



**Metro**

Metropolitan Transportation Authority

One Gateway Plaza  
Los Angeles, CA 90012-2952

213.922.2000 Tel  
metro.net

**34**

CONSTRUCTION COMMITTEE  
APRIL 21, 2005

PROJECT: METRO GOLD LINE EASTSIDE EXTENSION LIGHT RAIL  
TRANSIT, METRO ORANGE LINE, EXPOSITION LIGHT RAIL  
TRANSIT AND FUTURE BUS AND RAIL TRANSIT PROJECTS

CONTRACT: THE GAS COMPANY

ACTION: APPROVE UTILITY COOPERATIVE AGREEMENT AMENDMENT  
WITH THE GAS COMPANY

RECOMMENDATION

Authorize the Chief Executive Officer to execute Amendment #2 to the 1984 Utility Cooperative Agreement between The Gas Company and the Los Angeles County Metropolitan Transportation Authority (LACMTA) to define the responsibilities of each party for design and construction of The Gas Company and/or LACMTA facilities.

BACKGROUND

This Utility Cooperative Agreement Amendment is needed to ensure overall effective development of The Gas Company designs, design reviews, and rearrangements for the Metro Gold Line Eastside Extension Light Rail Transit project, Metro Orange Line (San Fernando Valley Bus Rapid Transit) project, the Exposition Light Rail Transit project and future Bus and Rail Transit projects. 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 The Gas Company.

FINANCIAL IMPACT

Funding for this scope of work is included in each major capital project's estimated total project cost. The annual work plans associated with this Utility Cooperative Agreement will be included in each fiscal year project budget. The LACMTA FY05 budget included costs for The Gas Company relocations necessitated by the Eastside Light Rail Transit Project and the SFV Orange Line as well as reviews for the EXPO Light Rail Transit project.

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.

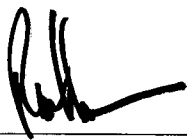
### ALTERNATIVES CONSIDERED

With respect to the overall Utility Cooperative Agreement, The Gas Company and LACMTA could develop and execute completely a new cooperative agreement 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

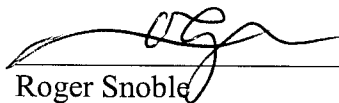
1. 1984 Utility Cooperative Agreement
2. Amendment No. 1
3. Amendment No. 2

Prepared by: Mark Perez, Director of Program Management  
John C. Higgins, Third Party Administration Manager



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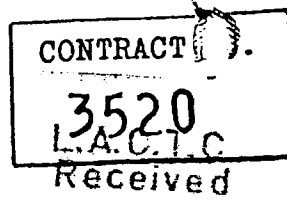
Richard Thorpe  
Chief Capital Management Officer  
Construction Project Management



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Roger Snoble  
Chief Executive Officer

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METRO RAIL PROJECT

UTILITY COOPERATIVE AGREEMENT

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SOUTHERN CALIFORNIA GAS COMPANY

AND

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT



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UTILITY COOPERATIVE AGREEMENT  
FOR THE  
SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT  
METRO RAIL PROJECT

This Agreement is between the Southern California Rapid Transit District, herein referred to as District, and the Southern California Gas Company herein referred to as Utility.

W I T N E S S E T H:

WHEREAS, District is established pursuant to Part 3 of Division 10 of California Public Utilities Code commencing with Section 30000 and will construct and operate the Southern California Rapid Transit District's Metro Rail Project in the City and County of Los Angeles; and

WHEREAS, from time to time the construction, reconstruction or improvement of District's Rapid Transit facilities will require the rearrangement of portions of Utility's facilities and the parties desire to cooperate to the end that such rearrangements be held to a minimum consistent with District's requirements and that when rearrangements are required, they be effected with the greatest expedition and minimum interference with the operations of the parties;

NOW, therefore, in view of their mutual covenants, herein contained, the parties agree as follows:



ARTICLE 1  
GENERAL

1.1 Scope of Agreement - This Agreement specifies the procedures which District and Utility will follow in identifying, planning, designing and effecting Rearrangements of Utility's Facilities in order for District to construct or operate its Project and the manner in which the Utility will be reimbursed for its costs of such activities. Both District and Utility agree that each will cooperate and coordinate with the other in all activities covered by this Agreement and any supplemental Agreements hereto.

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

(a) Abandonment is defined as the permanent termination of service in or on an existing Facility as authorized by the Utility.

(b) Betterment is defined as any upgrading or improvement of a Conflicting Facility by a Replacement Facility in terms of service capacity. The service capacity for a gas line shall be its nominal diameter.

(c) Conflicting Facility - is defined as that existing Facility that is so situated as to require Rearrangement because of interference with the Project.

(d) Design is defined as that engineering and architectural work which results in the production of maps, plans, drawings, and specification which are necessary to the elimination of conflicts and effectuation and construction of Rearrangements, Replacement Facilities, and the Project, under the terms of this Agreement.

(e) District is defined as the District, its employees, agents, contractors and subcontractors.

(f) District Representative is defined as the General Manager, Southern California Rapid Transit District, or his authorized representative who has the power to conduct reviews and make approvals as required by this Agreement.

(g) Facility is defined as any or all property, real or personal for the provision of gas service to the public by the Utility, including but not limited to pipes, mains, conduits, meters and any equipment, apparatus, or structure appurtenant thereto and associated therewith.

(h) Metro Rail Project (also referred to herein as Project) is defined as that rail rapid transit system which the District either presently or at some time in the future proposes to construct for the public transportation of passengers.

(i) Rearrangement is defined as the removal, replacement, alteration, reconstruction, or relocation of a Conflicting Facility or portion thereof for the purpose of construction and operating the Project or portion thereof, including but not limited to: Replacement of any Conflicting Facility or portion thereof with a Replacement Facility, permanent or temporary reconstruction, relocation or support of a Conflicting Facility or portion thereof.

(j) Replacement Facility is defined as that Facility which may be constructed or provided under the terms of this Agreement as a consequence of the Rearrangement of a Conflicting Facility or portion thereof and which meets the Utility's design standards on projects financed solely by the Utility.

(k) Substitute Facility is defined as a Facility that is equal to the corresponding Conflicting Facility which is to be Rearranged, in terms of service capacity and which meets the Utility's current design standards on projects financed solely by the Utility. Service capacity for a gas main will be determined by the nominal diameter of the pipe.

(l) Temporary Facility is defined as a Facility constructed for the purpose of ensuring continued service during a Rearrangement.

(m) Utility is defined as the Utility, its employees, agents, contractors and subcontractors.

(n) Utility Representative is defined as that person or persons, designated by Utility or his authorized representative under the terms of this Agreement, who has the power to conduct reviews and makes approvals as required by this Agreement.

(o) Work Order is defined as that document which the District shall issue to the Utility to authorize Utility's performance of Design and Rearrangement work and the Utility's supply of materials, under the terms and conditions of this Agreement.

ARTICLE 2  
DESIGN

2.1 Design Coordination - District Representative and the Utility Representative shall establish general guidelines, working relationships, administrative policies, standards of design and construction, approval procedures with respect to design review and coordination of construction and Rearrangement of Utility's Facilities pursuant to this Agreement in order to permit the construction and operation of the Project.

2.2 Design Performed by Utility - The Utility shall perform the Design for the Rearrangement of Facilities to eliminate conflicts in accordance with the following procedures:

(a) The District shall issue a Work Order to the Utility, upon receipt of which the Utility shall promptly proceed to perform the Design of said Rearrangement.

(b) The Utility shall use its best efforts to schedule its Design to coincide with the District's Design schedule and shall coordinate throughout the Design with the District as is necessary to develop plans satisfactory to both District and Utility for each Rearrangement.

(c) During Design, the Utility shall provide to the District a list of those Betterments to Replacement Facilities which Utility desires in a specific section so that the Design of said Betterments may be included in the plans.

(d) The Utility shall submit a set of the completed Design plans to the District for review. Upon the District's approval of Design plans for a Rearrange-

ment, the Utility shall prepare and submit to the District the Utility's estimate of the cost less applicable credits in accordance with Article 9 herein, for effecting such Rearrangements. The Utility shall also submit to the District its estimate of the time needed to perform the required Rearrangment work.

2.3 Design Performed by District - When requested by the Utility the District shall perform the Design of a specific Rearrangement, the District shall issue a Work Order to the Utility, upon receipt of which Utility shall perform the activities referred to in the following subparagraphs:

(a) District will coordinate with the Utility during the initial phase of Design and will present to the Utility a schedule for the Design of Rearrangements.

(b) Coordination of Design and the development of the Design plans and specifications may be accomplished through the District Representative who shall confer from time to time with the Utility Representative. As soon as coordination allows, the Utility shall inform the District what Betterments, if any, to respective Replacement Facilities the Utility will desire.

(c) During the progress of Design, at the stages of completion, mutually agreed upon, the District shall submit to the Utility, plans and specifications for the Rearrangement of the Utility's Conflicting Facilities. Within a reasonable time after receipt thereof, the Utility shall review the plans and specifications and transmit its comments to the District. The District shall consider the Utility's comments and shall revise the plans and specifications accordingly.

2.4 Design Requirements and Criteria - Rearrangement of Utility's Conflicting Facilities shall conform to standard practices contained in California Public Utilities Commission's General Order No. 112-D or subsequent revision.

Any increase in requirements in these standards as may be authorized by the Utility, from time to time, to be incorporated into the Design of Rearrangements shall be considered a Betterment. The District shall receive a credit for this Betterment in accordance with Section 9.2 of this Agreement.

2.5 Design Standards - Changes in Approved Plans - During development of plans by District or Utility, the standards of engineering and materials to be employed in the Rearrangement shall not exceed the standards utilized in the performance of work on projects financed entirely by the Utility, unless so agreed in writing by the parties. The District or the Utility may make changes to plans prior to or during the progress of the work only with written concurrence of the other party.

2.6 Construction Staging Plans - During Design of the Project, the District in cooperation with the City of Los Angeles, shall develop construction staging plans. Construction staging plans shall provide for the the handling of vehicular and pedestrian traffic on streets disrupted during construction of the Project and shall show construction phases, road closures, detours, signs and other pertinent information. To assist the District in coordination of the development of construction staging plans, Utility shall furnish in writing during Design to the District the following information:

- (a) Facilities in which service must be maintained;
- (b) Facilities in which service may be abandoned;
- (c) Proposed sequence of construction of Facility Rearrangements;

(d) Estimates of duration of street closures or restrictions necessary to construct Facility Rearrangements.

