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**CONSTRUCTION COMMITTEE
APRIL 19, 2007**

**PROJECT: METRO GOLD LINE EASTSIDE EXTENSION PROJECT AND
FUTURE BUS AND RAIL TRANSIT PROJECTS**

CONTRACT: TCG LOS ANGELES, INC.

**ACTION: UTILITY COOPERATIVE AGREEMENT WITH TCG LOS
ANGELES, INC.**

RECOMMENDATION

Authorize the Chief Executive Officer to execute a Cooperative Agreement between TCG Los Angeles, Inc. and the Los Angeles County Metropolitan Transportation Authority (LACMTA).

BACKGROUND

This Utility Cooperative Agreement is needed to ensure overall effective development of TCG Los Angeles, Inc. designs, design reviews and rearrangements for the Eastside Extension Light Rail Transit project, and future Bus and Rail Projects. LACMTA had previously executed an agreement with SBC, but SBC and AT&T have merged to become TCG Los Angeles, Inc. The requirements in this agreement are substantially the same as the SBC agreement. By executing this agreement we are establishing a clear and consistent framework of roles, responsibilities, and procedures for coordination of the planning, design and construction of all utility rearrangements will facilitate the extensive coordination between LACMTA and TCG Los Angeles, Inc.

FINANCIAL IMPACT

Funding for this scope of work is included in each major capital project's estimated total project cost. The annual work plans and relocations associated with this Utility Cooperative Agreement will be included in each fiscal year project budget. The LACMTA FY07 budget included costs for TCG Los Angeles, Inc. relocations necessitated by the Eastside Light Rail Transit Project and inspection for the Gold Line Yard expansion.

Since this is a multi-year agreement, the respective project managers and Chief Capital Management Officer will be accountable for budgeting necessary utility relocation review and implementation costs for each Project in future years.

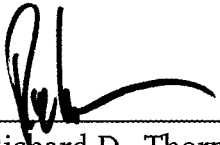
ALTERNATIVES CONSIDERED

With respect to the overall Utility Cooperative Agreement, TCG Los Angeles, Inc. and LACMTA could develop and execute completely new cooperative agreements for each project. This duplicative effort would take months of extensive attorney and staff discussion, review and negotiation to draft each agreement, and is therefore not recommended.

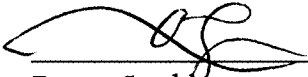
ATTACHMENT

A. Utility Cooperative Agreement

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



Richard D. Thorpe
Chief Capital Management Officer



Roger Snoble
Chief Executive Officer

**UTILITY COOPERATIVE AGREEMENT
FOR RAIL AND BUSWAY TRANSIT PROJECTS**

TCG LOS ANGELES, INC.

AND THE

**LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION
AUTHORITY**

DATED: April __, 2007

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**UTILITY COOPERATIVE AGREEMENT
FOR RAIL AND BUSWAY TRANSIT PROJECTS
BETWEEN TCG LOS ANGELES, INC.**

AND THE

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

THIS AGREEMENT, dated April __, 2007 is made by and between the Los Angeles County Metropolitan Transportation Authority (“METRO”) and TCG LOS ANGELES, INC., a Delaware corporation, (“Utility”). As used in this Agreement, terms identified by initial capital letters shall have the meanings set forth in Article 1, or as elsewhere provided in this Agreement.

RECITALS

A. METRO is a public entity created by the California State Legislature for many purposes including, but not limited to, the design, construction, and operation of rail and bus transit systems and other transportation facilities in Los Angeles County.

B. METRO proposes to design, construct and operate facilities necessary and convenient for various rail and busway transit systems within the County of Los Angeles. METRO’s proposed projects include, without limitation, the following projects:

- The METRO Gold Line Eastside Extension Project (the “Eastside LRT Project”), which is an approximately 6 mile light rail line currently proposed to traverse portions of the City of Los Angeles and unincorporated areas of the County of Los Angeles, between Union Station and Pomona Boulevard/Atlantic Boulevard (as said proposed route may be modified by METRO from time to time).
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- The Wilshire Corridor Bus Rapid Transit Project (the “Wilshire BRT Project”), which is an approximately 14 mile bus rapid transit line currently proposed to

run along Wilshire Boulevard in portions of the Cities of Los Angeles, Santa Monica and Beverly Hills, and in unincorporated areas of the County of Los Angeles, between Western Avenue and a terminus located in the City of Santa Monica (as said proposed route may be modified by METRO from time to time).



C. METRO historically has used the “Design/Bid/Build” method of project delivery for its rail transit projects. However, METRO anticipates utilizing alternative contracting methods for project delivery of some rail and busway transit projects.

D. From time to time the construction or improvement of METRO's rail and busway transit systems (including but not limited to those described in Recital B above) will require the Rearrangement of portions of certain Utility Facilities. The Parties desire to cooperate to the end that such Rearrangements be held to a minimum consistent with METRO's requirements and that Rearrangements, when required, be effected with the greatest expedition and least interference with the operations of either of the Parties.

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

Article 1 General Provisions

1.1 Scope of Agreement

1.1.1. This Agreement addresses the four Transit Projects described in Recital B above as well as any other METRO projects, which meet the definition of “Transit Project”, set forth below. Among other things, this Agreement specifies (a) the procedures which METRO and Utility will follow in identifying, planning, designing and effecting all Rearrangements of Utility Facilities that are necessary in order for METRO to construct and operate Transit Projects, and (b) the manner in which Utility and METRO will be reimbursed for their respective costs of such activities. Both METRO and Utility agree that each will

cooperate and coordinate with the other in all activities covered by this Agreement and any supplemental agreements hereto.

1.1.2. This Agreement shall not negate or modify the terms and conditions of (a) any legally binding easements or other use and/or occupancy agreements between Utility and METRO with respect to the occupancy by Utility Facilities of, or any interest of Utility in, real property owned by or under the operating jurisdiction of METRO, (b) any such easements or other agreements between Utility and any former owner of real property now or hereafter owned by METRO, and to which METRO has become or hereafter becomes a successor either by assignment or by operation of law, or of (c) any such easements or other agreements between Utility and any other governmental agency with respect to real property owned by or under the operating jurisdiction of such governmental agency, and in which METRO has a statutory or other right to install Transit Project Facilities.

1.2 Duration of Agreement

The initial term of this Agreement (the "Initial Term") shall commence on the Effective Date and shall terminate on June 30, 2016. This Agreement shall automatically be renewed for consecutive one year terms commencing on the day following the last day of the Initial Term and on each subsequent anniversary of such day, unless either Party provides written notice of termination to the other no later than ninety (90) days prior to the end of any term (including the Initial Term).

1.3 Definitions

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

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

1.3.2. Betterment is a Replacement Facility, or component thereof, that will increase or upgrade the level of service, service life, capacity, capability, efficiency or function of a

Replacement Facility over that which was provided by the corresponding Conflicting Facility (“upgrade”). However, the following shall not be considered Betterments:

- (a) An upgrade that is necessary to accommodate the Subject Transit Project.
- (b) An upgrade resulting from Design or Construction in accordance with the applicable Utility Standards as set forth in Section 2.6; provided, however, that any upgrade beyond the minimum level required by such applicable Utility Standards shall be considered a “Betterment.”
- (c) Measures to mitigate environmental impacts identified in the Transit Project's Final Environmental Impact Report or Statement, and which are mutually agreed to be a Transit Project responsibility; provided, however, that any upgrade beyond minimal applicable requirements shall be considered a “Betterment.”
- (d) Replacement of devices or materials no longer regularly manufactured with the next highest grade or size.

Certain revisions or additions to Utility Standards may also be a Betterment, as set forth in Section 2.5. The term “Betterment” shall also include any new or upgraded facilities or portion thereof added to a Replacement Facility at Utility’s request for the purpose of improving Utility Facilities or services, and which are not otherwise excluded from the definition of Betterment as set forth above. Betterments shall be entirely financed at the expense of Utility.

1.3.3. Busway Project is any busway system of METRO, which is constructed for the public transportation of passengers. A Busway Project may be located on an exclusive busway or may share the roadway with other vehicles. “Busway Project” may refer to any one of the busways, and any portion or section thereof, as the context may require.

1.3.4. Conflicting Facility is an existing Utility Facility, which METRO determines is so situated as to require Rearrangement in order to construct and operate the Subject Transit Project without adversely impacting that Utility Facility.

1.3.5. Construction or Construct is work of removal, demolition, replacement, restoration, alteration, realignment, building, fabrication, landscaping, supporting or relocation and those related tasks that are customarily reflected in a construction contract, by industry standards.

1.3.6. Contract is an METRO contract for effecting Design and/or Construction of Transit Project Facilities and/or related Rearrangements.

1.3.7. Contractor is a corporate entity engaged under Contract with the METRO to effect the Transit Project.

1.3.8. Construction Costs are those types of costs that are customarily reflected in a Construction Contract, by industry standards.

1.3.9. Cost is all authorized direct and indirect costs as further defined in Article 8 for costs incurred by Utility, and in Article 9 for costs incurred by METRO, and subject to the provisions of Article 11.

1.3.10. County is the County of Los Angeles, California.

1.3.11. Cutoff Date means the earliest date on which Utility received written notice (i) identifying a Utility Facility site as land proposed to be included in a Project, or (ii) of METRO's acquisition of title in respect to a Utility Facility site.

1.3.12. Design means that engineering and architectural and other design work and the resulting maps, plans, drawings, computer software, estimates and specifications, which are necessary to Construct Rearrangements and/or Transit Projects.

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

1.3.14. Dispute has the meaning set forth in Article 13.

1.3.15. Eastside LRT Project has the meaning set forth in Recital B of this Agreement.

1.3.16. Effective Date is the date on which this Agreement has been approved by Utility's and METRO's respective Boards and has been fully executed on behalf of both METRO and Utility.

1.3.17. Environmental Law means all local, state, and federal laws, rules, ordinances, orders and requirements pertaining to Hazardous Materials.

1.3.18. Expired Service Life Value has the meaning set forth in Section 9.7.

1.3.19. DELETED.

1.3.20. Facility is defined as real or personal property located within the route, such as structures, improvements, and other properties under the jurisdiction of County, City Utility, or the METRO and shall include, but not be limited to, streets, highways, bridges, alleys, storm drains, sanitary sewers, landscaping, trees, traffic signals, street lights, parking meters, police and fire alarm systems, manholes, ducts, cables, and fibers.

1.3.21. Final Design is the phase of the Design process that provides the detailed design and technical specifications for all temporary and permanent project facilities. This phase addresses and resolves all Design review comments, construction issues, and third party comments and finalizes all engineering, architectural, and system designs necessary for complete construction documents. The term also includes the products of such phase of the Design process.

1.3.22. Hazardous Materials means "hazardous substances" as that term is defined in Division 20, Chapter 6.8 of the California Health & Safety Code.

1.3.23. Initial Term has the meaning set forth in Section 1.2 of this Agreement.

1.3.24. METRO is the Los Angeles County Metropolitan Transportation Authority and, as the context may require, its officers, employees, agents, contractors and subcontractors.

1.3.25. METRO Fiscal Year is each one-year period commencing on July 1 of a calendar year and terminating on June 30 of the following calendar year.

1.3.27 METRO Representative is the person, or person holding a specified position, designated by the METRO pursuant to Section 1.4.

1.3.28 Non-Construction Costs means those types of Costs that are not Construction Costs.

1.3.29 Original Agreement has the meaning set forth in Recital E.

1.3.30 Parties are METRO and Utility collectively, and a “Party” is defined as each of METRO and Utility individually.

1.3.31 Preliminary Engineering (“PE”) Design is the phase of the Design process which takes a project from a conceptual state to a level of project Design definition that describes the project technical and architectural approach in order to determine environmental and community impacts, interfaces with utilities and existing infrastructure/facilities, operational characteristics, an estimate of project costs and a project execution schedule. The term also includes the products of such phase of the Design process. The PE Design phase for a Transit Project is initiated at the conclusion of the Draft Environmental Impact Statement and after the selection of the locally preferred alignment.

