursement provided for herein, Expo agrees to fulfill all obligations imposed upon Metro in accordance with the financing agreements between Metro and its funding sources for the Project and to take no action(s) that might interfere with the nature and source of the Funds or any tax-related benefits that are directly tied to the Funds. Expo further agrees that it will comply with all federal, state, and local or Metro rules, regulations, funding agreements, policies and directives affecting the funding, including but not limited to, GAAP, FAR, OMB A-133, A-87, and

records retention policy. Authority agrees to provide Metro with progress reports, expenditure documentation, and any other documentation as reasonably requested by Metro and necessary for Metro to fulfill its responsibilities as the grantee or administrator of the Project funds.

Payments to Expo for Project related travel and subsistence expenses of Expo forces and its subcontractors claimed for reimbursements shall not exceed rates authorized to be paid by Expo's Travel Reimbursement Policy. If the rates invoiced by Expo are in excess of those authorized rates, then Expo is responsible for the cost difference, and any overpayments inadvertently paid by Metro shall be reimbursed to Metro by Expo on demand.

Expo and its subcontractors will comply with all applicable Federal and State laws and regulations, including but not limited to, Office of Management and Budget Circular A-87, Cost Principles for State and Local governments, 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq.

Expo agrees to include State and Federal funds received under this MOU in the schedule of projects to be examined in Expo's annual financial audit and in the schedule of projects to be examined under its single audit prepared in accordance with Office of Management and Budget Circular A-133. Expo is responsible for assuring that the Single Auditor has reviewed the requirements of this agreement. Copies of said audits shall be submitted to Metro.

Expo and its subcontractors shall maintain all source documents, books, and records connected with performance under this MOU for a minimum of three years from the date of final payment to Expo or until audit resolution is achieved and shall make all such supporting information available for inspection and audit by representatives of Metro, the California Department of Transportation, the Bureau of State Audits or the Federal Government upon request. Copies of Expo source documents, books, and records and that of its subcontractors will be made and furnished by Expo upon request.

Expo and its subcontractors shall establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support reimbursement payment vouchers or invoices which segregate and accumulate Project costs by line item and produce monthly reports, which clearly identify reimbursable costs, matching costs (if applicable), and other expenditures by Expo.

Any subcontract entered into by Expo as a result of this MOU, shall contain all of the provisions of the Funding section of this agreement; and mandate that travel and per diem reimbursements and third-party contract reimbursements

to subcontractors shall be allowable as PROJECT costs only after those costs are incurred and paid for by the subcontractor.

d. Metro and Expo agree to administer the Funds in accordance with the following reimbursement process. Upon receipt from Expo of a certified request for reimbursement, Metro will promptly, within 5 business days, remit the entire amount to Expo or the payment recipient as designated by Expo. The request for reimbursement shall be accompanied by a certification executed by a duly authorized officer of Expo acknowledging that Expo has complied with the requirements set forth in subparagraphs 3.b and 3.c, above.

e. Metro employees may provide services to Expo in furtherance of the Project if such services are requested by Expo, are authorized by Metro's Chief Executive Officer, or his designee, and can be provided without interfering with the performance by the Metro employee of his or her duties with Metro. Metro employee time will be billed at actual costs, including hourly rates, fringe benefits and overhead.

SECTION 4. PROPERTY AGREEMENT

a. Metro and Expo shall each hold and maintain for the benefit of each other and for the benefit of the Project, all real and personal property and any other assets accumulated in the planning, design, and construction of the Project, including, but not limited to, third-party agreements, contracts, and design and construction documents, as necessary for completion of the Project.

b. Metro shall provide Expo with access to and full use of all real property and rights-of-way as set forth in Attachment C and necessary for the construction of the Project.

c. Upon completion of Phase 1 of the Project, Expo and its contractors shall vacate all real property and rights-of-way provided by Metro for construction of the Project except for any such property required for construction of Phase 2 of the Project. Expo shall transfer to Metro title to any and all real or personal property acquired with Project Funds. Furthermore, Expo shall turn over to Metro all Project planning, design, and construction documents, including but not limited to warranties, as-built drawings and manuals.

SECTION 5. MISCELLANEOUS

a. **Successors and Assigns.** The covenants and agreements of this MOU shall inure to the benefit of, and shall be binding upon, each of the parties and their respective successors and assigns.

b. **Governing Law.** This MOU shall be governed by, interpreted under, construed and enforced in accordance with the laws of the State of California.

c. **Notice.** Any notice, demand or documents which any party is required or may desire to give or deliver to the other shall be in writing and may be personally delivered or given by United States mail certified, return receipt requested, postage prepaid, and addressed as follows:

d. **Contract Period.** This agreement shall be effective from May 5, 2006 through June 30, 2015.

To Metro: One Gateway Plaza, Los Angeles, CA 90012
Attn: _____

To Expo: 707 Wilshire Blvd., Los Angeles, CA 90017
Attn: _____

The aforementioned addresses for notice are subject to each party's right to designate a different address by notice similarly given.

e. **Amendments.** No variation, modification, change or amendment of this MOU shall be binding upon either party unless such variation, modification, change or amendment is in writing and duly authorized and executed by both parties. This MOU shall not be amended or modified by oral agreement or understanding between the parties or by any acts or conduct of the parties.

f. **Counterparts.** This MOU may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

g. **Assignment.** Neither party shall assign this MOU or any of such party's interest, rights or obligations under this MOU without the prior written consent of the other party.

h. **Further Actions.** The parties shall develop and execute any other documents of any kind or type whatsoever, including procedures and policies, necessary to carry out the intent of the provisions of this MOU.

IN WITNESS WHEREOF, the parties have caused this MOU to be duly executed and delivered as of the above date and the person executing this MOU by their signatures hereby attest that they have the requisite authority to enter into this MOU.

Entered into this 3rd day of August, 2006

LOS ANGELES COUNTY METROPOLITAN
TRANSPORTATION AUTHORITY

By: _____

Approved as to form:

RAYMOND G. FORTNER, JR.
County Counsel

By: _____

By: _____
DEPUTY

EXPOSITION METRO LINE
CONSTRUCTION AUTHORITY

By: _____
Samantha Bricker
Chief Operating Officer

Approved as to Form:

ROBINSON & PEARMAN, LLP

By: _____
Robert C. Pearman
Deputy General Counsel