(e) Rights-of-Way which must be acquired for Replacement Facilities and Rearrangements.

2.7 Coordination of Rearrangements - During the progress of Design, the District and the Utility shall decide whether the necessary Rearrangements of Conflicting Facilities on any section can best be performed by the Utility prior to construction of the Project; by the Utility concurrently with construction of the Project; or by the District; or through a combination of said alternatives. The Utility shall perform the Rearrangements unless there are specific instructions between the District and the Utility to the contrary.

2.8 Coordination of New Utility Facilities - If the Utility plans to construct new facilities that cross or otherwise would occupy proposed rights-of-way of the District, the Utility should make arrangements to install such new facilities in a manner that will meet the requirements of the Project.

2.9 Reproducible Contract Documents - District and Utility agree to provide the other with suitable reproducible copies of those final contract plans and specifications they have prepared or caused to be prepared to govern the performance of a given Rearrangement by a contractor of either party so that each party may compile a complete set of plans and specifications.

### ARTICLE 3 PERMITS

3.1 Permits - After approval of the Design of Rearrangements as set forth in Article 2 herein, the party performing the Design shall obtain all necessary licenses and permits required by municipal,

county and state authorities for the Rearrangement of Utility's facilities within, under, over or above any public street, highway, bridge or other public way.

ARTICLE 4  
ACQUISITION OF REPLACEMENT RIGHTS-OF-WAY

4.1 Replacement Rights-of-Ways - General - Replacement rights-of-way for the relocation of Utility's Conflicting Facilities shall be determined during Design and shall be acquired by the District following approval of location and type by Utility prior to acquisition. The District will acquire the required rights-of-way to allow for the Rearrangements in an orderly manner so as not to impair District's schedule. The location and type of said replacement rights-of-way shall be mutually agreed upon in accordance with this Agreement, however, it is mutually understood and agreed that, if reasonably possible, Rearrangements shall be located in public ways where the Facilities being replaced are in public ways and that Rearrangements shall be located in private rights-of-way where facilities being replaced are located in private rights-of-way. Utility shall convey to District, if permitted under the law, at no cost to District, all abandoned rights, title and interest, which it possesses, in the existing Utility real property interest (except franchise rights) which has been taken out of service by the Rearrangement and which is required for the construction of the Project. All rights-of-way for the relocation of Utility's Conflicting Facilities shall be provided by the District at no cost to the Utility.

4.2 Compensation for Property Acquired - In those instances where the Utility shall be relocated from a private right-of-way to a public right-of-way (not including a Project right-of-way); the District shall compensate the Utility at fair market value for property and property rights acquired for the Project and that are owned by the Utility.



1.3 Utility Easements Within Project Right-of-Way - If a Rearrangement shall be made so that the Replacement Facility will be located within the Project's right-of-way, District shall grant to Utility a replacement utility easement to accommodate such Replacement Facility. Such replacement utility easement shall be granted at no cost to Utility. To the extent possible, the replacement utility easement shall contain the same provisions, terms, restrictions, limitations and conditions as are contained in Utility's existing easement, including rights of reimbursement for relocation. It is hereby understood that in accepting replacement utility easement and releasing existing rights, Utility acquires the right to install, operate, maintain and remove its facilities on said replacement utility easement, provided that Utility shall provide reasonable notice to District before any such installation, maintenance, or removal. The Utility will not be subject to any fees, including inspection charges during or after installation of the Utility's facilities in the Project Right-of-Way.

ARTICLE 5  
EFFECTING REARRANGEMENTS

5.1 Utility Performance of Rearrangement - The Utility shall perform the Rearrangement of Conflicting Facilities to eliminate conflicts in accordance with the following procedures:

(a) Upon receiving said Work Order, the Utility shall make its best efforts to commence and thereafter diligently prosecute such Rearrangement work to completion in accordance with the Work Order and the Design plans and specifications.

(b) The Utility shall not make changes in the Design Plans without the District's approval.

(c) In the event that Temporary Facilities are necessary to effect a Rearrangement, the Utility may

use lands owned or controlled by the District for the purpose of erecting such Temporary Facilities thereon, provided that the District shall have approved in writing the location and duration of such Temporary Facilities. Upon completion of Replacement Facilities in their permanent locations, the Utility shall remove all such Temporary Facilities and restore the area as near as practical to its original condition.

(d) The Utility shall notify the District at least 5 working days prior to commencing the work of each Rearrangement so that the District may make arrangements for such inspection and record keeping as the District may desire.

(e) For the convenience of the parties hereto, the Utility shall provide to the District an estimate of the total cost of the work authorized by the Work Order. The estimated cost is intended to reflect the Utility's general past experience of costs of similar work under favorable conditions. Because of unforeseen contingencies and other factors, the actual costs may be higher or lower than the estimate. Therefore, the estimate is not to be considered a warranty by the Utility of the actual cost. If at any time, the Utility has reason to believe that the total cost to the District under said Work Order will be greater or substantially less than the previously estimated cost thereof, the Utility shall notify the District in writing to that effect, giving the revised cost estimate for the work authorized in said Work Order.

5.2 District Performance of Rearrangement - Upon mutual agreement between the District and the Utility, the District may perform Rearrangement of Conflicting Facilities. In such event, Utility will provide inspection services to ensure that all work by the District's

contractor is in conformance to the Design plans and specifications agreed to by the District and the Utility during Design. If changes in Design plans of a Rearrangement are necessary, such changes shall be approved by the Utility.

5.3 District Performance of Rearrangement - Utility Supply of Materials - If the District so requests, the Utility shall supply any necessary materials to perform a specific Rearrangement. The District shall issue a Work Order for Utility supply of materials and shall reimburse the Utility therefor in accordance with this Agreement. The Utility agrees not to divert materials so ordered from Project. The District shall inspect materials furnished by the Utility and after District's acceptance thereof, the District shall be responsible for subsequent loss or damage. Materials furnished by Utility and subsequently found to be defective shall be replaced by the Utility at the Utility's expense.

5.4 Maintenance - In any case in which a utility failure occurs or in which an interruption in utility service occurs, the Utility shall have immediate access to District's construction area for the purpose of performing appropriate restoration work. The Utility will notify the District as soon thereafter as reasonably practicable. In all cases of interruption in Utility's service, the District agrees that it will, upon notice of such failure, make whatever accommodations are necessary to permit the Utility to undertake restoration work. The District will issue Work Orders to compensate the Utility for restoration required as a result of the District's construction of the Project. The Utility shall schedule routine maintenance of Facilities so as not to interfere with Project construction.

5.5 "As-Built" Drawings - The District and Utility shall maintain a set of "as-built" drawings of Rearrangements performed by District and Utility which shall be available for review by the District and the Utility during the progress of construction. Upon completion of the Rearrangement work, the party that performed the work shall furnish

the other party with polyester film reproductions or equivalent reproducible plans showing all Replacement Facilities installed.

ARTICLE 6  
INSPECTION

6.1 Inspection During Construction - The Utility shall have the right to inspect the Project in those areas in which Utility Facilities exist during all construction activities.

6.2 Final Inspection - As soon as the work of any specific Rearrangement or Replacement Facility has been completed, the party who performed such work shall notify the other party in writing that said Rearrangement or Replacement Facility is ready for final inspection. The final inspection of any Rearrangement or Replacement Facility under this Agreement shall be attended by representatives of District and Utility. At such inspections, each party shall inform the other of any deficiencies or discrepancies in any work discovered in the course of such final inspection. The party who performed or who directed the performance of the work being inspected shall direct or perform any necessary corrective work. Upon acceptance of the Rearrangement of Replacement Facilities, Utility shall assume sole responsibility for routine maintenance of said Rearrangement or Replacement Facility.

6.3 Inspection During Operations - Shortly before any section of the Project is energized, the Utility shall conduct an electrical baseline survey of all its Facilities in the vicinity of the section. The Utility shall repeat the survey after the section of the Project is in operation and variations between the two sets of data shall be noted. Copies of both surveys shall be provided to the District for its records. Should the operation survey show that the D.C. stray current from the Project is causing adverse interference to the Utility's Facilities, then the Utility will so advise the District. The District will take whatever steps are practical to eliminate the

source of stray current. The District will pay the cost of the baseline and one operations survey, for each section of the Project.

ARTICLE 7  
DISPOSITION OF SALVAGED MATERIALS

7.1 Salvage by District - The District shall salvage certain materials belonging to the Utility during the course of Rearrangement. If appropriate, salvaged materials shall be stored by the District until such time as the progress of work allows the reinstallation of such materials. Materials which are not to be reused and which the Utility desires to retain shall be returned by the District to the appropriate Utility storage facility. If the materials removed by District are not reusable and are not desired by the Utility, such materials shall become the property of the District, unless Design plan provide otherwise.

7.2 Salvage by Utility - The Utility shall salvage materials which are removed by the Utility and which the Utility determines are suitable for reuse.

7.3 Salvage Credits - The District shall receive a credit for salvage for such materials described herein retained by the Utility as provided in Article 9 of this Agreement.

ARTICLE 8  
REIMBURSEMENTS

8.1 Reimbursement to Utility- The issuance of a Work Order shall obligate the DISTRICT to reimburse Utility for any activity or work performed or materials acquired for each Rearrangement, in accordance with the terms of this Agreement; and such reimbursement shall be for the actual direct costs and indirect costs incurred by Utility for such activities or work performed or materials acquired under the terms of this Agreement, less credits to the DISTRICT, as provided in Article 9 of this Agreement. Direct costs shall include allowable direct labor and material costs spent specifically for work performed under this Agreement. Indirect costs shall be payable as a percentage

of direct salary costs at such percentage rate to be determined through an annual audit of the Utility's Cost Accounting System. See Exhibit 1)

8.2 Reimbursement to District - In those cases in which Rearrangement or other work under this Agreement is performed by the District, the Utility shall reimburse the District for credits, as defined in Article 9 of this Agreement.