1.3.32 Pre-Solicitation Comment Due Date for each Rearrangement that is to be Constructed by METRO’s Contractor as part of its scope of work for the Subject Transit Project, the “Pre-Solicitation Comment Due Date” means the deadline scheduled by the Parties pursuant to Article 2 for delivery of Utility’s last comments on the Design for such Rearrangement, prior to issuance of the solicitation documents for METRO’s Contract with such Contractor.

For all other Rearrangements, the “Pre-Solicitation Comment Due Date” means the earlier of (i) the deadline scheduled by the parties pursuant to Article 2 for delivery of either Party’s last comments on the Design for such Rearrangement, prior to issuance of the solicitation documents for Construction services for such Rearrangement, and (ii) the date of issuance of the solicitation documents for a Contractor whose scope of work includes Construction services for the Subject Transit Project.”

1.3.33 Project Plans are METRO’s drawings, plans and specifications for a Subject Transit Project, which METRO has identified as the plans on which Design of the affected Rearrangements should be based. Utility acknowledges that Project Plans may or may not be at a Final Design level.

1.3.34 Protected Materials are any paleontological, archeological, cultural, or similar resources requiring protection pursuant to applicable law during Construction.

1.3.35 Rail Project means those rail transitways of METRO that are adopted for Construction for the public transportation of passengers. “Rail Project” may refer to any one of such transitways, and any portion or section thereof, as the context may require.

1.3.36 Rearrangement or Rearrange is all work on Utility’s Facilities that is necessary to accommodate a Transit Project (as more particularly described in Section 1.5.2), including without limitation, Design, removal, replacement, alteration, reconstruction, support, protection in place, Abandonment or relocation of a Conflicting Facility or portion thereof, whether permanent or temporary.

1.3.37 Replacement Facility is a Utility Facility that 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 applicable Utility Standards (including any Betterments which the Parties agree to incorporate therein). A Replacement Facility may be an entirely new Utility Facility, or an existing Utility Facility, as modified by the Rearrangement work.

1.3.38 Schedule means the schedule for Design and Construction of a particular Rearrangement, which shall be mutually agreed upon by METRO and Utility.

1.3.39 Subject Transit Project, when referenced in connection with a particular Rearrangement, means the Transit Project which necessitates such Rearrangement; provided, however, that if METRO enters into more than one Contract for Construction of a particular Transit Project, then where the context so requires, the term “Subject Transit Project” shall refer to that portion of such Transit Project which is being Constructed by a particular Contractor and which necessitates such Rearrangement.

1.3.40 Substitute Facility means a Utility Facility equal, in terms of level of service, capacity, service life, capability, appearance, efficiency and function, to the corresponding Conflicting Facility that requires Rearrangement, but which also includes any upgrades to any of the foregoing that would not be considered Betterments pursuant to this Agreement.

1.3.41 Temporary Facility is a Utility Facility constructed for the purpose of ensuring continued service during a Rearrangement and/or any work on a Utility Facility to accommodate the construction of a Transit Project, but which will be removed or restored to its original condition after such construction activities are completed.

1.3.42 Transit Projects are Rail Projects and Busway Projects collectively, and a “Transit Project” is defined as an individual Rail Project or Busway Project, as the context may require. The Transit Projects include, but are not limited to, the METRO projects described in Recital B. Where the context so requires, “Transit Project” also refers to the Design and Construction undertaken by or at the direction of METRO in order to create a Rail Project or Busway Project.

1.3.43 Transit Project Facility means a facility that is a component of or appurtenance to a Transit Project.

1.3.44 Transit Project Right of Way means (a) real property owned (or intended for acquisition) by METRO and used (or proposed to be used) for Transit Project purposes, and (b) those portions of public streets or rights-of-way on which are located (or proposed to be located) any Transit Project Facilities or which are otherwise used (or proposed to be used) by METRO for Transit Project purposes.

1.3.45 Utility is defined as TCG Los Angeles, Inc. and, as the context may require, its officers, employees, agents, contractors and subcontractors.

1.3.46 Utility Facility is defined as any structure, improvement or other facility impacted by Transit Project Construction, that is used for the provision of communication services by Utility to the public and shall include, but not be limited to, wires, cables, poles, cross-arms, anchors, guys, fixtures, conduits and manholes together with any and all equipment, apparatus or structures appurtenant thereto or associated therewith. The term “Utility Facility” does not include any buildings of Utility or any facilities therein or any other property of Utility, whether or not devoted to public use, which is not included within the definition of “Utility Facility” as set forth above.

1.3.47 Utility Representative means the person, or the persons holding the specified position(s), designated by Utility pursuant to Section 1.4.

1.3.48 Utility Standards means the latest edition of Utility’s written standards that are in effect as of the Effective Date, as the same may be modified from time to time thereafter, but only to the extent that such modifications do not result in Betterments pursuant to Section 2.5.

1.3.49 Wilshire BRT Project has the meaning set forth in Recital B of this Agreement.

1.3.50 Work Order is that document which METRO shall issue to Utility authorizing funding for Utility's performance of Design, Design review, inspection, Construction and/or supply of materials and equipment, under the terms and conditions of this Agreement. Utility’s failure to execute a Work Order shall not excuse Utility’s performance of any obligation under this Agreement.

1.4 Utility Representative and METRO Representative

1.4.1. Utility Representative. For each Transit Project, Utility shall designate a person, or the holder of a specified office or position, to act as the Utility Representative for such Transit Project. A single individual may be the Utility Representative for more than one

Transit Project, to the extent necessary depending on the requirements of the Transit Project(s) to which he or she is assigned. The Utility Representative(s) shall assist METRO in the delivery of such Transit Project(s) and each component thereof in a timely manner. The Utility Representative(s) will have the responsibility and authority (i) to manage and coordinate interaction of Utility with METRO and its contractors, (ii) to produce the necessary billings, work documents and reports on production, Cost and Work Order status, (iii) to undertake reviews, provide comments and issue approvals as required by this Agreement, and (iv) to cause Utility to pay METRO's billings for its Costs that are reimbursable hereunder. Utility may change a designated Utility Representative by providing written notification to METRO fourteen (14) days prior to the change or as soon as reasonably practicable, if the change must be made sooner.

1.4.2. METRO Representative. For each Transit Project, the Chief Executive Officer of METRO shall designate a person, or the holder of a specified office or position, to act as the METRO Representative for such Transit Project. At METRO's option, a single individual may serve as the METRO Representative for any number of Transit Projects. The METRO Representative will have the responsibility to manage and coordinate METRO interaction with Utility, and to cause production of the necessary Design and Construction documents for Utility review and/or approvals as called for under this Agreement, to issue Work Orders, and to undertake reviews and issue approvals as required by this Agreement. The METRO may change its designated METRO Representative by providing written notification to Utility fourteen (14) days prior to the change, or as soon as reasonably practicable, if the change is to be made sooner.

1.5 Coordination and Cooperation

1.5.1 The Parties hereby acknowledge that the timely completion of each Transit Project will be influenced by the ability of METRO and Utility to coordinate their activities, communicate with each other, and respond promptly to reasonable requests. As information becomes available for each Transit Project, METRO will promptly provide to Utility such plans for the Project as will enable Utility to determine which Utility Facilities may be impacted thereby. The Parties will endeavor to agree on the plans and specifications for each Rearrangement prior to the giving of formal notice to Utility of a required Rearrangement.

This Section 1.5.1 is directory only and compliance therewith or agreement upon plans and specifications as aforesaid shall not be a condition precedent to the giving of formal notice to Utility of a required Rearrangement.

1.5.2 Cooperation. Rearrangement of a Utility Facility may be necessary in order to accommodate a Transit Project for either or both of the following reasons: (a) a physical conflict between the Transit Project (including its construction, operation, maintenance or use) and the Utility Facility, and/or (b) an incompatibility between the Transit Project Facilities as designed and the Utility Facility based on the requirements of Utility Standards, METRO's applicable standards, or applicable law (even though there is no physical conflict). Relocation of Utility Facilities will be avoided whenever it is possible to do so without causing increased costs for or delay in a Transit Project. When reasonably possible in accordance with the foregoing, as determined by METRO, Utility Facilities will be left in place and protected. When relocation or other Rearrangement of Utility Facilities cannot be avoided in accordance with the foregoing, Utility agrees to such Rearrangement as METRO determines is reasonably necessary and to cooperate with METRO's requirements for the Subject Transit Project, in accordance with the provisions of this Agreement. Where there are joint users of any such Utility Facilities or any part thereof or of space thereon or therein, Utility shall use its best efforts to cooperate with METRO in identifying any joint users and obtaining their cooperation.

1.6 METRO Contractor.

The parties acknowledge that METRO, at its sole discretion, may utilize various Design and Construction contracting methodologies to effect certain Transit Projects (or Rearrangement portions thereof). The METRO determination of Contract scope shall not impact the processes governed by this Agreement. Without limiting the generality of the foregoing, Utility acknowledges that development of a Transit Project will require strict compliance with the scheduling requirements of this Agreement, and that failure to meet the deadlines set forth in this Agreement or in the applicable Work Order could cause METRO and/or its Contractor to incur substantial costs as a result of such delay, or in taking measures to avoid resulting delay to the Subject Transit Project. The consequences of Utility's failure to meet a deadline are addressed in Section 11.4. Utility further acknowledges that the METRO

Contractor may be assigned various tasks, including certain tasks assigned to the METRO Representative hereunder. Accordingly, if METRO enters into a Contract, the Parties agree as follows:

1.6.1 Without limiting METRO's right to delegate the performance of Design and Construction tasks hereunder to consultants and contractors, METRO may delegate to a Contractor the duty to perform certain of METRO's obligations hereunder in lieu of METRO, as designated by METRO in the applicable Contract; provided, however, that the obligation to make payments or advance funds pursuant to Article 8 will not be delegated to the Contractor, and Utility shall have no right to seek such payments from the Contractor.

1.6.2 The Contractor may exercise certain of METRO's rights hereunder, but only to the extent designated by METRO in the Contract (without limiting METRO's right to exercise such rights).

1.6.3 METRO may add the Contractor as a required notice recipient pursuant to Section 15.2.1 for certain notices hereunder, as specified by METRO.

1.6.4 The Contractor has authority to provide approvals, consents, permissions, satisfactions or authorizations only where expressly permitted hereunder or pursuant to the Contract.

1.6.5 The Contractor may, if METRO so requests, by amendment become a party to this Agreement, provided that such amendment does not increase the financial burden on Utility beyond any that may otherwise be required hereunder.

1.6.6 Upon its entry into a Contract for a Transit Project that will require Rearrangement of Utility Facilities, METRO agrees to notify Utility as to (a) the name of the Contractor (and relevant contract information), (b) the obligations and rights hereunder that have been delegated to the Contractor, and (c) any modification to the notice requirements of Section 15.2. For any such Contract to which METRO is already a party upon execution of this Agreement, METRO shall provide such notification to Utility within 30 days after execution of this agreement. Utility agrees to coordinate its efforts and cooperate with the Contractor and with METRO as reasonably requested by METRO or the Contractor.

1.7 Interpretation and Application of Utility Standards

1.7.1 With respect to both Design and Construction, in interpreting applicable Utility Standards, and in exercising any discretion granted to Utility staff by applicable Utility Standards, Utility shall make such interpretations and exercise such discretion in such a manner as to impose the minimum requirements necessary to achieve reasonable goals of public health, safety and functionality. Any Design or Construction issues affecting Rearrangements which are not addressed by applicable Utility Standards shall be resolved in such a manner as to impose the minimum requirements necessary to make a Replacement Facility the equivalent (in terms of level of service, capacity, service life, capability, appearance, efficiency and function) of the Conflicting Facility which it replaces and to otherwise minimize Rearrangement work while achieving reasonable goals of public health, safety and functionality.

