

EXPOSITION METRO LINE CONSTRUCTION AUTHORITY

ADMINISTRATIVE CODE

August 4, 2005

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TITLE I - ADMINISTRATION

CHAPTER 1 - GENERAL PROVISIONS

SECTION 1: ADOPTION AND AMENDMENT

This Administrative Code for the Exposition Metro Line Construction Authority is adopted pursuant to Section 132600 of the Public Utilities Code. This Administrative Code may be amended at any meeting of the Board, if notice of such amendment is given on the agenda distributed to the Board Members, describing in general terms the nature of the proposed amendment.

SECTION 2: DEFINITIONS

“Applicable Laws” shall have the meaning set forth in Section 6 of this Chapter.

“Authority” shall mean the Exposition Metro Line Construction Authority, established by Chapter 7 of Division 12.7 of the Public Utilities Code, commencing with Section 132600, which became effective April 28, 2005, and designated therein as the “Exposition Metro Line Construction Authority.”

“Board” shall mean the governing board of the Authority.

“Board Member” or “Member” shall mean a member of the Board.

“Chief Executive Officer” or “CEO” shall mean the Chief Executive Officer of the Authority.

“Code” shall mean this Administrative Code.

“Commission” shall mean the California Transportation Commission.

“Committee” shall mean a standing or ad hoc committee of the Board established pursuant to Section 8 of Chapter 2 of Title I of this Code.

“Joint Development Agreement” shall mean an agreement entered into pursuant to the authority granted in paragraph (a)(5) of Section 132600 of the Public Utilities Code.

“Metro” shall mean the Los Angeles County Metropolitan Transportation Authority.

“Majority of the Members” or “majority of the Board” shall mean a majority of the voting members of the Board.

“Political Reform Act” shall mean the Political Reform Act of 1974 (Title 9 of the Government Code, commencing with Section 81000).

“Procurement Manual” shall mean the compilation of any procurement policies and procedures that may be issued by the Chief Executive Officer.

“Project” shall mean the Los Angeles-Exposition Metro Line light rail project extending from the Metro Rail Station at 7th Street and Flower Street in the City of Los Angeles to the downtown of the City of Santa Monica.

“Ralph M. Brown Act” shall mean Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code, commencing with Section 54950.

“Reimbursement Procedures” shall mean the Authority Travel and Expense Reimbursement Procedures referred to in Section 2 of Chapter 5 of this Title I.

SECTION 3: PURPOSE

The purpose of the Authority is to award and oversee all design and construction contracts for completion of the Project. The Authority is to be dissolved upon completion of construction of the Project, and the Metro shall thereafter assume responsibility for operating the Project.

SECTION 4: POWERS

The Authority has all of the powers necessary for planning, acquiring, leasing, developing, jointly developing, owning, controlling, using, jointly using, disposing of, designing, procuring, and building the Project, including, but not limited to, the powers specifically enumerated in the Authority’s enabling legislation (Chapter 7 of Division 12.7 of the Public Utilities Code, commencing with Section 132600).

SECTION 5: OFFICE

The Authority shall maintain an office as designated by the Board.

SECTION 6: COMPLIANCE WITH APPLICABLE LAWS

- A. Every effort has been made to ensure that the provisions of this Code conform with the Applicable Laws. In the event of any conflict between the Applicable Laws and this Code, the Applicable Laws shall control.
- B. The Authority and its Board Members, Officers and employees shall comply with the Applicable Laws at all times.

- C. For purposes of this Code, “Applicable Laws” shall mean the provisions of the laws (including case law) and regulations of the United States and the State of California applicable to the Authority and the Project and include applicable laws and regulations regarding the eligibility and use of Federal funding.

SECTION 7: INTERPRETATION

- A. The captions in this Code are included solely for convenience. In the event of any conflict between the captions and the text of this Code, the text shall control.
- B. In this Code, the masculine includes the feminine and vice versa, the neuter includes the feminine and masculine, the singular number includes the plural, and the word “person” includes corporation, partnership, firm, trust, or association wherever the context so requires.