8.3 Reimbursement for Abandoned Facility - In those cases in which the District and the Utility agree that the construction of the District's Project will eliminate the service need for a specific Conflicting Facility, such Conflicting Facility may be abandoned by the Utility, and the District shall not be required to replace or compensate the Utility for such Conflicting Facility, except that the District shall compensate Utility for work necessary to sever or remove such Conflicting Facility.

#### ARTICLE 9 CREDITS

9.1 Credits to District - The District shall receive a credit from the Utility against work performed under this Agreement for Betterment, salvage, and accumulated depreciation. The amount of credits shall be determined by mutual agreement of the parties based upon applicable Utility books, records and documents. To assist in the determination of credits due the District under this Agreement, the District and the Utility shall conduct an inspection survey of each Conflicting Facility during the Design stage. Pursuant to a Work Order the Utility shall provide the District with drawings, plans, or other records necessary to conduct such survey. The survey shall describe the physical attributes of the Conflicting Facility such as a number, length, diameter dimension, type of material, number and type of service connections. The survey shall further describe for each Conflicting Facility, the date of construction or installation; the expected service life as derived from Utility's records; the present

condition; and whether materials contained therein are reusable or salvageable.

9.2 Credit for Betterments - Credit for Betterments shall be allowed where there is an increase in service capacity of a Replacement Facility as compared to the Conflicting Facility or corresponding Substitute Facility as defined in this Agreement. The amount of a Betterment credit shall be the estimated cost of the Replacement Facility, minus the estimated cost of a Substitute Facility; and said estimated costs shall be based on the unit price schedules agreed to by the parties. The amount of Betterment credit, if any, shall be determined by the parties during the Design.

9.3 Credit for Salvage - Credit for salvage shall be allowed for items of materials and equipment recovered from the Utility's existing Facilities in the performance of work specified herein. The amount of a salvage credit, if any, shall be computed as follows:

(a) Credit for Reuseable Materials - If the removed or salvaged materials are reuseable, the credit shall equal the market value of the materials.

(b) Credit for Junk Value - If the removed materials are not useable, the credit shall equal the market value of such junk materials.

(c) Credit of Salvage Program - The Utility shall receive a deduction from a given salvage credit for the reasonable costs of removing and transporting salvageable materials.

(d) District Disposition of Junk Materials - No credit shall be due the District in the case of junk materials which are removed and disposed of by the District.

9.4 Credit for Accumulated Depreciation - The District shall receive a credit for the accumulated depreciation associated with the expired service life of Utility's Conflicting Facilities being replaced if the Replacement Facility will have a greater expected period of useful service than the period which the Existing Facility would have, had it remained in service, and the Rearrangement not been made. The credit to be given for the accumulated depreciation will be determined using the cost of the Conflicting Facility being replaced and California Public Utility Commission's adopted service life and procedures associated with the related class of facility. In no instance will the credit for accumulated depreciation exceed the original cost of the Facility being replaced. The amount of credit shall be agreed upon by the Utility and District in the appropriate Work Order.

#### ARTICLE 10 INDEMNITY

10.1 Indemnification by District - District agrees to hold Utility and Utility's agents, servants and employees, harmless from any and all losses, claims, damages, suits or actions of any character for damages to property and for injury or death to persons except those arising out of Utility's sole negligence.

10.2 Indemnification by Utility - Utility agrees to hold District and District's agents, servants,, and employees, harmless from any and all losses, claims, damages, suits or action of any character for damages to property and for injury or death to persons arising out of the Utility's sole negligence.

#### ARTICLE 11 WORK ORDERS AND BILLINGS

11.1 Work Performed by Utility - All work performed by the Utility under the terms of this Agreement shall be initiated by work Orders as provided herein.



11.2 Work Orders - The District shall issue Work Orders to the Utility to authorize the performance of all work or purchase of all materials and equipment required under the terms and conditions of this Agreement. The Utility or Utility's contractor or subcontractor may perform any work so authorized. Each Work Order issued under the terms of this Agreement shall specify the work to be performed and any materials or equipment to be acquired, the estimated cost for the work authorized and the estimated starting and finishing dates for work so authorized.

• The District shall issue a Work Order to the Utility for Project coordination and administrative activities and other work activities required as a result of the Project which are not included in a specific Work Order authorization.

11.3 Work Order Changes - Any proposed changes in a Work Order issued under this Agreement shall be submitted in writing to the District for its prior approval, and the District agrees to act promptly on any such request; provided, however, that any proposed change occasioned by field construction difficulties may be submitted to the District orally, by telephone, and later confirmed in writing by Utility; and in such event, the District agrees to act on such oral request immediately. The District may terminate any Work Order at any time, but the District shall be liable to the Utility for reimbursement in accordance with this Agreement of costs, if any, already incurred, and costs, if any, necessary to restore the Utility's Facilities in the process of Rearrangement to a permanent condition for the provision of service to the public. The Utility agrees to promptly request written revisions to Work Order estimate amounts in the event of cost overruns.

11.4 Procedures for Utility Billings to District - The parties agree that the following procedures shall be followed concerning the submission of billings by Utility to District, monthly on a progress basis for work performed by the Utility under a specific Work Order. Utility billings shall begin as soon as practicable following the

commencement of a specific Rearrangement or other work under a given Work Order. Billings shall be in quadruplicate, shall specify costs incurred for that billing, shall bear the District's Work Order number, and shall be addressed to the District Representative. Data to support costs incurred for each billing shall be placed on file in the Utility's Accounting Center and shall be maintained for audit. Each billing shall be noted as either progress or final. The final billing, with a notation that all work covered by a given Work Order has been performed, shall be submitted to the District as soon as practicable following the completion of said Rearrangement, shall recapitulate prior progress billings, and shall show costs incurred already paid by the District. All billings shall identify the inclusive dates upon which work billed therein was performed.

11.5 Procedures for District Billings to Utility - In those cases in which the District performs Rearrangements or other work under the terms of this Agreement, the District shall submit to the Utility regular monthly progress billings indicating actual work performed for those credits properly reimburseable to the District under this Agreement. District billings shall begin as soon as practicable, following the commencement of a specific Rearrangement or other work. Each billing shall be noted as either progress or final. The final billing, with a notation that all work covered thereby has been performed shall be submitted to the Utility as soon as practicable following the completion of said Rearrangement or other work.

11.6 Payment of Billings - The District shall pay each billing presented by the Utility under the foregoing procedures within 30 days of receipt thereof, provided, however, that such payments shall be conditional subject to post-audit adjustments and that the District may withhold credit amounts due the District if Utility has not posted such credits within 60 days after submittal of requests for same by the District.

ARTICLE 12  
RESOLUTION OF DISPUTES

12.1 Arbitration - Where No Work Stoppage - In the event of a claim or dispute arising out of this Agreement, both parties shall make good faith efforts to resolve said dispute through negotiation. Failing a resolution of the dispute through these good faith efforts, or in the absence of good faith efforts to resolve the dispute, either party may serve upon the other a written demand for arbitration. The parties within 10 days thereafter, or within such extended period as the parties agree to in writing, shall attempt to agree upon a mutually satisfactory arbitrator. If they are unable to agree, each party, prior to the expiration of said time period, shall designate one person to act as arbitrator. The two designated arbitrators shall promptly select a third arbitrator (hereinafter "neutral arbitrator").

If either party fails to designate its arbitrator within the 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 5 days after their appointment, a neutral arbitrator shall be designated pursuant to Section 1281.6 of the California Code of Civil Procedure. Section 1283.05 of the California Code of Civil Procedure is specifically made applicable to this Agreement, but only with respect to those issues not involving work stoppage. The arbitrator's award shall be supported by law and substantial evidence, and further, the arbitrator shall issue written findings of fact and conclusions of law. The making of an award failing to comply with the requirements of the immediately preceding sentence shall be deemed to be in excess of the arbitrator's powers and the court shall vacate the award if after review it determines that the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.

12.2 Arbitration - Work Stoppage - In no event shall work be stopped in the event of a claim, or dispute, except where it is absolutely necessary to first resolve the dispute in order to be able to continue

work. In the event that work is stopped, a neutral arbitrator shall be immediately designated pursuant to Section 1281.6 of the California Code of Civil Procedure.

No neutral arbitrator shall be selected who is unable to hear the dispute within five days after being selected. Notwithstanding Sections 1282.2(b) and 1286.2(e) (regarding postponement of the hearing) of the California Code of Civil Procedure, where work is stopped the neutral arbitrator may not adjourn the hearing except upon the stipulation of all parties to the arbitration. In addition to all other issues the neutral arbitrator shall also determine whether it was necessary to stop work, the other party shall be entitled to damages arising out of such work stoppage.

12.3 Impartiality of Arbitrator - No person shall act as a 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.

12.4 Compensation of Arbitrator - Each party shall 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.

### ARTICLE 13 FEDERAL REQUIREMENTS

This Agreement is subject to a financial assistance agreement with the U.S. Department of Transportation, Urban Mass Transportation Administration, and as such is subject to the following terms and conditions:

13.1 Audit and Inspection - Utility shall permit the authorized representatives of the District, the U.S. Department of Transportation and the Comptroller General of the United States to inspect and audit

all records relating to the Utility and its subcontractor's performance under the contract from date of Agreement through and until expiration of three years after completion of the Rearrangement with which Federal funds are used.

13.2 Interest of Members of Congress - No members or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

13.3 Prohibited Interests - No member, officer or employee of the District, or of a local public body, during this tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. To the District's or Utility's knowledge, no board member, officer or employee of the District has any interest, whether contractual, noncontractual, financial or otherwise in this transaction, or in the business of the Utility; and if any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such information will be made in writing to the other party, even if such interest would not be considered a conflict under Article 4 of Division 4 (commencing with Section 1090) and Title 9, Chapter 7 (commencing with Section 87100) of the Government Code of the State of California.

13.4 Equal Employment Opportunity - In connection with the execution of the Agreement, Utility shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Utility shall take affirmative action to insure that applicants are employed, and that employees are treated during their employment without regard to their 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.