1.7.2 If a disagreement arises between Utility and METRO (or its Contractors) with respect to a Design issue, then upon receiving notice of such disagreement, the METRO Representative shall promptly investigate and shall promptly notify Utility of his or her determination as to the appropriate resolution of such disagreement in accordance with this Agreement. If, within fourteen (14) days after receiving the METRO Representative's notice, Utility notifies METRO that it disagrees with the METRO Representative's determination, the dispute shall be resolved in accordance with Article 13. If Utility does not timely give such notice, then the METRO Representative's determination shall prevail. Prior to resorting to the terms of Article 13 for resolution of the dispute, the Parties shall meet and confer in a joint working group consisting of appropriate members selected by each Party to attempt to resolve the dispute.

1.7.3 If either Party issues a written nonconformance notice in accordance with Article 6, the METRO Representative shall promptly investigate and notify Utility of METRO's determination as to whether (a) correction of the completed work is necessary in order to prevent public health and/or safety risks and/or to achieve the level of functionality for a Rearrangement required by the Design approved by the Parties, or (b) correction is not necessary in order to achieve such purposes. If, within seven (7) days after receiving the METRO Representative's notice, Utility notifies METRO that it disagrees with METRO's

determination, then the dispute shall be resolved in accordance with Article 13. If Utility does not timely give such notice, then the METRO Representative's determination shall prevail. Prior to resorting to the terms of Article 13 for resolution of the dispute, the Parties shall meet and confer in a joint working group consisting of appropriate members selected by each Party to attempt to resolve the dispute. If the METRO Representative, joint working group, or the Arbitrator(s) pursuant to Article 13, as applicable, determines that correction is necessary, then the Party responsible for such work shall cause its contractors to correct or resolve the nonconformance. If the METRO Representative, joint working group, or such Arbitrator(s), as applicable, determines that correction is not necessary, then such nonconformance shall be deemed waived. Correction of any nonconformance waived pursuant to this Section 1.7.3 shall not be a condition to Utility's acceptance of a completed Rearrangement.

Article 2

Design

2.1 Design Coordination

The METRO Representative and the Utility Representative shall use their best efforts to agree upon written general guidelines, working relationships and administrative policies to implement the approval procedures with respect to Design review, and coordination of Construction, right-of-way acquisition and Rearrangement of Utility Facilities in order to permit the timely Construction of Transit Projects. All such guidelines, relationships, policies, procedures and coordination shall be consistent with this Agreement and, in the event of any conflict between the provisions thereof and this Agreement, the provisions of this Agreement shall prevail. METRO shall consult with the Utility Representative in establishing the schedule for Design of each Rearrangement to be consistent with METRO's schedule for each Transit Project.

2.2 Identification of Utility Facilities

2.2.1. Within sixty (60) calendar days after request by METRO, Utility shall identify and disclose to METRO the nature and location of all Utility Facilities, which are located on, in, under or over the locations, which METRO indicates, may be affected by a Transit

Project. Utility and METRO shall take reasonable actions to verify such information. Utility shall be responsible for all costs and expenses incurred by METRO (including, without limitation, costs of delay and other costs incurred by METRO or paid by METRO to its contractors) resulting from or which arise out of Utility's intentional failure to timely disclose all such Utility Facilities.

2.2.2 If Utility agrees it owes the amount due, Utility shall pay to METRO any amount due pursuant to this Section 2.2 within ninety (90) calendar days after receipt of demand therefore. If Utility disputes the amount due or disputes that it owes any amount, the dispute shall be resolved in accordance with Article 13. Prior to resorting to the terms of Article 13 for resolution of the dispute, the Parties shall meet and confer in a joint working group consisting of appropriate members selected by each Party to attempt to resolve the dispute.

2.3 Design by Utility

Unless METRO and Utility agree that METRO shall Design a particular Rearrangement, Utility shall Design each Rearrangement. Prior to commencing Design, Utility shall submit a Form 60 for Design hours and upon METRO approval of same, and Utility's receipt of a Work Order for Design from METRO along with the related Project Plans, Utility shall proceed with Design of such Rearrangement in accordance with the following:

2.3.1. Utility shall diligently perform its Design work in conformance with the Design schedule for the Rearrangement that is mutually agreed upon by METRO and Utility, subject to Section 2.3.4, and Utility shall coordinate throughout Design with METRO as is necessary to develop plans satisfactory to both METRO and Utility for each Rearrangement, subject to the requirements of this Agreement. The schedule for Utility's completion of Design, coordination requirements, review procedures, and related provisions shall be included as attachments to the Work Order, which shall also include the not-to-exceed cost of completing the Design of the specific Rearrangements based upon the Form 60. Betterments shall be addressed in accordance with Section 2.5. If a dispute over the Design Schedule occurs, the dispute shall be resolved in accordance with Article 13. Prior to resorting to the

terms of Article 13, the Parties shall meet and confer in a joint working group consisting of appropriate members selected by each Party to attempt to resolve the dispute.

2.3.2. Utility shall prepare a complete set of Design plans and specifications for each Rearrangement, together with (a) Utility's itemized estimate of the total Cost of work, and (b) an estimate of the time needed to perform the required Rearrangement Construction. During Utility's Design process for each Rearrangement, METRO shall have the right to review and comment on the plans and specifications as well as on the Cost and time estimates. In order to facilitate such review, Utility shall submit to METRO its Design product for each Rearrangement at the completion of the Preliminary Engineering and Design Development phases; provided, however, that METRO shall provide any comments on such Design products to Utility within 30 days after receipt. All final Designs, including time and cost estimates, shall be subject to METRO's written approval. Unless otherwise expressly provided for herein, Utility may not change the plans and specifications prior to or during the progress of Construction, except with prior written concurrence of METRO. METRO's review and approval of any Design furnished by Utility shall be solely for purposes of assessing compatibility of the Rearranged Utility Facilities with the Subject Transit Project, coordination with METRO's work on the Subject Transit Project, and Cost issues. METRO has and undertakes no duty to review such Designs for their quality or for the adequacy of Rearranged Utility Facilities (as designed) for the purposes for which they are intended to be used.

2.3.3. Utility shall be responsible for errors in and omissions from any Designs prepared or provided by Utility, its consultants or contractors.

2.3.4. The following scheduling provisions shall apply:

(a) Utility shall deliver the Final Design for each Rearrangement to METRO for its review and approval in accordance with the schedule established in the applicable Work Order authorizing such Design work.

(b) As soon as reasonably practicable, Utility shall submit to METRO any modified Design necessitated by METRO's review and comments pursuant to Section 2.3.2,

but not later than thirty (30) days, or such later date as the Parties may mutually agree, after Utility's receipt of METRO's comments.

(c) Following any modification by METRO of Construction plans for the Subject Transit Project, Utility shall have a reasonable amount of time, as the Parties may mutually agree, in which to complete redesign of its Rearrangements. Each Party shall reasonably exercise its right to approve the timing for submittals of a revised Design, considering METRO's schedule for the Subject Transit Project, Utility's workload for carrying out its public utility duties, the type of Utility Facilities involved, the extent of the modification of the Construction plans for the Subject Transit Project, and the extent of the resulting changes necessary to the Rearrangement Design.

2.4 Design Performed by METRO

If METRO and Utility mutually agree that METRO shall Design a specific Rearrangement, METRO shall issue Work Orders for Utility to review plans and specifications as required, and the following procedures shall govern:

2.4.1. Coordination of Design and the development of the Design plans and specifications shall be accomplished through the METRO Representative who shall confer from time to time with the Utility Representative, except to the extent that responsibility for same has been delegated to METRO's Contractors in accordance with Section 2.8.

2.4.2. METRO or its Contractor shall submit to Utility plans and specifications for each Rearrangement at the Preliminary Engineering, Design Development and Final Design stages for Utility review and approval or comment consistent with the requirements of this Agreement; provided, however, that the schedule for such submittals and responses shall conform to the following requirements:

(a) Within five (5) business days after receipt of up to 3 Design submittals, (i) Utility shall inform METRO whether the submittal is sufficiently complete for Utility review purposes, and (ii) if not sufficiently complete, Utility shall so notify METRO, or shall return the submittal to METRO together with an identification of those portions that are not sufficiently complete and a description of the missing information listing the deficiencies.

This means, for example, that if Utility receives 7 Design Submittals at one time, it shall have a total of 15 business days to (i) inform METRO whether the submittal is sufficiently complete for Utility review purposes, and (ii) if not sufficiently complete, notify METRO, or return the submittal to METRO together with an identification of those portions that are not sufficiently complete and a description of the missing information listing the deficiencies. If no such notice or return is received by METRO within the time frames set forth herein, the submittal(s) shall be deemed complete and acceptable for review purposes. For purposes of this Section 2.4.2(a), the determination as to whether a Design Submittal is sufficiently complete for Utility review purposes shall be based solely on whether the information provided is sufficient to review the particular components or elements as to which Utility's review has been requested.

(b) Within thirty (30) calendar days after receipt of each Design Submittal, Utility shall review and approve the submittal or transmit its comments to METRO. If no comments are received within such period, then the contents of such submittal shall be deemed complete and satisfactory to, and approved by, Utility.

(c) The provisions of this Section 2.4.2 also will apply to any resubmittal of a Design by METRO, whether in response to a Utility notice or return of an incomplete submittal, or in response to substantive Utility comments.

2.4.3. Utility's approval of the Final Design for any Rearrangement will not be withheld if the submittal is consistent with (a) the most recent previous submittal, modified as appropriate to respond to Utility comments on such submittal and to reflect any subsequent changes agreed to by Utility and METRO, or (b) earlier submittals which have been approved by Utility. However, Utility shall have the right to make new comments on any material changes from previous submittals.

2.5 Betterments

2.5.1. During the Preliminary Engineering Design phase but in any event not later than the applicable Pre-Solicitation Comment Due Date for each Rearrangement, Utility shall inform METRO what Betterments, if any, Utility desires so that METRO can review the Betterments and determine whether they satisfy the requirements set forth in Section 2.5.2.

Each Design furnished by Utility shall specifically identify any Betterments included in such Design. METRO may also identify Betterments included in Designs furnished by Utility or in comments provided by Utility on METRO-furnished Designs, by giving written notice thereof to Utility during the Design review process.

2.5.2. It is understood and agreed that METRO shall have no obligation for the Cost of any Betterment (whether or not identified pursuant to Section 2.5.1), and that no Betterment may be performed in connection with any Rearrangement (whether Designed or Constructed by Utility or by METRO) that is incompatible with the Subject Transit Project or which cannot be performed within the constraints of applicable law, any applicable governmental approvals, the schedule for the Subject Transit Project and/or the Design. Utility shall bear the Cost of all Betterments included in each Rearrangement in accordance with Article 9.

2.5.3. For a Rearrangement to be Constructed by METRO, the price which Utility shall pay for each included Betterment shall equal the estimated incremental additional Cost for the Rearrangement resulting from such Betterment, calculated in accordance with Section 9.6.

2.6 General Design Criteria for Rearrangements

2.6.1. Utility shall notify METRO of any revisions or additions to the Utility Standards identified in Exhibit 1 promptly after their formal issuance or adoption. The Design and Construction of each Rearrangement, whether undertaken by Utility or by METRO (or by their contractors), shall conform to the Utility Standards identified in Exhibit 1, together with any revisions or additions thereto which are required to be incorporated into the Utility Standards pursuant to the following provisions (such standards, together with any such required revisions and additions, are sometimes referred to in this Agreement as “applicable Utility Standards”):

(a) The Design shall incorporate any revisions or additions to the Utility Standards of which Utility has notified METRO on or before the earlier of (i) thirty (30) calendar days after their formal issuance or adoption, and (ii) the applicable Pre-Solicitation Comment Due Date.