13.5 Disadvantaged and Women's Business Enterprise - In connection with the performance of the Agreement, Utility will cooperate with the District in meeting their mutual commitments and goals with regard to the maximum utilization of Disadvantaged and Women's Business Enterprises (DBE/WBE), and will use its best efforts to insure that DBE/WBE's shall have the maximum practicable opportunity to compete for subcontract work under this Agreement.

A Disadvantaged Business Enterprise (DBE) or Women's Business Enterprise (WBE) means a small business concern:

(a) Which at least 51% owned by one or more socially and economically disadvantaged individuals, or women, respectively, or, in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

There is a rebuttable presumption that "disadvantaged" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) Black (a person having origins in any of the black racial groups of Africa).

(b) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

(c) Native American (a person who is American Indian, Eskimo, Aleutian, or Native Hawaiian).

(d) Asian Pacific American (a person having origins in Japan, China, Taiwan, Korea, Vietnam, Laos,

Cambodia, the Phillipines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas.

(e) Asian American (a person having origins from India, Pakistan, and Bangladesh).

Pursuant to 49CFR Part 23, Section 23.43, the following is made a part of this Agreement:

Policy. It is the policy of the Department of Transportation that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the MBE requirements of 49 CFR Part 23 apply to this agreement.

DBE/WBE Obligation. The recipient or its contractor agrees to ensure that minority business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of Department of Transportation assisted contracts.

13.6 Ownership of Reports and Documents - Originals of all documents pertaining to the work performed under this agreement shall become the property of the Utility. Copies may be made for the District's records.

13.7 Maintenance of Records - The Utility agrees to keep and maintain records showing actual time devoted and all costs incurred in the

execution of the agreement for a period of 3 years from the accepted completion of the Rearrangement.

13.8 Assignment - Neither District nor Utility shall assign its interest in this Agreement without prior consent of the other party.

13.9 Prior Approval - This Agreement, subcontracts, and all amendments thereto, are subject to U.S. Department of Transportation, Urban Mass Transportation Administration review and approval.



13.10 Severability - In the event that any of the provisions, or portions or applications thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, District and Utility shall negotiate equitable adjustment in the affected provisions of this Agreement with a view toward effecting the purpose of this Agreement and the validity and enforceability of the remaining provisions, or portions or applications therefor, shall not be affected thereby.

SOUTHERN CALIFORNIA GAS COMPANY

By: E. L. Runkel

Vice President  
Title

Date: 10/11/84

By: \_\_\_\_\_

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

SOUTHERN CALIFORNIA RAPID  
TRANSIT DISTRICT

By: [Signature]

John A. Dyer  
General Manager

Date: 11/12/84

APPROVAL RECOMMENDED:

[Signature]  
Robert J. Murray  
Assistant General Manager  
Transit System Development

APPROVED AS TO FORM:

[Signature]  
Counsel

METRO RED LINE EASTSIDE EXTENSION PROJECT  
UTILITY COOPERATIVE AGREEMENT  
AMENDMENT NO. 1

The Los Angeles County Metropolitan Transportation Authority ("AUTHORITY") and Southern California Gas Company (UTILITY) hereby agree that with respect to rearrangement made necessary by Metro Red Line Eastside Extension Project, all the terms and provisions of the Utility Cooperative Agreement dated November 12, 1984, between the parties shall apply, except that:

- A. All references to the Southern California Rapid Transit District (District) shall mean the Los Angeles County Metropolitan Transportation Authority (AUTHORITY).

In the Definition under Section 1.2 (H)

- B. The term "Project" shall be deemed to include, but not be limited to the "Metro Red Line Eastside Extension Project" which is generally defined as that rail transit system beginning at Union Station to Whittier Boulevard and Atlantic Avenue in Los Angeles, approximately 7 miles long, that follows the routes shown on Exhibit A, attached hereto, and which AUTHORITY proposes to construct for public transportation purposes.

In the Audit and Inspection under Section 13.1

- C. Audits generally will be conducted in accordance with the provisions of the Federal Acquisition Regulations (FAR) Part 52.215-2. An audit will include, but not be limited to, the right to visually examine, record (i.e., take pictures of materials or facilities), and photo copy any necessary documents, files, or download computer records, at the agency's/utility's reasonable expense, and retain the photo copied or downloaded documents/data.

The Utility shall keep and ensure that any of it's sub-contractors and/or sub-consultants keeps all detailed accounts, records, bills and receipts relating to payments received, made, expected to be received or expenses incurred, for a period of four (4) years from the date of the completion of the rearrangement.

- D. Notification shall be as follows:

METRO RED LINE EASTSIDE EXTENSION PROJECT  
UTILITY COOPERATIVE AGREEMENT  
AMENDMENT NO. 1

To AUTHORITY:

Los Angeles County Metropolitan  
Transportation Authority  
818 West Seventh Street  
Los Angeles, California 90017  
Charles W. Stark  
Deputy Executive Officer, Construction

To UTILITY:

Southern California Gas Company  
Post Office Box 3249  
Terminal Annex 9520  
Los Angeles, CA 90051-1249  
Attention: Mr. John L. Dagg  
Technical Services Manager

THE FOREGOING IS ACCEPTED AND APPROVED:

"AUTHORITY"

"UTILITY"

LOS ANGELES COUNTY METROPOLITAN  
TRANSPORTATION AUTHORITY

SOUTHERN CALIFORNIA GAS COMPANY

By: \_\_\_\_\_  
JOSEPH E. DREW  
Chief Executive Officer

By: John L. Dagg  
NAME John L. Dagg  
Title Technical Services Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DeWitt W. Clinton  
COUNTY COUNSEL

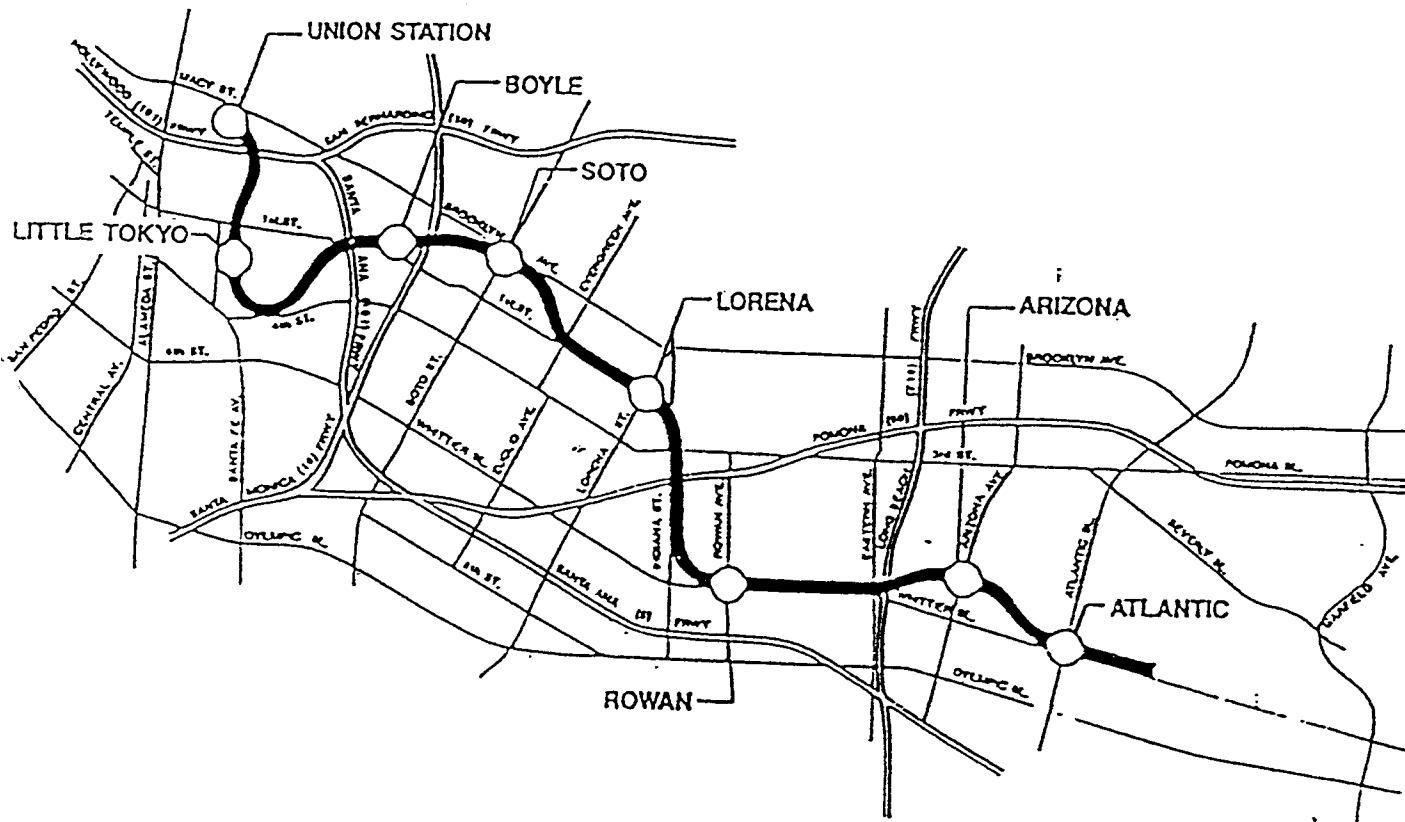
Name William A. Dorland  
Title Business Unit Counsel

By: \_\_\_\_\_  
Deputy

By: [Signature]  
Attorney for Southern  
California Gas Company

EXHIBIT A

# M METRO RED LINE - EAST SIDE EXTENSION





**AMENDMENT #2 DATED AS OF OCTOBER 4, 2004 FOR RAIL AND  
BUSWAY TRANSIT PROJECTS  
TO THE UTILITY COOPERATIVE AGREEMENT  
BETWEEN  
SOUTHERN CALIFORNIA GAS COMPANY  
AND THE  
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION  
AUTHORITY**

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**AMENDMENT #2 DATED AS OF OCTOBER 4, 2004 FOR RAIL AND BUSWAY  
TRANSIT PROJECTS (“Amendment”)**

**TO THE UTILITY COOPERATIVE AGREEMENT**

**BETWEEN**

**SOUTHERN CALIFORNIA GAS COMPANY AND**

**LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION  
AUTHORITY**

**I N T R O D U C T I O N**

THIS Amendment to the Utility Cooperative Agreement for the Southern California Rapid Transit District Metro Rail Project as amended by that certain amendment #1 for the Eastside Transit Project dated December 18, 1996 (“Original Agreement”) is made by and between the Los Angeles County Metropolitan Transportation Authority (“MTA”) (as successor in interest to the Southern California Rapid Transit District) and Southern California Gas Company, a California corporation (“Utility”), for the purposes of addressing additional and new projects, use of the design/build method of project delivery and procurement, and to extend the terms of Original Agreement with respect to the Transit Projects (as defined below). As used in this Amendment, terms identified by initial capital letters shall have the meanings set forth in Section 1.2, or as elsewhere provided in this Amendment. Terms not specifically defined in this Amendment shall have the meanings assigned to them in the Original Agreement. To the extent that there is a conflict between the Original Agreement and this Amendment, the meaning given in this Amendment shall govern. The Original Agreement as amended by this Amendment is herein after referred to as the “Agreement”.