(b) The Design also shall incorporate any revisions or additions to the Utility Standards of which Utility notifies METRO after the deadline established pursuant to subparagraph (a) above but prior to the scheduled deadline for the non-Designing Party's final comments on the Final Design for the Rearrangement, provided that (i) such revisions or additions do not require Design changes necessitating resubmittal of the Design to the non-Designing Party and do not increase the cost of and/or time for Construction of either the Rearrangement or the Subject Transit Project as initially estimated, or (ii) such revisions or additions result from changes in federal or State laws, rules or regulations which mandate incorporation of the changes into the Design.

2.6.2. In all cases, Utility Standards shall be interpreted in accordance with Section 1.7.1. If Utility proposes an increase in requirements of, or variance from, the applicable Utility Standards (pursuant to this Section 2.6) for the Design or Construction of any Rearrangement, such increase or variance may be incorporated into such Rearrangement only if agreed to by METRO in its sole discretion; in such event, the increase or variance shall be considered a Betterment and shall be addressed in accordance with Section 2.5. METRO shall receive a credit or reimbursement for any additional Costs that it incurs due to such Betterment in accordance with Section 9.6.

2.6.3. Utility agrees that it shall not adopt any new Utility Standards, or otherwise amend or supplement any existing Utility Standards, for the sole or primary purpose of affecting any Transit Project. All Utility Standards shall be applied to the Rearrangements hereunder in the same manner as they are applied by Utility to projects that are (a) financed primarily by Utility, (b) comparable to the Rearrangements of Utility Facilities hereunder, and (c) constructed for Utility by its own forces or by its contractors.

2.7 Changes in Approved Designs

METRO or Utility may make changes to a previously approved Design prior to or during the progress of Construction only with written concurrence of the other Party. Except where changes are required to accommodate an unanticipated site condition or a change in a site condition, METRO shall have no obligation to consent to or approve any requested changes that will (a) necessitate resubmittal of Design to Utility, (b) delay Construction of the

Subject Transit Project or any portion thereof, or (c) increase the cost of Construction of either the Rearrangement or the Subject Transit Project. The increased Cost, if any, attributable to changes in approved plans or specifications requested by Utility and approved by METRO shall be borne by Utility unless the change in approved plans or specifications was necessitated by an unanticipated site condition or a change in a site Construction Staging Plans.

During Design of a Transit Project, METRO shall develop construction staging plans. Construction staging plans shall provide for, among other-things, the handling of vehicular and pedestrian traffic on streets adjacent to Transit Project construction and shall show construction phases, street closings, detours, warning devices and other pertinent information. To assist METRO in coordination and the development of construction staging plans, Utility shall furnish to METRO during Design the following information in writing, together with such other relevant information as METRO may reasonably request:

- (a) Utility Facilities in which service must be maintained without interruption.
- (b) Utility Facilities in which service may be permanently abandoned.
- (c) Utility Facilities which may be temporarily abandoned and the maximum allowable duration of abandonment.
- (d) Proposed sequence of Construction of Utility Facility Rearrangements.
- (e) Estimates of duration of street closures or restrictions necessary to construct Rearrangements of Utility Facilities.
- (f) Rights-of-way, which must be acquired for Replacement Facilities and Rearrangements.

2.8 Delegation of METRO Duties to Contractors

Without limiting METRO's right to delegate other tasks hereunder to its Contractors, METRO shall have the right to delegate to its Contractors the task of coordinating directly with Utility with respect to Design matters, including without limitation the submittal of

Design for Utility review and discussion of Utility comments. Upon its entry into a Contract with a Contractor to which METRO intends to make such a delegation, METRO shall notify Utility in writing as to (a) the name of such Contractor (and relevant contact information), (b) the tasks hereunder that have been delegated to such Contractor, and (c) any modification to the notice requirements of Section 15.2. Utility agrees to coordinate its efforts and cooperate with such Contractor and with METRO as reasonably requested by METRO or such Contractor in accordance with such notification.

Article 3 **Permits**

After approval of the Final Design of a Rearrangement as set forth in Article 2, the Party performing the Design or its contractor shall obtain all necessary licenses and permits required by municipal, county and state authorities for the Rearrangement of Utility Facilities within, under, over, or above any public street, highway, bridge, or other public way; provided, however, METRO shall be responsible for obtaining (or causing its Contractor(s) to obtain) all such permits and licenses required for any Construction to be performed by its Contractor(s) in accordance with Article 5. Each Party shall use reasonable efforts (the cost of which shall be considered a Cost hereunder) to assist the other Party in securing Permits. Each Party shall comply with the terms of all applicable permits in carrying out its assigned work hereunder.

Article 4 **Acquisition of Replacement Rights-of-Way**

4.1 Replacement Rights-of-Way

Replacement of private rights-of-way for the relocation of Utility's Conflicting Facilities shall be determined during Design and, if needed, may be acquired by METRO or Utility following approval of location and type by both Parties prior to acquisition. METRO or Utility, at no cost or expense to Utility, will acquire the required private rights-of-way to allow for the Rearrangements in an orderly manner so as not to impair METRO's schedule; provided, however, that if Utility cannot acquire said private rights-of-way, they shall be acquired by METRO upon proper and timely notification. The location and type of said

replacement rights-of-way shall be mutually agreed upon in accordance with this Agreement; however, to the extent Design will permit, Rearrangements shall be located in public ways. Utility shall convey to METRO, at no cost to METRO, all rights, title and interest Utility possesses in the existing Utility real property interests (except franchise rights and except where Utility owns the property in fee) (a) on which are located Utility Facilities that have been taken out of service by the Rearrangement, and (b) that are required for the construction of the Subject Transit Project. Where replacement rights are to be acquired within Transit Project Right-of-Way owned by METRO, METRO shall be responsible for providing such replacement rights. Subject to the provisions of this Section 4.1, all real property interests obtained shall be in a legally binding form reasonably acceptable to Utility. The cost of any temporary construction easements or other real property rights (e.g., for installation of temporary Utility Facilities) that are needed for any Rearrangement Construction Utility is performing shall be considered a "Cost" hereunder. METRO will be responsible for obtaining any temporary construction easements or other real property rights that are needed for Rearrangement Construction that METRO is performing and the cost of such easements or other rights shall be considered a "Cost" hereunder. The Parties shall use their best efforts in acquiring right-of-way so as not to impair METRO's schedule. Within sixty (60) calendar days after request by METRO, Utility shall furnish to METRO copies of any agreements or other documents evidencing Utility's franchise, easements, or other existing rights in real property for its Utility Facilities that are located within a proposed Transit Project area. Utility's cost to provide such documentation shall be reimbursed by METRO.

4.2 Reimbursement for Real Property Interest Costs

Real property interest Costs shall be invoiced separately from other Cost items, but shall be reimbursable to the extent provided in Articles 8 and 9.

4.3 Right of Entry

Each Party shall permit the other immediate entry upon, and use of, all of such Party's right-of-way located within or near the route of a Transit Project, whenever necessary for a purpose related to construction of the Transit Project or related to the maintenance, operation or inspection of Utility Facilities during Transit Project construction and where not

inconsistent in time or manner of exercise either with Utility's discharge of its duty as a public utility or with METRO's discharge of its duties with respect to the Transit Project, except METRO shall not enter any Utility facility, such as a manhole or a cross-connect box, unless a Utility Representative is present.

4.4 Quitclaim by Utility

For any Utility Facilities located within the Transit Project Right-of-Way owned by METRO that are being Abandoned in place or dismantled, but are not being replaced by a Rearranged Facility, upon request by METRO Utility shall quitclaim to METRO (or otherwise terminate by appropriate documentation) all of Utility's right, title and interest in and to any such portion of such Transit Project Right-of-Way on which such Utility Facilities were located.

4.5 Joint Use

If Utility Facilities located in Transit Project Right-of-Way are not required to be Rearranged hereunder and a quitclaim is not required to be provided to METRO pursuant to Section 4.4 (e.g., the Utility Facility is relocated within the original Facility area, the Utility Facility is merely protected in place, or there is no existing Utility easement in the easement area), then Utility shall execute an agreement in form and substance satisfactory to METRO and Utility whereby Utility agrees to the joint use of the subject property by both Utility and METRO.

Article 5 Construction of Rearrangements

5.1 Responsibility for Construction

Utility shall perform (through its contractors) all Construction for each Rearrangement, unless, during the process of Design Engineering, METRO and Utility mutually agree that METRO shall perform all or part of the Construction for a Rearrangement. The Party performing Construction may perform such Construction either prior to Construction of the Subject Transit Project, concurrently with such Construction, or through a combination of said alternatives, as mutually agreed by the Parties.

5.2 METRO Construction of Rearrangements

5.2.1. If agreed by the Parties pursuant to Section 5.1 that METRO shall perform the Construction of a Rearrangement, METRO may advertise, award and administer the

Construction of such Rearrangement. Utility agrees to coordinate its efforts and cooperate with METRO's Contractors performing Construction, as reasonably requested by METRO or such Contractor.

5.2.2. METRO shall be responsible for all claims and stop notices or mechanic's liens filed by METRO's contractor, sub-contractors, and material and labor providers for work performed on Utility Facilities.

5.2.3. METRO shall notify Utility at least seven (7) days prior to commencing the Construction for each Rearrangement so that Utility may make arrangements for such inspection and record keeping as Utility may desire or as may be required pursuant hereto.

5.3 Utility Construction of Rearrangements.

METRO shall issue a Work Order to Utility for the Construction of all or part of a Rearrangement that Utility shall perform, and Utility will advertise, award and administer a contract(s) for the Construction of the Rearrangement. In such event:

5.3.1. Utility shall commence and diligently prosecute the Construction of such Rearrangement to completion as authorized by Work Order, in conformance with the time schedule set forth in the Work Order. Such Construction shall coincide closely and be coordinated with METRO's Construction schedule for the Subject Transit Project, including the schedule for Construction of Rearrangements of utility, cable, pipeline, and other facilities in the same segment or portion of the Transit Project; provided, however, that the schedule for work by Utility shall allow Utility a reasonable period of time for performance of its responsibilities hereunder. METRO shall coordinate Utility's work with other facility owners and contractors performing work that may connect, complement or interfere with Utility's work hereunder or with Utility Facilities.

5.3.2. In the event that Temporary Facilities are necessary to effect a Rearrangement being constructed by Utility, Utility may use lands owned or controlled by METRO for the purpose of erecting such Temporary Facilities thereon, provided that METRO shall have approved in writing the location and duration of such Temporary Facilities. Upon completion of the Rearrangement, Utility shall remove all such Temporary Facilities and

shall restore the area as near as practical to its original condition (unless Utility and METRO mutually agree to another arrangement), all at METRO's cost.

5.3.3. Utility shall notify METRO at least seven (7) business days prior to commencing the Construction for each Rearrangement so that METRO may make arrangements for such inspection and record keeping as METRO may desire.

5.3.4. For all work by Utility's forces or its contractors pursuant to Section 5.1, METRO shall include detailed environmental controls in the applicable Work Order, tailored to the specific work site. All such work shall comply with such Work Order requirements as well as with the environmental controls established in the Construction Contract or Contract, as applicable, for the Subject Transit Project, including without limitation construction noise and vibration control, pollution controls, archeological and paleontological coordination and requirements with respect to biological resources, historic properties, and parklands. In case of inconsistency, the more stringent requirements shall prevail.