## RECITALS

- A. MTA is a public entity created by the California State Legislature for many purposes including, but not limited to, the design, construction, and operation of rail and bus transit systems and other transportation facilities in Los Angeles County.
- B. MTA proposes to design, construct and operate facilities necessary and convenient for various rail and busway transit systems within the County of Los Angeles. MTA's proposed projects include, without limitation, the following projects:
- (a) 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 MTA from time to time).
  - (b) The Metro Orange Line Project (the "MOL Project"), which is an approximately 14 mile bus rapid transit line currently proposed to traverse portions of the City of Los Angeles between North Hollywood and Warner Center (as said proposed route may be modified by MTA from time to time).
  - (c) 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 MTA from time to time).
  - (d) The Exposition Light Rail Transit Corridor Project (the "Expo LRT Project"), which is an approximately 9 mile light rail line currently proposed to traverse the City of Los Angeles, extending southward from Downtown Los

Angeles to Exposition Park, and then westward along Exposition Boulevard to Venice Boulevard/Robertson Boulevard (as said proposed route may be modified by MTA from time to time).

- C. MTA historically has used the "Design/Bid/Build" method of project delivery for its rail transit projects. However, MTA anticipates adopting the "Design/Build" method of project delivery for the MOL Project and for the at-grade portion of the Eastside LRT Project (from Union Station to the portal at 1<sup>st</sup> and Clarence Streets and from the 1<sup>st</sup>/Lorena Station to the Pomona/Atlantic Station), and may elect to utilize Design/Build for other projects in the future. The use of Design/Build will require numerous changes in MTA's approach to those of its projects which are delivered in whole or in part on a Design/Build basis.
- D. From time to time the construction or improvement of MTA'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 MTA's requirements and that Rearrangements, when required, be effected with the greatest expedition and least interference with the operations of either of the Parties.
- E. Utility and MTA are parties to the Original Agreement for the Metro Rail Transit System dated November 21, 1984 and amendment #1 for the Eastside Transit Project dated December 18, 1996, which, among other things, establishes procedures for the Rearrangement of Utility Facilities affected by certain rail transit systems constructed or to be constructed by MTA.
- F. The Parties desire to supplement and amend the Original Agreement in order (1) to apply its terms to MTA's proposed busway transit systems as well as to all of its proposed rail transit systems; (2) to make such changes to its terms as are necessary or appropriate to accommodate Design/Build as well as Design/Bid/Build; and (3) to make certain other modifications to the Original Agreement.

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 MTA agree to supplement and amend the Original Agreement (including any Exhibits thereto) as follows:

**1. The following provision shall be added to the Agreement as a subsection to “ARTICLE 1 GENERAL” after the end of Section 1.1. “Scope of Agreement”:**

**1.1.1 Scope of Amendment**

1.1.1. This Amendment addresses the four (4) Transit Projects described in Recital B above as well as any other MTA projects, which meet the definition of “Transit Projects” set forth in Section 1.2.37 below. This Amendment 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 MTA 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 MTA, (b) any such easements or other agreements between Utility and any former owner of real property now or hereafter owned by MTA, and to which MTA 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 MTA has a statutory or other right to install Transit Project Facilities.

**2. The following provision shall be added to the Agreement as a subsection to “ARTICLE 1 GENERAL” after the end of Section 1.1.1 “Scope of Amendment” and shall be titled “1.1.2 “Duration of Agreement”:**

**1.1.2 Duration of Agreement**

The term of the Agreement (the “Term”) shall terminate on the later of (a) June 30, 2016 or (b) when either Party sends the other Party a written termination notice of at least one hundred twenty (120) days.

**3. Existing Section 1.2 of Article 1 of the Original Agreement is deleted in its entirety and replaced with the following Section 1.2:**

**1.2 Definitions**

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

1.2.1 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.

1.2.2 Betterment is any upgrading or improvement of a Conflicting Facility by a Replacement Facility in terms of service capacity. The service capacity for a gas line shall be its nominal diameter. 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 1.2.42; 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 Projects Final Environmental Impact Report or Statement.
- (d) Replacement of devices or materials no longer regularly manufactured with an equivalent or the next highest grade or size.
- (e) Replacement of or modifications to Utility’s existing customer’s facilities in order to maintain service to that customer.

Certain revisions or additions to Utility Standards may also be a Betterment, as set forth in Section 2.5.2. 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 (not caused as a consequence of the Rearrangement), and which are not otherwise excluded from the definition of Betterment as set forth above. MTA shall receive a credit for Betterments in accordance with Section 9.2.

1.2.3 Busway Project is a type of Transit Project and is any busway system of MTA, 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.

1.2.4 Conditional Design Submittal means a submittal by MTA to Utility of the Design for the route selection components of a particular Rearrangement (or elements thereof) prior to completion of the Final Design for the Transit Project, as more particularly set forth in Section 2.4.

1.2.5 Conflicting Facility is an existing Utility Facility which MTA or Utility determines is so situated as to require Rearrangement in order to construct and/or operate the Project without adversely impacting that Utility Facility.

1.2.6 Construct or Construction is work of removal, demolition, replacement, restoration, alteration, realignment, building, fabrication, landscaping, supporting in place, or relocation.

1.2.7 Construction Contractor is a contractor that is engaged to Construct a Transit Project pursuant to a Design/Bid/Build procurement.

1.2.8 Construction Costs are those types of costs that are customarily reflected in a construction contract, by industry standards or by Utility standards.

1.2.9 Cost means all actual direct and indirect costs as further defined in Article 8 for costs incurred by Utility less credits to MTA as provided by Article 9 and subject to the provisions of Article 11.

1.2.10 Design refers either to Route Design, Rearrangement Design or to Transit Project Design. Route Design means engineering, surveying and other design work and the

resulting maps, plans, drawings, and specifications necessary for selecting the route for a Rearrangement. Rearrangement Design means engineering and other design work and the resulting maps, plans, drawings, estimates, and specifications, which are necessary to Construct a Utility Rearrangement. Transit Project Design or Project Design means engineering and architectural and other design work and the resulting maps, plans, drawings, computer software, estimates, and specifications, which are necessary to Construct Transit Projects. Where “Design” is used, it means either Route Design, Rearrangement Design or Transit Project Design, as the context requires.

1.2.11 Design/Bid/Build (“D/B/B”) means the method of Transit Project delivery in which the Transit Project Design consultant is engaged to prepare Final Design for a Transit Project and a Construction Contractor is engaged under a separate contract to Construct the Transit Project based on the Final Design.

1.2.12 Design/Build (“D/B”) is the method of project delivery in which a Design/Build Contractor is engaged to furnish the Final Design of and to Construct a project.

1.2.13 Design/Build Contract (“D/B Contract”) is a contract with a D/B Contractor for Design and Construction of Transit Project Facilities.

1.2.14 Design/Build Contractor (“D/B Contractor”) is defined as a single entity or joint venture which is engaged by MTA to complete the Design of and to Construct a Transit Project pursuant to a Design/Build procurement.

1.2.15 Design Development is the phase of the Transit Project 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.

1.2.16 Eastside LRT Project has the meaning set forth in Recital B of this Amendment.

1.2.17 Effective Date is the date on which this Amendment has been approved by Utility's and MTA's respective Boards, if necessary, and has been fully executed on behalf of both MTA and Utility.

1.2.18 Environmental Law means applicable federal, state, regional or local law, regulation, ordinance, rule, code, order, permit or permit condition which relate in any way to environmental conditions, environmental quality and human health and safety concerns. Environmental Law includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC §§9601 et seq.), the Resource Conservation and Recovery Act (42 USC §§6901 et seq.), the Federal Water Pollution Control Act (33 USC §§ 1251 et seq.), the Safe Drinking Water Act (42 USC §§300 et seq.), the Hazardous Materials Transportation Act (49 USC §§ 1801 et seq.), the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code §§25300 et seq.), the Toxic Substance Control Act (15 USC §§2601 et seq.), the California Hazardous Waste Control Law (California Health & Safety Code §§25100 et seq.), the Occupational Safety and Health Act (29 USC §§651 et seq.), the California Occupational Safety and Health Act (California Labor Code §§6300 et seq.), the Porter-Cologne Water Quality Control Act (California Water Code §§ 13000 et seq.), and applicable regulations or rules promulgated thereunder.

1.2.19 Expo LRT Project has the meaning set forth in Recital B of this Amendment.

1.2.20 Facility, when it is a Transit Project Facility, is defined as real or personal property located within the route, such as structures, improvements, and other properties under the jurisdiction of County or other public agency and shall include, but not be limited to, streets, highways, bridges, alleys, storm drains, sanitary sewers, landscaping, trees, traffic signals, street lights, parking meters and police and fire alarm systems. Facility, when it is a Utility Facility, shall mean any or all properties, real or personal for the provision of gas service to the public by Utility, including but not limited to, pipes, mains, conduits, meters, and any equipment, apparatus or structure appurtenant thereto or associated therewith. When the word "Facility" is used, it shall refer to Transit Project Facility or Utility Facility as the context requires.

1.2.21 Final Design is the phase of the Project Design process that provides the detailed design and technical specifications for all temporary and permanent Project Facilities.