5.3.5. A separate Work Order will be issued for Construction of each Rearrangement.

5.4 Maintenance

Utility shall schedule, in concurrence with METRO, any routine maintenance of Utility Facilities so as not to interfere with the Transit Project Construction.

5.5 "As-Built" Drawings

METRO and Utility shall each maintain a set of "as-built" plans of Rearrangements performed by METRO and Utility, respectively, during the progress of construction. Within sixty (60) days following the completion and acceptance of each Rearrangement, the Party that performed the work shall furnish the other Party with reproducible "as-built" drawings showing such Rearrangement as installed by the performing Party and all contract records pertaining to such as-builts. All "as-built" plans (whether provided by METRO or by Utility) shall be in a format, which conforms to METRO's requirements for the Subject Transit Project, as specified in the applicable Contract. If the drawings submitted by either Party are

incomplete or nonconforming to such required format, they will be returned to that Party for correction at its expense.

5.6 Underground Service Alert

Prior to any commencement of underground work by either Party, such Party or its contractor shall notify Underground Service Alert in accordance with California law. In addition, METRO shall cause its Contractors to ascertain from Utility and plainly mark before any excavations are made and during all time that work is being performed by METRO's Contractors in such area, the exact location of all Utility Facilities which may be below the surface of the ground or otherwise not plainly visible, as identified by Utility. Except as provided in the Design for the Rearrangement of Utility Facilities or as otherwise approved by Utility, METRO and its contractors shall not interfere with the operation of Utility Facilities. If any other Utility Facilities are damaged by METRO's Contractors in the course of construction work, Utility shall immediately repair the damage as required to maintain service to its customers and, except as otherwise set forth in Section 2.2, METRO shall reimburse, or shall cause its Contractor to reimburse, Utility for its actual and reasonable costs incurred to repair the damaged Utility Facilities (or, if approved by both METRO and Utility, METRO's Contractor shall repair the damage at no cost to Utility (except as otherwise set forth in Section 2.2)). If any of METRO's property is damaged by Utility or its contractors in the course of its construction work, Utility shall immediately report such damage to METRO and shall repair the damage at its sole cost to the reasonable satisfaction of METRO or, at METRO's election, METRO shall cause such damage to be repaired and Utility promptly shall reimburse METRO for METRO's actual and reasonable costs incurred in connection with such repair.

5.7 Utility Activities

If Utility plans to undertake any activities (including without limitation construction of new facilities, repairs or modifications to existing Utility Facilities, and similar activities) in the vicinity of the Transit Project or Rearrangement Construction, Utility will coordinate such activity with METRO so that such activity will not delay or otherwise interfere with such Construction, and METRO shall reasonably cooperate with Utility with regard to same;

provided, however that if METRO determines that such activity will delay or otherwise conflict with such Construction, METRO shall have the right to condition the implementation of such activity on such scheduling adjustments and/or other modifications as METRO deems appropriate, and if modification cannot resolve the delay or conflict or Utility refuses to make such modification, Utility shall not implement such activity. The provisions of this Section 5.7 shall not apply in emergency situations; however, in such situations Utility will coordinate with METRO to the extent feasible in light of the circumstances.

Article 6 Inspection

6.1 Inspection During Construction

6.1.1. All work performed by either Party on Rearrangements pursuant to this Agreement that affects Construction of a Transit Project shall be subject to METRO and Utility inspection and final approval. METRO and Utility also may inspect the Construction of Rearrangements to ensure that the work has been performed in conformance with the Design approved by the Parties.

6.1.2. All Rearrangement Construction of Utility Facilities by METRO shall be inspected by Utility. Utility shall provide inspectors to observe and inspect the Rearrangement of Utility Facilities so that upon completion of Construction, Utility will have a basis for acceptance of the work. All such inspection services shall be authorized by METRO under the appropriate Work Order. Utility's inspectors shall make a good faith effort to be available, upon METRO's request and at METRO's expense, as needed throughout Construction to support METRO's schedule for the Subject Transit Project. Utility's inspectors shall cooperate and coordinate with the METRO Representative and METRO's Contractors and shall coordinate with the METRO Representative so as to provide safe access to Project sites by Utility inspectors.

6.1.3. At the inspections provided in accordance with Sections 6.1.1 and 6.1.2, above, each Party shall inform the other of any deficiencies or discrepancies in any work discovered in the course of such inspection. Utility will provide immediate verbal notice of nonconformance to METRO's Representative as well as to METRO staff or Contractors (as

designated by the METRO Representative), followed by a written nonconformance notice not later than one business day after discovery. Likewise, METRO will provide immediate verbal notice of nonconformance to the Utility Representative (or to such other Utility staff as may be designated by the Utility Representative), followed by a written nonconformance notice not later than one business day after discovery. Each nonconformance notice shall include an explanation of the notifying Party's desired resolution. Work shall not be stopped as a result of any such nonconformance unless (i) proceeding with the work will prevent resolution of the deficiency or discrepancy; (ii) the additional work cannot be properly performed without resolution of the deficiency or discrepancy, or (iii) otherwise determined and agreed upon by Utility and METRO. All notices of nonconformance provided by either Party shall be addressed in accordance with Section 1.7.3.

6.2 Final Inspection

As soon as the work of any specific Rearrangement has been completed, the Party, which performed the Construction work, shall notify the other Party in writing that the Rearrangement is ready for final inspection. All final inspections by Utility will be completed within seven (7) business days following request for same by METRO's Contractor. The final inspection of any Rearrangement or Transit Project Facility shall be attended by the METRO Representative and the Utility Representative. Each Party will provide to the other Party's Representative immediate verbal notice of any deficiencies or discrepancies in any Construction work discovered in the course of the final inspection, followed by a written nonconformance notice within one business day thereafter. Each nonconformance notice shall include an explanation of the notifying Party's desired resolution. Work shall not be stopped as a result of any such nonconformance unless otherwise determined and agreed upon by Utility and METRO. All notices of nonconformance provided by either Party shall be addressed in accordance with Section 1.7.3. Both Parties' inspectors shall be available to observe and inspect any corrective work performed. Promptly upon completion of the Rearrangement of a Utility Facility by METRO's Contractors (including if applicable, completion of any corrective work performed), METRO shall furnish in writing to Utility its notice of completion. Promptly thereafter, Utility shall furnish to METRO in writing its notice of acceptance of the Rearrangement. Upon such acceptance, title to such Utility

Facility shall automatically vest in Utility (if not already so vested), and Utility shall assume full responsibility for such Utility Facility. Notwithstanding the foregoing, and except as further limited by this Agreement, METRO shall have responsibility and liability for correction of any latent defects in any Rearrangement work performed by METRO's contractors and not discovered by Utility prior to acceptance.

6.3 Materials Testing

Utility shall have the right to test materials used in Construction of Utility Facilities by METRO's Contractors, upon 24 hours prior written notice to METRO and the Contractor. METRO shall have the right to have its witnesses attend all such tests. Utility shall provide copies of the testing reports within 24 hours after each test, as well as providing to METRO access to the samples used and to the testing laboratory for inspection of its equipment. Testing shall be authorized by METRO under an appropriate Work Order, and the costs thereof, including any travel expenses incurred for off-site inspection and testing, shall be considered Costs of Rearrangement.

Article 7 Disposition of Salvaged Materials

7.1 Salvage by METRO

METRO may not salvage materials from the Conflicting Facility belonging to Utility during the course of its work on a Rearrangement, unless agreed to in writing by Utility. If METRO desires to use salvaged materials, subject to the consent of Utility, materials removed shall be stored by METRO until such time as the progress of work allows the reinstallation of such materials. Materials that are not to be reused and that Utility desires to retain shall be returned by METRO to a mutually suitable location. If the materials removed by METRO are not reusable by METRO and are not desired by Utility, such materials shall become the property of METRO unless the approved Design provides otherwise.

7.2 Salvage by Utility

Salvaged materials, which are removed by Utility and not reused in a Rearrangement, shall be retained by Utility.

7.3 Salvage Credits

METRO shall receive a credit or payment, as provided in Article 9 of this Agreement, for salvage, storage and transporting of such materials described herein which are retained by Utility.

Article 8 Reimbursements to Utility

8.1 Reimbursements to Utility

The issuance of a Work Order (following METRO receipt of a Utility estimate using Form 60 or other form required by METRO as described in Article 11) shall obligate METRO to reimburse Utility, subject to the terms of this Agreement, for the “Costs,” as hereinafter defined, of all activities or work performed or materials acquired by Utility, its consultants or contractors pursuant to such Work Order, to the extent only that such activities, work or materials are within the scope of this Agreement as established pursuant to Section 1.1, and except to the extent that such Costs are not METRO’s responsibility pursuant to this Agreement or pursuant to the agreements referred in Section 1.1.2. For purposes of determining the amounts due from METRO to Utility pursuant to this Article 8, the term “Cost” shall mean all actual, allowable, allocable and reasonable direct and indirect costs necessarily incurred by Utility and attributable to such activities, work or materials, less credits to METRO as provided in Article 9 of this Agreement. Subject to the foregoing, direct costs shall include allowable direct labor, equipment and materials costs spent specifically for work performed under this Agreement. METRO’s obligation to reimburse Utility for Costs shall be subject to the limitations established in Article 11.

8.2 Reimbursement for Abandoned Conflicting Facility

In those cases wherein METRO and Utility agree that the construction of a Transit Project will eliminate the service need for a specific Conflicting Facility, such Conflicting Facility may be Abandoned by Utility, and METRO shall not be required to replace or compensate Utility for such Conflicting Facility, except for reasonable and necessary Costs incurred in severing and demolishing such Conflicting Facility and in restoring the subground and ground surfaces as appropriate; provided, however, that under no circumstances shall

METRO be responsible for any Abandonment, remediation or other Costs relating to the presence or existence of any environmental hazard on, in, under or about a Conflicting Facility or other Utility Facility, including but not limited to the presence of any Hazardous Materials. Subject to the consent of Utility, METRO may elect to undertake the activities described in this Section 8.2, the Costs of which shall be reimbursable to METRO as provided in Article 9.

Article 9 Reimbursements and Credits to METRO

9.1 Credits to METRO Where Utility Performs Work

METRO shall receive a credit against work performed by Utility under this Agreement at METRO's expense, for salvage, Betterments and Expired Service Life Value of Utility Facilities. The amount of credits shall be determined as provided below in this Article 9. All credits pertaining to a particular Rearrangement or other item of work hereunder shall be reflected on the applicable invoice(s) submitted by Utility.

9.2 Payments to METRO Where METRO Performs Work

Where METRO performs work hereunder, METRO shall receive compensation from Utility (by credit or payments as provided below) for salvage and Expired Service Life Value of Utility Facilities as applicable, as well as for Costs incurred by METRO for Betterments, and for any other Costs incurred by METRO that are Utility's responsibility pursuant to this Agreement. The amount of compensation shall be determined as provided below in this Article 9. To the extent possible, METRO may take such compensation in the form of credits against amounts owed by METRO to Utility in connection with the Rearrangement for which the compensation is owed. METRO shall invoice Utility for any remaining amounts due in accordance with Section 11.6, and Utility shall make payments to METRO in accordance with Section 11.7.

9.3 METRO's Costs

For purposes of determining the amounts due from Utility to METRO pursuant to this Article 9, the term "Cost" shall mean all actual, allowable and reasonable direct and indirect costs incurred by METRO and attributable to activity or work performed or materials acquired

in performing a task pursuant to this Agreement. Subject to the foregoing, direct costs shall include allowable direct labor, equipment and materials costs spent specifically for work performed under this Agreement, and shall include but not be limited to those associated with Design, project review, construction management, permit fees, inspection, processing, remediation plan development and implementation, real property acquisition and contract administration. Indirect costs shall include administrative and overhead costs at the rate therefore established by METRO from time to time. METRO shall maintain its standard forms of records showing actual time expended and costs incurred under each Work Order.

9.4 Survey; Review of Records

The amount of credits or payments, as applicable, due METRO for salvage and Expired Service Life Value shall be determined by mutual agreement based upon Utility's applicable books, records, documents and other data of Utility. To assist in the determination of credits or payment due METRO under this Agreement, if any, METRO and Utility may conduct an inspection survey and/or inventory of each Conflicting Facility during Design Engineering. Pursuant to a Work Order, Utility shall provide METRO, to the extent such exist and are known and available, with drawings, plans or other records necessary to conduct such survey or inventory. The survey shall describe the physical attributes of the Conflicting Facility such as number, length, diameter, dimensions, and type of material. The survey shall further describe, for each Conflicting Facility, the date of construction or installation; the present condition; the expected service life of each Conflicting Facility as derived from Utility's records; and whether materials contained therein are salvageable. The results of such survey shall also be applied in the determination of Betterments, as necessary.

9.5 Salvage

As applicable, credit shall be allowed or Utility shall pay for salvage for items of materials and equipment recovered from the Conflicting Facility in the performance of Rearrangement work which are subsequently retained by Utility in accordance with Section 7.2. The amount of a salvage credit or payment, if any, shall equal the estimated cost to Utility to acquire like or similar used materials (as depreciated), as determined by mutual agreement, plus storage and transportation Costs.

9.6 Betterments

As applicable, credit shall be allowed or Utility shall pay for Betterments in accordance with the following: The amount of a Betterment credit, if any, shall be the estimated cost of the Replacement Facility, minus the estimated cost of a Substitute Facility. The amount of Betterment credit, if any, shall be a fixed amount determined by the Parties during Design Engineering based upon estimates provided by Utility and its contractors and agreed to by the METRO.

9.7 Expired Service Life

9.7.1. METRO shall receive a credit for the Expired Service Life Value of each Conflicting Facility being replaced (as applicable), if the Replacement Facility will have an expected period of useful service greater than the period which the existing Conflicting Facility would have had, had it remained in service and the Rearrangement not been made. For purposes of this Agreement, "Expired Service Life Value" shall mean the depreciated value of the Conflicting Facility as determined by Utility utilizing its standard depreciation calculation. The amount of credit or payment for Expired Service Life Value shall be set forth by Utility on a Form 60. If METRO disputes the Expired Service Life Value of any Conflicting Facility, the dispute shall be resolved in accordance with Article 13. Prior to resorting to Article 13 for resolution of the dispute, the Parties shall meet and confer in a joint working group consisting of appropriate members selected by each Party to attempt to resolve the dispute.

Article 10 Indemnity And Insurance

10.1 Indemnification by Utility

Subject to the limitations of applicable laws, Utility shall indemnify, protect, defend and hold harmless METRO, its respective governing Board members, officers, employees, authorized agents, engineers, contractors and subcontractors from and against any and all claims, damages, losses, liabilities, costs and expenses (including reasonable attorneys' and expert witness fees and costs) (collectively, "Claims and Expenses") that arise out of or as a result of any negligent act or omission or willful misconduct of Utility or its officers, agents,

employees, engineers, contractors or subcontractors in carrying out Utility's obligations under this Agreement or under any Work Order executed pursuant hereto, except to the extent that such Claims or Expenses are proximately caused by the negligence or willful misconduct of the parties indemnified or their agents, servants, or independent contractors who are directly responsible to such indemnified parties.

10.2 Indemnification by METRO

Subject to the limitations of applicable laws, METRO shall indemnify, protect, defend and hold harmless Utility, and its successors and assigns and its shareholders, officers, directors, employees, authorized agents, engineers, contractors, and subcontractors from and against any and all Claims and Expenses that arise out of or as a result of any negligent act or omission or willful misconduct of METRO or its officers, agents, employees, engineers, contractors or subcontractors in carrying out METRO's obligations under this Agreement or under any Work Order executed pursuant hereto, except to the extent that such Claims or Expenses are proximately caused by the negligence or willful misconduct of the parties indemnified or their agents, servants, or independent contractors who are directly responsible to such indemnified party.

10.3 Insurance

10.3.1. Any Design Contract, Construction Contract or other Contract entered into by METRO or Utility in connection with a Rearrangement shall contain a provision that requires the contractor, as part of the liability insurance requirements, to provide an endorsement (using the 1985 edition of form CG-20-10) to each policy of general or automobile liability insurance that names as additional insureds to such policy (not subject to any premiums or assessments) Utility and METRO and their respective officers and employees as additional insureds (not subject to any premiums or assessments). In addition, a waiver of subrogation in favor of METRO, et.al. shall be provided in support of workers' compensation coverage. Unless otherwise mutually agreed by the Parties, the following shall be the minimum insurance coverage and limits:

- a) Workers' Compensation insurance with benefits afforded under the laws of the state in which the services are to be performed and Employers Liability insurance with

minimum limits of \$1,000,000 for Bodily Injury-each accident, \$1,000,000 for Bodily Injury by disease-policy limits and \$1,000,000 for Bodily Injury by disease-each employee.

- b) Commercial General Liability insurance with minimum limits of: \$2,000,000 General Aggregate limit; \$1,000,000 each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; \$2,000,000 Products/Completed Operations Aggregate limit, with a \$1,000,000 each occurrence sub-limit for Products/Completed Operations. Fire Legal Liability sub-limits of \$300,000 are required for lease agreements.
- c) If use of a motor vehicle is required, Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, which coverage shall extend to all owned, hired and non-owned vehicles.

The companies affording insurance coverage must have a rating of B+ or better and a Financial Size Category rating of VII or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies. Each contractor shall also require all subcontractors performing work for a Rearrangement or who may enter upon the work site to maintain the same insurance requirements listed above.

10.3.2. Prior to commencement of work, a Certificate evidencing the required coverage shall be provided directly by the insurers to Utility and METRO, providing that said coverage shall not be reduced in scope or cancelled without thirty (30) days prior written notice to METRO and Utility. Utility recognizes and agrees that all or part of such insurance can be provided by METRO through an owner-controller insurance program.

10.3.3. If Utility itself performs any of the work for a rearrangement, Utility shall itself comply with the insurance requirements set forth in Sections 10.3.1 and 10.3.2 above.

Article 11 Work Orders and Billings

11.1 Work Performed by Utility

11.1.1. All work performed by Utility under the terms of this Agreement shall be initiated by Work Orders as provided herein. Utility shall have no obligation to perform work hereunder, which is reimbursable by METRO, except to the extent that a commitment to fund such work has been made in a Work Order. Utility's review of Project documents, drawings, etc. furnished by METRO may not be subjected to complete reengineering or technical study; therefore METRO cannot rely on Utility's review to validate METRO's work product.

11.1.2. To the extent it is reasonably possible, all work to be performed by Utility under this Agreement will coincide with METRO's Design and Construction schedule for each Transit Project.

11.2 Work Orders

METRO shall issue Work Orders to Utility, following Utility's submittal of estimates therefore in the form then required by METRO (currently Form 60 as set forth in Exhibit 2, as the same may be amended or replaced from time to time by notice from METRO to Utility), to authorize Utility's performance of all work and the purchase of all materials and equipment required under the terms and conditions of this Agreement. Utility shall complete (either through its own forces or through its consultants, contractors or subcontractors) all work authorized by any Work Order, except as otherwise provided in Section 11.3.4. Contractors engaged by Utility to perform work covered by this Agreement shall comply with all applicable labor and other laws and agreements. Utility shall cooperate with METRO and take such actions as the METRO may reasonably request, to ensure such compliance. 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 Utility may expend therefore, and a schedule, including the estimated starting and finishing dates for

work so authorized. Work Orders shall set forth schedules that are consistent with and supportive of METRO's Design and Construction schedule and that are agreed to by Utility. Utility shall not be authorized to do any work, and shall not be paid, credited or reimbursed for Costs or expenses associated with any work that is not authorized by a Work Order, unless otherwise mutually agreed in writing. Under no circumstances shall Utility receive payment for, or reimbursement of, any Costs associated with or related to Betterments, and the issuance of a Work Order authorizing Utility work or other activity respecting a Betterment shall not constitute the agreement of METRO to make any payments to Utility in respect thereto.

11.3 Work Order Changes

11.3.1. Utility shall not order or direct work that would cause Construction Costs to exceed the maximum amount allowable therefore in any Work Order, without the prior approval of METRO as set forth in a Work Order revision in accordance with Section 11.3.3. Utility agrees to use its best efforts to perform such work within the maximum amount specified therefore in each Work Order. Utility agrees to notify METRO if at any time Utility has reason to believe that the Construction Costs that it expects to incur under any Work Order in the next 60 days, when added to all Construction Costs previously incurred under such Work Order, will exceed 75% of the maximum Construction Costs specified in the Work Order, or if at any time Utility has reason to believe that the total Construction Costs under said Work Order will be in excess of ten percent (10%) greater or less than previously estimated. Utility may request revision of Work Orders to increase the maximum allowable Construction Costs thereunder, in the event of anticipated Construction Cost overruns. METRO will consider, and may not unreasonably withhold its approval of, any increase in the maximum allowable amount of Construction Costs that is caused by (i) a necessary change in the scope of the subject Construction, or (ii) a delay that is not caused by Utility (or its contractors, suppliers or agents), provided that Utility notifies METRO within three (3) business days of the Utility Representative becoming aware of the event or situation causing such anticipated change. METRO may withhold its approval of any other increase in Construction Costs above the maximum allowable amount authorized in the applicable Work Order. Without METRO's prior approval, Utility will not be reimbursed for Construction

Costs expended in excess of maximum amounts allowable therefore and authorized in a Work Order.

11.3.2. Utility shall not order or direct work that would cause Non-Construction Costs to exceed the maximum amount allowable therefore in any Work Order, without the prior written approval of METRO as set forth in a Work Order revision in accordance with Section 11.3.4. Utility agrees to use its best efforts to perform such work within the maximum amount specified therefore in each Work Order. Utility agrees to notify METRO if at any time Utility has reason to believe that the Non-Construction Costs that it expects to incur under any Work Order in the next 60 days, when added to all Non-Construction Costs previously incurred under such Work Order, will exceed 75% of the maximum Non-Construction Costs specified in the Work Order, or if at any time Utility has reason to believe that the total Non-Construction Costs under said Work Order will be in excess of ten percent (10%) greater or less than previously estimated. Utility may request written revisions of Work Orders to increase the maximum allowable Non-Construction Costs thereunder, in the event of anticipated Non-Construction Cost overruns. METRO will consider, and may not unreasonably withhold its approval of, any increase in the maximum allowable amount of Non-Construction Costs that is caused by (i) a necessary change in the scope of the subject Construction, or (ii) a delay that is not caused by Utility (or its contractors, suppliers or agents), provided that Utility notifies METRO within three (3) business days of the Utility Representative becoming aware of the event or situation causing such anticipated change. METRO may withhold its approval of any other increase in Non-Construction Costs above the maximum allowable amount authorized in the applicable Work Order. Without METRO's prior approval, Utility will not be reimbursed for Non-Construction Costs expended in excess of maximum amounts allowable therefore and authorized in a Work Order.

11.3.3. Utility agrees to notify METRO if at any time Utility has reason to believe that the estimated finishing date of any work under a Work Order will be later than the date authorized in the Work Order. Utility will request written revision of the Work Order in the event of anticipated completion delays and METRO will consider, and may not unreasonably

withhold, its approval of the revision to the Work Order to reflect the change in the finishing date.