This phase addresses and resolves all Project 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 Project Design process. A detailed Final Design may be furnished on MTA's behalf either by a D/B Contractor or by a design consultant under the Design/Bid/Build contracting method (and in the latter case, some elements of the Final Design also may be furnished by a Construction Contractor).

1.2.22 Hazardous Materials means any chemical, substance, material, controlled substance, object, condition, solid or hazardous waste or combination thereof which is hazardous to human health or safety or the environment due to its flammability, corrosivity, reactivity, toxicity, or other harmful or potentially harmful properties or effects. Hazardous Materials include, without limitation, any substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," or "toxic substances" in, under or pursuant to any Environmental Law and all those chemicals, substances, materials, controlled substances, objects, conditions and waste or combinations thereof which are defined or regulated in any manner by any applicable federal, state or local Environmental Law.

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

1.2.24 MTA Representative is the person, or person holding a specified position, designated by the MTA to conduct reviews and make approvals as required by this Agreement.

1.2.25 Original Agreement has the meaning set forth in Recital E and the initial paragraph of this Amendment.

1.2.26 Parties are MTA and Utility collectively, and a "Party" is defined as each of MTA and Utility individually.

1.2.27 Preliminary Engineering ("PE") Design is the phase of the Design process which takes a Transit Project from a conceptual state to a level of Project Design definition that describes the Transit Project technical and architectural approach in order to determine environmental and community impacts, interfaces with Utility and other 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.

1.2.28 Project Plans are MTA's drawings, plans and specifications for a Subject Transit Project, which MTA 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, except at otherwise required herein.

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

1.2.30 Rail Project means those rail transitways of MTA 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.

1.2.31 Rearrangement is the abandonment-in-place, removal, replacement, alteration, reconstruction, or relocation of a Conflicting Facility or portion thereof, including but not limited to: replacement of any Conflicting Facility or portion thereof with a Replacement Facility, permanent or temporary reconstruction, relocation or support of a Conflicting Facility or portion thereof.

1.2.32 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 the applicable Utility Standards (including any Betterments). A Replacement Facility may be an entirely new Utility Facility, and/or an existing Utility Facility, as modified by Rearrangement work.

1.2.33 Metro Orange Line Project has the meaning set forth in Recital B of this Amendment.

1.2.34 Subject Transit Project, when referenced in connection with a particular Rearrangement, means the Transit Project which necessitates such Rearrangement; provided,

however, that if MTA enters into more than one D/B Contract or Construction Contract for 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 D/B Contractor or Construction Contractor and which necessitates such Rearrangement.

1.2.35 Substitute Facility means a Utility Facility equal in terms of service capacity to the corresponding Conflicting Facility that requires Rearrangement and which meets Utility’s current Utility Standards on projects financed solely by Utility. Service capacity for a gas main will be determined by the nominal diameter of the pipe. Substitute Facility also includes any upgrades to any of the foregoing that are not considered Betterments pursuant to this Agreement.

1.2.36 Temporary Facility is a 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.

1.2.37 Transit Projects are Rail Projects and Busway Projects collectively (including Transit Project Facilities and Transit Project Rights-of-Way), and a “Transit Project” is defined as an individual Rail Project or a Busway Project (including Transit Project Facilities and Transit Project Rights-of-Way), as the context may require. The Transit Projects include, but are not limited to, the MTA 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 MTA in order to create a Rail Project or Busway Project.

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

1.2.39 Transit Project Right-of-Way means (a) real property owned by MTA and used (or proposed to be used) for Transit Project purposes, and (b) those portions of 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 MTA for Transit Project purposes.

1.2.40 Utility is defined as Southern California Gas Company and, as the context may require, its officers, employees, agents, contractors and subcontractors.

1.2.41 Utility Representative is defined as the person or persons holding a specific position designated by Utility or his authorized representative under the terms of this Agreement, who has the power to conduct reviews and makes approvals as required by this Agreement.

1.2.42 Utility Standards are the provisions of the California Public Utilities Commission's General Order No. 112-E and 49 Code of Federal Regulations Parts 186 through 199, plus Utility's formal communications documents, standard practices, or best practices, all as in effect from time to time.

1.2.43 Wilshire BRT (Bus Rapid Transit) Project has the meaning set forth in Recital B of this Amendment.

1.2.44 Work Order is that document which MTA issues to Utility to authorize Utility's performance of Design, Rearrangement, and/or inspection work and Utility's supply of materials under this Agreement.

**4. All of the Sections (2.1 through 2.9) of Article 2 of the Original Agreement are deleted and replaced with the following Sections 2.1 through 2.12:**

## **ARTICLE 2 DESIGN**

### **2.1 Design Coordination.**

The MTA Representative and the Utility Representative shall 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. MTA shall consult with the Utility Representative in establishing the schedule for Design of Rearrangements to be consistent with MTA's Construction schedule for each Transit Project.

## 2.2 Identification of Facilities.

Within sixty (60) days after receipt of written request from MTA, Utility shall identify and disclose to MTA any and all Utility Facilities (excluding abandoned Facilities), which are located on, in, under or over the locations, which MTA indicates may be affected by a Transit Project. Utility and MTA shall take reasonable actions to verify such information at MTA's expense. If MTA makes such a request for Utility transmission Facilities, then Utility's response shall be provided in a reasonable period of time, as agreed to by Utility Representative and MTA Representative.

## 2.3 Rearrangement Design Performed by Utility

Following receipt by MTA of a written cost estimate from Utility, MTA shall issue a Work Order to Utility and shall deliver to Utility, Project Plans that are at least 60% complete for the appropriate portion of the Subject Transit Project. Upon receipt of such Work Order and Project Plans, Utility shall proceed to Design such Rearrangement in accordance with the following:

2.3.1 Utility shall diligently perform its Design work in conformance with MTA's Design schedule for the Subject Transit Project, and shall coordinate throughout Design with MTA as is necessary to develop plans satisfactory to both MTA and Utility for each Rearrangement. 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 estimated Cost, if applicable, for completing the Design of the specific Rearrangement. Betterments shall be addressed in accordance with Section 2.11.

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, and (b) an estimate of the time needed to perform the required Rearrangement Construction. During Utility's Design process for each Rearrangement, MTA shall have the right to review and comment on the plans and specifications as well as on the Cost and time estimates. All final Designs, including time and Cost estimates outlined on MTA form 60 (a sample of which is attached hereto as an Exhibit), shall be subject to MTA's written approval. If MTA does not so approve, Utility shall have no obligation to proceed with the Rearrangement. 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 MTA or approved on site by the MTA Representative. MTA's review and approval of any Design furnished by Utility shall be solely for purposes of assessing compatibility of the Rearranged Facilities with the Subject Transit Project, coordination with MTA's work on the Subject Transit Project, and Cost issues. MTA has and undertakes no duty to review such Designs for their quality or for the adequacy of Rearranged Facilities (as designed) for the purposes for which they are intended to be used.

2.3.3 The following scheduling provisions shall apply:

(a) Utility shall deliver the Final Design for each Rearrangement to MTA for its review and approval in accordance with the schedule established in the applicable Work Order authorizing such Design work. Unless otherwise agreed by the Parties, each Work Order shall provide that Final Design for the subject Rearrangement of Utility distribution Facilities shall be due within 60 days after the later (1) Utility's receipt of such Work Order and (2) Utility's receipt of the appropriate Project plans. Notwithstanding the forgoing, each Work Order for the Final Design of a Rearrangement of Utility transmission Facilities shall be as agreed to by the Utility Representative and MTA Representative and shall be not less than one hundred twenty (120) days unless otherwise agreed to by both Parties.

(b) Utility shall submit to MTA any modified Design for a Rearrangement of distribution Facilities necessitated by MTA's review and comments, within fourteen (14) days, or such later date as the Parties may mutually agree, after Utility's receipt of MTA's comments. If the Design is for a transmission Facility Rearrangement, Utility shall submit any modified Design necessitated by MTA's review and comments within such time period as the Parties may mutually agree.

(c) Following any modification by MTA 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 a revised Design of its Rearrangements. Each Party shall reasonably exercise its right to approve the timing for submittals of a revised Design, considering MTA's schedule for the Subject Transit Project, Utility's workload for carrying out its public utility

duties, the type of Utility Facilities involved, availability of materials necessary to complete the Rearrangement, 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 Route Design Performed by MTA

If MTA and Utility mutually agree that MTA shall Design the route (Route Design – see Section 1.2.10) for a specific Rearrangement, MTA shall issue Work Orders for Utility to review plans and specifications as required. Coordination of Route Design and the development of the Route Design plans and specifications shall be accomplished through the MTA Representative who shall confer from time to time with the Utility Representative, except to the extent that responsibility for same has been delegated to MTA’s consultants and/or contractors in accordance with Section 2.10.

2.4.1 MTA 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 the Agreement; provided, however, that the schedule for such submittals and responses shall conform to MTA’s schedule for the subject Transit Project and to the following requirements:

(a) Subject to the provisions of subparagraph (d) below, within twenty (20) business days after receipt of any Route Design submittal, (i) Utility shall inform MTA whether the submittal is sufficiently complete for Utility review purposes, or, whether because of exceptional circumstances due to utility operating needs, Utility will need more time for review, and (ii) if not sufficiently complete or if because of utility operating needs, Utility will need more time, Utility shall so notify MTA, or shall return the submittal to MTA together with an identification of those portions that are not sufficiently complete and a description of the missing information listing the deficiencies. If no such notice or return is received by MTA within such twenty (20) days, the submittal shall be deemed complete and acceptable for review purposes. For purposes of this Section 2.4, the determination as to whether a Conditional 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 forty-five (45) days after receipt of each submittal, Utility shall review and approve the submittal or transmit its comments to MTA. 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 also will apply to any resubmittal of a Design by MTA, whether in response to a Utility notice or return of an incomplete submittal, or in response to substantive Utility comments.

(d) If the Route Design is for a Rearrangement of Utility transmission Facilities, Utility shall use its commercially reasonable best efforts to meet MTA's time schedule as set forth above in subparagraphs (a) through (c). However, the Parties recognize that due to the more complex nature of a transmission Facility, Utility will in most cases need more time to respond to a Route Design. If a Route Design is for a transmission Facility, Utility and MTA shall agree in writing upon the time frames for Utility's review.