11.3.4. Any revision to a Work Order requested by Utility shall be submitted in writing to METRO for its prior approval and METRO shall act promptly on any such request. If METRO fails to respond in writing to a requested revision within fourteen (14) days after receipt thereof, the revision shall be deemed accepted; provided, however, that the Parties may agree to extend such period before its expiration. Notwithstanding the foregoing, any proposed revision occasioned by emergency field construction difficulties may be submitted to METRO orally, by telephone, and confirmed in writing by Utility within three (3) business days; in such event, METRO agrees to immediately act and the METRO Representative shall convey METRO's decision orally, to be confirmed in writing within three (3) business days. All Work Order revision requests shall include an estimate for the Work Order revision in the form then required by METRO (currently Form 60, as the same may be amended or replaced from time to time by notice from METRO to Utility). Without METRO's prior approval, Utility will not be reimbursed for costs to correct defective performance by Utility, its consultants, or contractors.

11.3.5. METRO may terminate, in writing, any Work Order at any time in its sole discretion, but METRO shall reimburse Utility in accordance with this Agreement for Costs, if any, already incurred by Utility thereunder, and Costs, if any, necessary to restore Utility's Facilities in the process of Rearrangement to a permanent condition suitable for the provision of service to the public. If restoration is necessary, METRO will authorize the Costs therefore in its written termination of the Work Order.

11.4 Deadlines and Delays

11.4.1. Utility shall perform its work under this Agreement in accordance with the deadlines and schedules established in the applicable Work Order. Subject to Sections 11.3.3, 11.3.4, 11.4.2, and 15.12, if Utility fails to meet a deadline established in this Agreement or in the applicable Work Order for Construction or any other activity, then Utility shall be responsible for all actual documented costs and expenses incurred by METRO (including, without limitation, costs of delay and other costs incurred by METRO or

paid by METRO to its Contractors) and arising out of such delay, unless such delay was not caused by Utility. Utility shall pay to METRO any amount it agrees is due pursuant to this Section 11.4.1 within 90 days after receipt of demand therefore, or, at METRO's election, METRO shall have the right to deduct any amount due from Utility to METRO pursuant to this Section 11.4.1 from the payment (or payments, if necessary) next due to Utility under the applicable Work Order. If Utility disputes the amount METRO contends is due or disputes that any amount is due, the dispute shall be resolved in accordance with Article 13. Prior to resorting to Article 13 for resolution of the dispute, the Parties shall meet and confer in a joint working group consisting of appropriate members selected by each Party to attempt to resolve the dispute.

11.4.2. If METRO or its Contractor fails to complete any work hereunder by the applicable deadlines established in this Agreement or in the respective Work Orders, then any affected deadlines for Utility's Construction or other activities under this Agreement or any Work Order shall be revised accordingly.

11.5 Procedures for Utility Billings to METRO

11.5.1. The Parties agree that the following procedures will be observed for submission of monthly billings by Utility to METRO on a progress basis for work performed by Utility under a specific Work Order. Utility shall maintain separate accounting records for each Work Order authorized by METRO.

- a) Utility shall submit to METRO, within thirty (30) days after the end of each month, a Project Labor Report identifying by task both Utility staff (and applicable consultant) hours charged for administrative, design, inspection and management services and Utility direct field labor.
- b) Following the commencement of a specific Rearrangement or other work under a given Work Order, Utility's billings (in an electronic format where possible) shall be submitted to the METRO Representative within 60 days of the monthly period when the work was performed. This billing shall specify all Costs incurred for that billing period including copies of invoices and other Cost data. Signed individual

labor time sheets including clear identification of METRO's Work Order number and Project title shall be maintained for audit on file in Utility's Accounting Center. Utility shall provide a full description of any labor charges during the billing period that were not identified in the Project Labor Report, if requested by METRO, in order to resolve any questionable Utility charges. Each billing shall show all applicable credits, 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 and billed for, shall be submitted to METRO within one hundred twenty (120) days after completion and acceptance of the work covered by the Work Order.

11.5.2. Utility agrees to retain, or cause to be retained, for inspection and audit by METRO or other governmental auditors for the period required pursuant to Section 11.8, all records and accounts relating to the work performed by Utility under this Agreement; provided, however, that if any actions brought under the dispute resolution provisions of this Agreement have not been finally resolved by the foregoing deadline, then any records that pertain to any such actions shall be maintained until such actions have been finally resolved.

11.6 Procedures for METRO Billings to Utility

11.6.1. In those cases in which METRO performs work payable by Utility under the terms of this Agreement, METRO shall submit regular progress billings to Utility, which shall (a) specify Costs incurred for that billing period, (b) bear the METRO work order number, (c) be supported by copies of data that support the Costs incurred, (d) be addressed to the Utility Representative, and (e) be maintained by METRO for inspection and audit. Each billing shall be noted as either progress or final, and shall include a certification that the charges identified in such billing were appropriate and necessary to performance of the reference contract and have not previously been billed or paid. The progress billing shall indicate actual work performed during the billing period, the direct and indirect Costs thereof, Utility's share of such Costs, and any amount thereof being paid through the

application of credits against amounts owed by METRO to Utility. The final billing, with a notation that all work covered by a given work order has been performed and billed for, shall be submitted to Utility as soon as practicable (but no later than six months) following the completion of the work, shall recapitulate prior progress billings, and shall show inclusive dates upon which work billed therein was performed.

11.6.2. METRO agrees to retain, or cause to be retained, for inspection and audit by Utility or other governmental auditors for the period required pursuant to Section 11.8, all records and accounts relating to all work performed by METRO for Utility under this Agreement; provided, however, that if any actions brought under the dispute resolution provisions of this Agreement have not been finally resolved by the foregoing deadline, then any records that pertain to any such actions shall be maintained until such actions have been finally resolved.

11.7 Payment of Billings

Payment of each bill properly submitted pursuant to Section 11.5 or 11.6 shall be due within sixty (60) days of receipt thereof; provided, however, that (a) all such payments shall be conditional, subject to post-audit adjustments, (b) final payment for each Rearrangement shall be contingent upon final inspection (and acceptance, where applicable) of the work by the Party billed for such work, which inspection (and acceptance, where applicable) will not be unreasonably withheld or delayed, and (c) METRO may withhold credit amounts due METRO under the Work Order for which the bill was submitted if Utility has not posted such credits on the bill within sixty (60) days after submittal of requests for same by METRO.

11.8 Inspection and Audit

Upon reasonable notice, each Party (and its authorized representatives) shall have reasonable rights to inspect and audit during normal business hours, the other's relevant records relating to its performance hereunder (and all Costs incurred with respect thereto) for each Transit Project and related Rearrangements, from the date hereof through and until expiration of four (4) years after the later of (a) the accepted completion of all Rearrangements for such Transit Project and (b) payment of all final billings owed to such Party related to such Transit Project and related Rearrangements, or such later date as is required under other

provisions of this Agreement or by law. Each Party shall bear its own costs and expenses in connection with undertaking any inspection and audit, and in responding thereto. Examination of a document or record on one occasion shall not preclude further or reexamination of such document or record on subsequent occasions. By providing any of its records to the other Party for examination, the Party providing such records represents and warrants that such records are accurate and complete. The Parties shall mutually agree upon any financial adjustment found necessary by any audit. If the Parties are unable to agree on such adjustment, then the matter shall be resolved pursuant to Article 13. The rights granted pursuant to this Section 11.8 shall not obligate either Party to inspect or audit the other Party's records nor shall either Party be entitled to utilize or rely on the other Party's audit results, absent such other Party's consent.

Article 12

Hazardous Materials and Protected Materials

12.1 Investigation of Sites and Preparation of Environmental Impact Reports

12.1.1 As between Utility and METRO, METRO shall be responsible, at METRO expense, for the investigation of potential Hazardous Materials sites and Protected Materials sites within the area that would directly impact Construction of a Transit Project or a Rearrangement of Utility Facilities hereunder.

12.1.2 METRO shall prepare, at its sole cost and expense, all environmental impact reports/statements required by local, state or federal law for the Construction of a Transit Project or a Rearrangement of Utility Facilities hereunder.

12.2 Indemnity by Utility

Utility shall be responsible for, and shall indemnify, defend and hold harmless METRO, its respective governing boards. Officers, directors, employees, authorized agents, engineers, contractors, and subcontractors, and their respective successors and assigns, from and against any claims, liabilities, losses or actions arising out of (i) the release of Hazardous Materials, to the extent such release is directly caused by activities or omissions of Utility, its

employees, representatives, agents, shippers, contractors, or invitees, (ii) any soil contamination or Hazardous Materials existing prior to the Rearrangement work, including any such contamination or hazardous Materials discovered during Construction work performed for the relocation, and (iii) breach of Utility's representations and warranties in this Subsection 12.2.

12.3 Responsibility For Remedial or Protective Action

12.3.1 At least 7 days before Utility commences its work, METRO shall provide to Utility a copy of all environmental impact reports and soil tests prepared in connection with the Transit Project and shall disclose to Utility all information of which it is aware concerning the existence of any Hazardous Material and/or Protected Materials within any site for a Rearrangement of Utility Facilities. If the information provided reveals the existence of a Hazardous Materials and/or Protected Materials in an area in which Utility will be working and METRO is required by an Environmental Law or otherwise to take some action with respect to the Hazardous Materials such as containment, cleanup, removal, restoration or other remedial work ("Remedial Work"), Utility shall not commence its work until the required Remedial Work has been completed by METRO at its sole cost and expense. However, if the presence of Hazardous Materials that are in violation of applicable environmental laws is directly caused by the Utility or its facilities Utility will take immediate action at its sole cost and expense to complete the Remedial Work necessary under Environmental law.

12.3.2 If, after it commences work, Utility discovers the existence of a Hazardous Substance in the site on which it is working on a Rearrangement, Utility shall immediately suspend its work and notify METRO of its discovery. METRO shall immediately determine if any Remedial Work is reasonably necessary or required by any Environmental Law. If any Remedial Work is reasonably necessary or required by any Environmental Law, METRO shall immediately commence, or cause to be commenced, and thereafter diligently prosecute to completion, all such Remedial Work at its sole cost and expense. Utility shall not continue its work until METRO has completed the Remedial Work in accordance with the law(s) that required it. However, if the presence of Hazardous Materials that are in violation of applicable environmental laws is directly caused by the Utility or its facilities Utility will take immediate action at its sole cost and expense to complete the Remedial Work necessary under

Environmental law. The Party discovering Hazardous Materials and/or Protected Materials shall make any required notifications to federal, state, and/or local agency(ies) in accordance with applicable law.

12.4 Indemnity by METRO

METRO shall indemnify, defend at Utility's request with counsel selected by Utility subject to METRO's approval, and hold harmless Utility and its affiliated companies and their officers, employees, agents and contractors from any and all claims, judgments, damages, penalties, fines, costs, liabilities (including sums paid in settlements of claims) and losses, including attorneys' fees, consultant fees, and expert fees that arise during or after Utility's work on the Transit Project from or in connection with the presence or suspected presence of Hazardous Materials on a site on which Utility performed work for a Rearrangement, unless the presence of Hazardous Materials that are in violation of applicable environmental laws is directly caused by activities or omissions of Utility, its employees, representatives, agents or Contractors.

Article 13 Resolution of Disputes

13.1 Arbitration – No Work Stoppage

The provisions of this Section 13.1 apply where work hereunder is not stopped in connection with a claim or dispute between Utility and METRO. If work is stopped in connection with such a claim or dispute, the provisions of Section 13.2 shall apply instead.

13.1.1. In the event of a claim or dispute arising out of this Agreement, both Parties shall make good faith efforts to resolve the dispute through negotiation. Failing a resolution of the dispute through these good faith efforts, in the absence of good faith efforts to resolve the dispute, or in the event the Parties are unable to agree upon the terms of such further agreements as are herein required to be executed by the Parties, either Party may serve upon the other a written demand for arbitration. The Parties shall, within ten (10) days after delivery of such demand, or within such extended period of time to which they agree in

writing, attempt to agree upon a mutually satisfactory arbitrator. If they are unable to agree, each Party, prior to the expiration of the ten-day or agreed extended period, shall designate one person to act as arbitrator. The two designated arbitrators shall promptly select a third arbitrator (“neutral arbitrator”).