2.4.2 Utility shall confine its comments with respect to Route Designs for Rearrangements to the issue of compliance with applicable Utility Standards. Utility's approval of the Final Route Design for any Rearrangement will not be withheld if the submittal is consistent with (a) the most recent previous submittal approved by Utility, modified as appropriate to respond to Utility comments on such submittal and to reflect any subsequent changes agreed to by Utility and MTA, or (b) earlier submittals which have been approved (or deemed complete and approved) by Utility. However, subject to the first sentence of this Section, Utility shall have the right to make new comments on any material changes from previous submittals.

2.4.3 Utility recognizes that time is of the essence for all Transit Projects, and that certain Transit Projects (whether procured on a D/B basis or on a D/B/B basis) may involve Conditional Route Design Submittals by MTA's consultants or contractors to facilitate early



Construction of components of a Rearrangement (or elements thereof) prior to completion and approval of Final Design therefor. Each Conditional Route Design Submittal will identify the particular components or elements as to which Utility's review and consent to early construction by MTA's contractors is being requested. Utility agrees to review and authorize when necessary early construction for (subject to the timing and other requirements of this Amendment) all such Conditional Design Submittals in order to facilitate such early Construction where feasible. Utility's comments on Conditional Design Submittals shall identify any aspects of the identified components or elements, which do not conform to applicable Utility Standards, based on the information provided.

2.4.4 The Parties recognize that the use of Conditional Design Submittals might result in Route Design (or components thereof) that are non-conforming to applicable Utility Standards. If, upon inspection of any completed Rearrangement (or any component thereof) that was Constructed pursuant to Section 5.2, Utility determines that such facility or component does not conform to applicable Utility Standards, then Utility will provide immediate verbal notice of nonconformance to the MTA Representative as well as to MTA staff (as designated by the MTA Representative), followed by a written nonconformance notice to the MTA Representative within 72 hours after making such determination. Such written notice shall include an explanation of Utility's desired resolution. Work shall not be stopped as a result of any such nonconformance unless otherwise determined by MTA or Utility.

## 2.5 General Design Criteria for Rearrangements

### 2.5.1 Intentionally Deleted.

(a) Intentionally Deleted.

(b) Intentionally Deleted.

2.5.2 Rearrangement of Utility's Conflicting Facilities shall conform to Utility Standards. Subject to Section 1.2.2, if Utility's Design exceeds the requirements of its Utility Standards, the design requirements in excess of such Standards shall be considered a Betterment, and MTA shall receive a credit for the Betterment in accordance with Section 2.11.

2.5.3 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.

2.5.4 All Utility Standards shall be applied to the Rearrangements hereunder in the same manner as they are applied by Utility to projects which 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.

## 2.6 Changes in Approved Designs

MTA 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 different, unforeseen, or unanticipated site conditions, unknown to the Parties during the Design of the Rearrangement, neither MTA nor Utility shall have any obligation to consent to or approve any requested changes. When neither Utility nor MTA has an obligation to consent to or approve any requested changes, the increased Cost, if any, attributable to changes in approved plans or specifications requested by either Party and approved by the Parties shall be borne by the Party requesting the change. When the change is requested because of the unknown conditions set forth above in the second sentence of this paragraph, MTA shall be responsible for the increased Cost in accordance with the terms of this Agreement.

## 2.7 Construction Staging Plans

During Design of a Transit Project, MTA 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 MTA in coordination and the development of construction staging plans, Utility shall furnish to MTA during Design the following information in writing, together with such other relevant information as MTA may reasonably request:

- (a) Utility Facilities in which service must be maintained throughout interruption of service.
- (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 Reserved.

## 2.9 Reproducible Contract Documents

MTA and Utility agree to provide the other with suitable reproducible copies of those final plans and specifications that they have prepared or caused to be prepared to govern the performance of a given Rearrangement by their respective contractor so that each Party may compile a complete set of plans and specifications. Each Party shall prepare or cause to be prepared the plans and specifications for which it is responsible in accordance with its drafting standards. MTA shall deliver copies of all D/B contracts to the Utility.

## 2.10 Delegation of MTA Duties to Contractors and Consultants

Without limiting MTA's right to delegate other tasks hereunder to its consultants and contractors, MTA shall have the right to delegate to its consultants and 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. Such delegation shall not relieve MTA of responsibility to comply with any of its obligations under this Agreement, however. MTA shall remain responsible for the actions and inactions of its consultants and contractors (including any DB Contractor). This Agreement shall not give rise to any contractual relationship between Utility and any consultant or contractor for MTA. Upon its entry into a contract with a contractor or consultant to which MTA intends to make such a delegation, MTA shall notify Utility as to (a) the name of such contractor or consultant (and relevant contact information) and (b) the tasks hereunder that have been delegated to such contractor or consultant. Utility agrees to coordinate its efforts and cooperate with such contractor or consultant and with MTA as reasonably requested by MTA or such contractor or consultant in accordance with such notification.

## 2.11 Betterments

2.11.1 As soon as possible, preferably during the Preliminary Engineering Design phase but in any event not later than the applicable Utility comment due date for each Rearrangement, Utility shall inform MTA what Betterments, if any, Utility desires, so that MTA can review the Betterments and determine whether there is any conflict with the Transit Project. Each Design furnished by Utility shall specifically identify any Betterments included in such Design. MTA may also identify Betterments included in Designs furnished by Utility by giving written notice thereof to Utility during the Design review process.

2.11.2 It is understood and agreed that MTA shall have no obligation for the Cost of any Betterment. Utility shall bear the Cost of all Betterments included in each Rearrangement, by crediting or paying MTA therefor, as applicable, in accordance with Article 9.

2.11.3 Intentionally Deleted.

## 2.12 Design/Build Contractor

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

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

2.12.2 The D/B Contractor may exercise certain of MTA's rights hereunder, but only to the extent designated by MTA in the D/B Contract (without limiting MTA's right to exercise such rights).

2.12.3 MTA may add the D/B Contractor as a required notice recipient pursuant to Section 15.3.1 for certain notices hereunder, as specified by MTA.

2.12.4 D/B Contractor has authority to provide approvals, consents, permissions, satisfactions or authorizations only where expressly permitted hereunder or pursuant to the D/B Contract.

2.12.5 Intentionally deleted.

2.12.6 MTA's procurement documents and resulting D/B Contract shall make specific reference to this Amendment and shall incorporate this Amendment.

2.12.7 Upon its entry into a D/B Contract, MTA agrees to notify Utility in writing as to (a) the name of the D/B Contractor (and relevant contact information), and (b) the obligations and rights hereunder that have been delegated to the D/B Contractor.

2.12.8 Utility agrees to coordinate its efforts and cooperate with the D/B Contractor and with MTA as reasonably requested by MTA or the D/B Contractor in light of the involvement of the D/B Contractor as described in such notification.

2.12.9 Notwithstanding MTA's delegation of duties to a D/B Contractor, MTA shall at all times be responsible for the performance of all of its duties under this Agreement. This Agreement shall not give rise to any contractual relationship between Utility and the D/B Contractor.

2.12.10 Notwithstanding any other provision of this Agreement to the contrary, Utility shall have no liability under this Agreement or otherwise for following any instructions of the D/B Contractor, whether such instructions appear to be authorized by MTA or not.

**5. Article 4 of the Original Agreement is amended by adding the following Section 4.4:**

**4.4 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 the Transit Project construction and where not inconsistent in time or manner of exercise either with Utility's discharge of its duty as a utility or with MTA's discharge of its duties with respect to the Transit Project. Provided, however, that nothing herein excuses either Party from notifying Underground Service Alert in advance of any excavation, as required by the provisions of Government Code §§ 4216, et seq., and both Parties shall comply

with the applicable provisions set out therein. MTA 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 in such area, the exact location of all Utility Facilities which may be below the surface of the ground, overhead, or otherwise not plainly visible. Except as provided in the Design for the Rearrangement of Utility Facilities, MTA and its contractors shall not interfere with the operation of Utility Facilities. If any Utility Facilities are damaged by MTA's contractors in the course of construction work, Utility shall promptly repair the damage. MTA shall promptly reimburse, or shall cause its contractor to promptly reimburse, Utility for its actual and reasonable costs incurred to repair the damaged Utility Facilities. If any of MTA's property is damaged by Utility or its contractors in the course of its construction work, Utility shall immediately report such damage to MTA and shall repair the damage at its sole cost to the reasonable satisfaction of MTA or, at Utility's election, MTA shall cause such damage to be repaired and Utility promptly shall reimburse MTA for MTA's actual and reasonable costs incurred in connection with such repair.

**6. The following new Article 14 "ENVIRONMENTAL PROVISIONS" is added to the Agreement:**

#### **ARTICLE 14 ENVIRONMENTAL PROVISIONS**

14.1 Hazardous Materials or Protected Materials

The responsibilities of the Parties with respect to remediation of Hazardous Materials or Protected Materials discovered during, or which require protective, managerial, custodial or remedial action as a result of the Rearrangement of Utility Facilities to accommodate a Transit Project shall be governed by this Article.

14.2 Intentionally Deleted.

14.3 Responsibility for Remedial or Protective Action and Investigation

As between Utility and MTA, MTA shall be responsible, at MTA's 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.

#### 14.4 Duties of Discovering Party

If evidence of Hazardous Materials or Protected Materials is found by either Party during the Construction of a Rearrangement for a Transit Project which could reasonably be expected to require remediation or other action under Environmental Laws, the discovering Party shall notify the other Party in writing within three working days after such discovery and shall make any required notifications to the required Federal, State and/or local agency(ies) in accordance with applicable law.

#### 14.5 MTA Responsibilities

Upon discovery of such evidence, MTA shall immediately arrange for an investigation, at MTA's expense, by an environmental consultant acceptable to Utility. This assessment shall include the investigation, sampling, laboratory analysis, and other work deemed necessary by the consultant to determine the nature of the Hazardous Materials or Protected Materials, and the procedures required to eliminate or address the Hazardous Materials or Protected Materials to the extent required by Environmental Laws. MTA shall provide to Utility draft copies of all information and reports which it receives in connection with the investigation, and shall provide Utility ten business days to comment on such drafts. MTA shall address and/or incorporate Utility's comments to Utility's reasonable satisfaction.

#### 14.6 MTA Remediation

MTA shall then formulate a plan of remediation or action that complies, in all aspects, with all applicable federal, state and local laws, regulations and policies. MTA shall provide to Utility draft copies of MTA's proposed remediation or action plan, and shall provide Utility ten (10) working days to comment on such drafts. MTA shall address and/or incorporate Utility's comments to Utility's reasonable satisfaction. MTA shall obtain the approval, if required, of all applicable governmental authorities possessing jurisdiction over the remediation or other action and shall execute the plan promptly. All expenses of remediation to address Hazardous Materials and actions to address Protected Materials shall be borne by MTA except to the extent Utility is obligated to indemnify MTA pursuant to Section 10.2 of Article 10 of the Original



Agreement. Nothing contained in this Section shall be deemed to obligate the Parties to undertake or pay for the remediation of any Hazardous Materials or protection of any Protected Materials or to undertake any other action with respect to Hazardous Materials or Protected Materials, which is not legally required under Environmental Laws in order to proceed with a Transit Project or the Rearrangement of Utility Facilities hereunder. Moreover, nothing herein shall be deemed to prohibit MTA from collecting some or all of the costs of remediation from other, potentially responsible parties.

**7. The following new ARTICLE 15 “MISCELLANEOUS PROVISIONS” is added to the Agreement:**

**ARTICLE 15  
MISCELLANEOUS PROVISIONS**

**15.1 Approvals, Further Documents and Actions**

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);

(b) shall not be unreasonably withheld, conditioned or delayed; and if Approval is withheld, such withholding shall be in writing and shall state with specificity the reasons for withholding such Approval, and every effort shall be made to identify with as much detail as possible what changes are required for Approval; and

(c) shall be deemed granted if no response is provided to the Party requesting an Approval within the time period prescribed by this Agreement or the applicable Work Order (or if no time period is prescribed, then 20 calendar days) commencing upon actual receipt by the Party from which an Approval is requested or required of a request for Approval from the requesting Party.

15.2 Further Documents

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.

15.3 Notices

15.3.1 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 – For Distribution Facilities:**  
Southern California Gas Company  
P.O. Box 9099, ML SC 9521  
Compton, CA 90224  
Facsimile No.: (310) 605-7987  
Attn.: Technical Services Manager

**OR**

Southern California Gas Company  
701 N. Bullis Road, ML9521  
Compton, CA 90221-2253  
Facsimile No.: (310) 605-7987  
Attention: Technical Services Manager

**To Utility – For Transmission Facilities**  
Southern California Gas Company  
P.O. Box 2300, ML 9314  
Chatsworth, CA 91313-2300  
Facsimile No.: (818) 701-3441  
Attn.: Technical Services Manager,  
Transmission

**OR**

Southern California Gas Company  
9400 Oakdale Ave.  
Chatsworth, CA 91313-6511  
Facsimile No.: (818) 701-3441  
Attn.: Technical Services Manager,  
Transmission

To MTA:

Chief Executive Officer  
Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza, Mail Stop 99-16-1  
Los Angeles, California 90012-2952  
Facsimile No.: \_\_\_\_\_

With a copy to:

Deputy Executive Officer, Project Management  
Construction Project Management Division  
Los Angeles County Metropolitan Transportation MTA  
One Gateway Plaza  
Los Angeles, CA 90012-2952  
Facsimile No.: \_\_\_\_\_

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

15.3.1 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 MTA Representative and by the Utility Representative appointed pursuant to this Agreement

#### 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 any 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. Utility's duties to the public have priority over its obligations

under this Agreement, however. In the event of a conflict, MTA understands and agrees that Utility must first fulfill those duties and that any resulting delays shall not be a breach of this Agreement.

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 Utility of California. The rights and remedies of MTA 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 which 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.

#### 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, if requested by MTA and if agreed to by Utility in its sole discretion, Utility shall accelerate its efforts hereunder if reasonably feasible in order to regain lost time, so long as MTA agrees to reimburse Utility or its assigned contractor 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 any 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 which 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 Utility 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, Utility Facilities and other public facilities which 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 final judgment, ruling or decision reached in accordance with Article 12 of Original Agreement, 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 Insurance

15.17.1 Any Design Contract, Construction Contract or Design/Build Contract entered into by MTA or Utility in connection with a Rearrangement shall contain a provision which 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 which names Utility and MTA and their respective officers and employees as additional insureds (not subject to any premiums or assessments). The Parties shall determine based on the indicated scope of each Work Order, the required insurance coverage, liability amounts and the Party responsible for payment of this insurance and include this within each Work Order."

15.17.2 A Certificate evidencing the required coverage shall be provided directly by the insurer or authorized insurance broker or agent to Utility and MTA, providing that said coverage shall not be reduced in scope or cancelled without thirty (30) days prior written notice to MTA and Utility. Utility recognizes and agrees that all or part of such insurance can be provided by MTA through an owner-controller insurance program.

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

“UTILITY”

SOUTHERN CALIFORNIA GAS  
COMPANY

By: Debra L. Reed

Name: Debra L. Reed

Title: President

APPROVED AS TO FORM:

By: Carol A. Conover

Attorney for Utility

“MTA”

LOS ANGELES COUNTY METROPOLITAN  
TRANSPORTATION AUTHORITY

By: \_\_\_\_\_

ROGER SNOBLE

Chief Executive Officer

APPROVED AS TO FORM:

Office of  
County Counsel

By: \_\_\_\_\_

Deputy County Counsel

**LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY  
COST OR PRICING SUMMARY**

Name of Offeror/Contractor		Supplies and/or Services to be Furnished		
Home office address				
Division(s) and Locations where Work is to be performed		MTA Solicitation/Bid/Proposal/Contract Number		
1. Direct Labor	Est. Hours	Rate Per Hour	Est. Cost	Total Est. Cost
			\$ -	
			\$ -	
			\$ -	
			\$ -	
			\$ -	
			\$ -	
<b>TOTAL DIRECT LABOR</b>				\$ -
2. Labor Overhead (O/H)	O/H Rate	x Base = Est. Cost		
		\$ -	\$ -	
		\$ -	\$ -	
<b>TOTAL LABOR OVERHEAD</b>				\$ -
3. Fringe Benefits Overhead (Rate x Base)	FB O/H Rate	x Base = Est. Cost		
		\$ -	\$ -	
<b>TOTAL F.B. OVERHEAD</b>				\$ -
4. Direct Material				Est. Cost
a. Purchase Parts				
b. Subcontracted items				
c. Other				
<b>TOTAL DIRECT MATERIAL</b>				\$ -
5. Material Overhead (Rate x Base)	Mtrl O/H Rate	x Base = Est. Cost		
		\$ -	\$ -	
<b>TOTAL MATERIAL OVERHEAD</b>				\$ -
6. Equipment	Quantity	Unit Cost	Est. Cost	
			\$ -	
			\$ -	
			\$ -	
<b>TOTAL EQUIPMENT</b>				\$ -
7. Travel				Est. Cost
a. Transportation				
b. Per Diem or Submissions				
<b>TOTAL TRAVEL</b>				\$ -
8. Consultants/Subcontractors (See Item No. 15 for details)				Est. Cost
<b>TOTAL CONSULTANTS/SUCONTRACTORS</b>				\$ -
9. Other Direct Costs (Provide itemized listing at Item No. 16)				
<b>TOTAL OTHER DIRECT COSTS</b>				\$ -



**LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY  
COST OR PRICING SUMMARY**

10. (Total Item Nos. 1-9)	<b>TOTAL DIRECT AND OVERHEAD COSTS</b>	\$	-
11. General and Administrative Expense (Rate% x Total Item No. 10)	rate%		#VALUE!
12.	<b>TOTAL ESTIMATED COSTS</b>		#VALUE!
13. Fee or Profit (Rate % x Total Item No. 12)	rate%		#VALUE!
14.	<b>TOTAL ESTIMATED COST/PROPOSED PRICE AND FEE OR PROFIT</b>		#VALUE!

15. Identify Subcontractor(s)	Task Assigned	Contract Type	Amount

16. Identify Other Direct Costs (Reference Item No. 9)	<b>Amount</b>	
<b>Total</b>	\$	-

17a Has any Agency of the United States Government, State government or local public agency, in the Los Angeles County Metropolitan Transportation Authority (MTA) performed any review of your accounts or records, overhead rates and general and administrative rates in connection with any public prime contract or subcontract within the past twelve months? Yes  No   
If yes, when? Reference Contract No. \_\_\_\_\_

17b. Agency Name/Address	17c. Individual to contact/Telephone Number

18. As required by MTA, firms not audited, as described above, shall submit financial data and calculations in sufficient detail to support all proposed direct costs and subcontractor costs.

Proposer/contractor grants to the MTA, the right to examine those books, records, documents and other supporting data that will permit adequate evaluation of such cost or pricing data, along with the computations and projections used therein, for the purpose of verifying the cost or pricing data submitted. This right may also be exercised in connection with any negotiations/discussions prior to contract award or execution of contract modification

**CERTIFICATE**

The labor rates and overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Bidder represents: (a) that Bidder/Proposer has , has not , employed or retained any company or person (other than a full time bona fide employee working solely for the bidder) to solicit or secure a contract, and (b) that bidder has , has not , paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to information relating to (a) and (b) above, as requested by the Contracting Officer.

**CERTIFICATE OF CURRENT COST OR PRICING DATA**

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in Section 2.101 of the Federal Acquisition Regulation (FAR) and required under subsection 15.403-4) submitted, either actually or by specific identification in writing, to the MTA's Contracting Officer or to the MTA's Contracting Officer's representative in support of \_\_\_\_\_\* are accurate, complete, and current as of \_\_\_\_\_.\*\* This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the MTA that are a part of the proposal.

This proposal as submitted represents our best estimates and/or actual costs as of this date.

Type Name and Title of Authorized Representative	Signature	Date***

\* Identify the proposal, quotation, request for price adjustment, or other submission involved, giving appropriate identifying number (e.g. Invitation For Bid No. Request for For Proposal No. etc.)

\*\* Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

\*\*\* Insert the day, month, and year of signing ( i.e. when price negotiations were concluded and mutual agreement on contract price.)