13.1.2. If either Party fails to designate its arbitrator within the ten (10) days after the date of delivery of the demand for arbitration or 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.

13.1.3. The arbitrator’s award shall be supported by law and substantial evidence and the arbitrator shall issue written findings of fact and conclusions of law. An award that does not 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.

13.2 Arbitration – Work Stoppage

13.2.1. 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 claim or 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 California Code of Civil Procedure.

13.2.2. 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) of the California Code of Civil Procedure (regarding postponement of the hearing), 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, and if it was not necessary the other Party shall be entitled to damages arising out of such work stoppage, which damages shall also be determined by the neutral arbitrator.

13.3 Impartiality of Arbitrator

No person shall act as neutral arbitrator who in any way has any 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. Failure to disclose any such interest or relation shall be grounds for vacating the award.

13.4 Compensation of Arbitrator/Costs

If the Parties agree upon and select a mutually satisfactory arbitrator in accordance with Section 13.1.1, they shall initially equally share the expenses and fees of that arbitrator. If the Parties are unable to agree upon a mutually satisfactory arbitrator in accordance with Section 13.1.1, each Party shall initially pay the expenses and fees of the arbitrator it selects. The expenses and fees of the neutral arbitrator shall be paid in accordance with the provisions of Section 1284.2 of the California Code of Civil Procedure. However, the prevailing Party in such proceeding shall be entitled to recover, in addition to reasonable attorneys' fees and all other costs, its cost of the arbitrators as an item of recoverable costs. If either Party refuses to pay its share of the costs of the proceeding, at the time(s) required, the other Party may do so, in which event that Party will be entitled to recover (or offset) the amount advanced, with interest at the maximum rate permitted by law, even if that Party is not the prevailing Party. The arbitrators shall include such costs in the award.

13.5 Cooperation

The Parties shall diligently cooperate with one another and the arbitrators as applicable, and shall perform such acts as may be necessary to obtain expeditious resolution of a dispute. If either Party refuses to cooperate diligently, and the other Party, after first giving notice of its intent to rely on the provisions of this Section 13.5, incurs additional expenses or attorneys' fees solely as a result of such failure to cooperate diligently, then the arbitrators may award such additional expenses and attorneys' fees to the Party giving such notice, even if such Party is not the prevailing Party in the action.

13.6 Continuing Performance

Notwithstanding any Dispute, the Parties agree that they will continue their respective performances required hereunder, including paying undisputed billings, and such continuation of efforts and payment of billings (whether or not disputed) shall not be construed as a waiver of any legal right or power (a) of any Party under this Agreement or any other agreement or Work Orders executed pursuant hereto, or (b) otherwise available pursuant to applicable law. The Parties acknowledge and agree that delays in Rearrangements may impact the public convenience, safety and welfare, and that monetary damages could be inadequate to compensate for delays in the construction of a Transit Project. Consequently, the Parties shall be entitled to specific performance in the event of any breach of this Agreement that unreasonably imminently threatens to delay Transit Project construction.

13.7 No Waiver of Damages

Notwithstanding a Party's seeking or securing injunctive relief, it shall be entitled to all consequential damages otherwise available, including but not limited to those resulting from delays in performance under this Agreement.

13.8 Implementation

Each Party will take any action required of it in order to implement (a) an agreed-upon resolution between the Parties, or (b) an arbitration award issued pursuant to this Article 13.

Article 14 Federal and Other Requirements

14.1 Inspection and Audit

This Agreement, as to certain Transit Projects, may be subject to a financial assistance agreement with the U.S. Department of Transportation, Federal Transit Administration, and as such is subject to the following terms and conditions as to such Transit Projects only:

Utility agrees to comply with all financial record keeping, reporting and such other requirements that are imposed by law as a condition to or requirement of funding obtained by METRO from third parties (provided that METRO gives reasonable notice of such

requirements to Utility). Utility shall permit the authorized representatives of METRO, the U.S. Department of Transportation, the Comptroller General of the United States, and any other government agency providing funding or oversight on a Transit Project, to inspect and audit (and if required by law to copy) during normal business hours and upon reasonable notice, all relevant records maintained by Utility relating to performance by Utility, its contractors and subcontractors (as appropriate) under any Work Order issued to Utility for such Transit Project or Rearrangements of Utility Facilities related thereto, from the date of this Agreement through and until expiration of three years after the later of (a) the accepted completion of all Rearrangements for such Transit Project and payment of all final billings owed to Utility related to such Transit Project and related Rearrangements, or (b) such later date as is required by the rules and regulations of any such government agency (provided that METRO gives reasonable notice of such later date to Utility). Each Party shall bear its own costs and expenses in connection with undertaking any audit, and in responding thereto. Examination of a document or record on one occasion shall not preclude further examination of such document or record on subsequent occasions.

14.2 Prohibited Interests

No member, officer or employee of METRO, or of a local public body, during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. To METRO's knowledge, no board member, officer or employee of METRO has any interest, whether contractual, noncontractual, financial or otherwise in this transaction, or in the business of Utility.

14.3 Equal Employment Opportunity

In connection with the performance of this Agreement, Utility and METRO shall not discriminate against any employee or applicant for employment because of age, race, religion, color, sex, national origin or disability. The Utility and METRO shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their age, race, religion, color, sex or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or

transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

14.4 Disadvantaged Business Enterprise

In connection with the performance of this Agreement, Utility will cooperate with METRO in meeting all applicable federal regulations with regard to the maximum utilization of disadvantaged business enterprises, and both Parties will use their best efforts to ensure that disadvantaged business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this Agreement.

14.5 Prior Approval

This Agreement and all amendments thereto are subject to U.S. Department of Transportation, Federal Transit Administration review and approval.

14.6 Non-Discrimination

Without limiting any other provision of this Article 14, Utility and METRO agree to comply, and to cause all of their contractors to comply, with all applicable state and federal non-discrimination laws, rules and regulations.

Article 15 Miscellaneous Provisions

15.1 Approvals, Further Documents and Actions

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

(a) must be in writing to be effective (except as otherwise specifically allowed by this Agreement); and

(b) shall not be unreasonably withheld, conditioned or delayed; and if Approval is withheld, such withholding shall be in writing and shall state with specificity the

reasons for withholding such Approval, and every effort shall be made to identify with as much detail as possible what changes are required for Approval.

15.1.2 The Parties agree to execute such further documents, agreements, instruments, and notices, and to take such further actions, as may be necessary or appropriate to effectuate the transactions contemplated by this Agreement

15.2 Notices

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

To Utility:

AT&T

Attn: Group Manager - Network Services

One AT&T Way

Room 3D171D

Bedminister, NJ 07921

With Copy to:

TCG Los Angeles, Inc.

Attn: OSP Construction

700 S Flower St, Ste 340

Los Angeles, CA 90017

To METRO:

Chief Executive Officer

Los Angeles County Metropolitan Transportation Authority

One Gateway Plaza

Los Angeles, California 90012

Any notice or demand required shall be given (a) personally, (b) by certified or registered mail, postage prepaid, return receipt requested, (c) by confirmed fax, or (d) by reliable messenger or overnight courier to the address of the respective Parties set forth above. Any notice served personally shall be deemed delivered upon receipt, served by facsimile transmission shall be deemed delivered on the date it was faxed as shown on the confirmation, and served by certified or registered mail or by reliable messenger or overnight courier shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service or such courier. Utility or METRO may from time to time designate any other address or addressee or additional addressees for this purpose by written notice given to the other Party in accordance with this Section 15.2.1.

15.2.2. 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 the METRO Representative and by the Utility Representative.

15.3 Assignment; Binding Effect

Neither Party shall assign its interest in this Agreement without prior consent of the other Party. Any permitted assignment shall bind and inure to the benefit of the respective successors and permitted assigns of the Parties.

15.4 Waiver

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

15.5 Entire Agreement; Modification

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 either of the Parties hereto.

15.6 Time

15.6.1. In accomplishing all work and performing all other acts required under this Agreement, time is of the essence.

15.6.2 All references to “days” herein shall be deemed to refer to calendar days, unless otherwise specified.

15.7 Legal Rights

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

15.8 Gender and Tense

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

15.9 Headings

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

15.10 Incorporation of Exhibits and Addenda

Every Exhibit and Addendum to which reference is made in this Agreement is hereby incorporated in this Agreement by this reference.

15.11 Counterpart Originals

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument. A signature received via facsimile shall be as legally binding for all purposes as an original signature.

15.12 Force Majeure

Neither Party shall be held liable for any loss or damage due to delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence; such causes may include acts of God, acts of civil or military authority, government regulations (except those promulgated by the Party seeking the benefit of this section), embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, other major environmental disturbances or unusually severe weather conditions; provided, however, that lack of funds or funding shall not be considered to be a cause beyond a Party's control and without its fault or negligence. The foregoing events do not constitute force majeure events where they are reasonably foreseeable consequences of Construction. If any of the foregoing events occur, Utility agrees, if requested by METRO, to accelerate its efforts hereunder if reasonably feasible in order to regain lost time, so long as METRO agrees to reimburse Utility for the incremental actual costs of such efforts.

15.13 Construction

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

15.14 Survival

The representations, warranties, indemnities, waivers and dispute resolution provisions set forth in this Agreement, all payment obligations hereunder incurred prior to termination of this Agreement, and all other provisions that by their inherent nature should survive termination of this Agreement, shall survive the termination of this Agreement for any reason

whatsoever, and shall remain in effect unless and until terminated or modified in writing by mutual agreement.

15.15 Benefit

Nothing in the provisions of this Agreement is intended (a) to create duties or obligations to or rights in third parties not parties to this Agreement, except to the extent that specific provisions (such as the indemnity provisions) identify third parties and provide that they are entitled to benefits hereunder, or (b) to affect the legal liability of either Party to the Agreement by imposing any standard of care with respect to the development, design, construction, operation or maintenance of highways, Transit Projects and other public facilities that is different from the standard of care imposed by law.

15.16 Severability

If any part of this Agreement is found to be invalid or unenforceable by a ruling or decision reached in accordance with Article 13, or otherwise by a court having proper jurisdiction, such finding shall not invalidate the remaining portions hereof, but such provisions shall remain in full force and effect to the fullest extent permitted by law; provided, however, that the Parties shall immediately renegotiate, reasonably and in good faith, the terms or provisions found to be invalid, as well as any other terms and provisions as necessary to achieve as nearly as possible the Parties' original contractual intent.

15.17 Governing Law

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

15.18 Limitation of Liability

Any provisions of this Agreement to the contrary notwithstanding, neither Party shall be liable to the other for any errors or omissions or Design or Construction defects, whether patent or latent, or for any loss or injury occasioned thereby, with respect to any work performed by one Party for the other under this Agreement unless written notice of the defect, loss, or injury is given no later than two (2) years after completion of the work or completion of the Project, whichever shall last occur. After that time, any repair, reconstruction,

compensation or cure shall be the responsibility of the Party for which the work was performed.

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

“UTILITY”

TCG LOS ANGELES, INC., A
DELAWARE CORPORATION

By: _____
Name:
Title:

APPROVED AS TO FORM:

AT&T SERVICES, INC. LEGAL DEPT..

By: _____
Randi Maurer, Attorney for TCG Los
Angeles, Inc.

“METRO”

LOS ANGELES COUNTY
METROPOLITAN
TRANSPORTATION AUTHORITY

By: _____
ROGER SNOBLE
Chief Executive Officer

APPROVED AS TO FORM:

Office of County Counsel

By: _____
Deputy