SECTION 8: SEVERABILITY

If any provision of this Code, or any part thereof, shall at any time be held to be invalid, in whole or in part, under any federal, state or local law by a court of competent jurisdiction, or by an administrative agency of the federal, state or local government with proper jurisdiction, then such provision or a portion thereof, as appropriate, shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law. In that event, the remaining provisions of this Code shall remain in effect and shall in no way be affected, impaired or invalidated.

CHAPTER 2 - BOARD OF DIRECTORS

SECTION 1: BOARD - GENERALLY

The Authority shall be governed by a Board consisting of seven (7) voting members and one non-voting member.

SECTION 2: APPOINTMENT; TERM; VACANCIES; ALTERNATES

- A. Appointment. The Members of the Board shall be appointed as follows:
1. Two Members shall be appointed by the City Councils of the City of Culver City and Santa Monica each City Council appointing one Member by a majority vote of the membership of the City Council.
 2. Two Members shall be appointed by the Los Angeles County Board of Supervisors.
 3. One Member shall be appointed by the Metro.
 4. Two Members shall be appointed by the City Council of the City of Los Angeles.
 5. The Chief Executive Officer of Metro shall serve on the Board as an ex-officio, non-voting member.
- B. Term. The Members shall serve a term of not more than four (4) years as determined by their respective appointing authorities. The initial terms shall commence July 1, 2005 irrespective of when the initial Members are appointed by their appointing authority. There is no limit on the number of terms that may be served by any Member.
- C. Filling of Vacancies. Each appointing authority shall also appoint an alternate member to serve in a member's absence. If the position of a voting member becomes vacant, the alternate member shall serve until the position is filled as required pursuant to sub-Section "A" of this Section 2.
- D. Alternates. Notwithstanding sub-Section "C" of this Section 2, each appointing authority shall appoint an alternate voting member ("Alternate"), in the same manner as Members are appointed in accordance with sub-Section "A" of this Section 2. The Alternate shall be authorized to act in place of the Member of his or her appointing authority, if the Member is unable to be present at a Board meeting. The provision of staff assistance to Alternates, and the forwarding of correspondence to Alternates, shall be the obligation of the Member of the Alternate's appointing authority; the CEO shall have no obligation therefore.

SECTION 3: COMPENSATION

Each Board Member shall be compensated at the rate of one hundred and fifty dollars (\$150) for any day attending to the business of the Authority, but not to exceed six hundred dollars (\$600) in any month. Each Board Member shall also be entitled to receive reimbursement for expenses directly related to the performance of duties imposed by the Authority, subject to the provisions of the Reimbursement Procedures. [See Chapter 5 of this Title.]

SECTION 4: INFORMATION

Each Member will be provided a copy of any non-confidential correspondence or document relating to policy matters sent or received by any other Board Member. Outgoing correspondence will be mailed or faxed to each Board Member concurrently with the original.

SECTION 5: APPOINTMENT AND REMOVAL OF OFFICERS OF THE BOARD

- A. Appointment of Chair and Vice Chair. The officers of the Board shall be a Chair and Vice Chair. The first election of officers shall occur at a regular meeting of the Board held after all voting Members of the Authority have been appointed; the term of those officers shall expire on June 30th of each year. At that time, the Vice Chair shall automatically succeed to the position of Chair and a new Vice Chair shall be elected on an annual basis each year thereafter and at such other times as there may be a vacancy in any office.
- B. Vacancies in Board Offices. In the event of a vacancy during the term of the Chair or Vice Chair, the Board shall elect a replacement to serve the remainder of the term of the vacant office.
- C. Removal of Board Officers. The Chair or Vice Chair of the Board may be removed from office at any time by four (4) affirmative votes. The removed Officer's status as a Member of the Board shall not be affected by removal as Chair or Vice Chair of the Board.

SECTION 6: DUTIES OF THE CHAIR

The Chair shall preside at all meetings of the Authority and shall exercise and perform such other powers and duties as may be from time to time assigned by the Board or prescribed by this Code. In any case where the Board directs execution of a document or the performance of an act, the Chair, unless the Board otherwise provides, is empowered to execute such documents or perform such act. Pursuant to Section 3.E of Chapter 3, the Chair is also responsible for investigating any complaints involving the Chief Executive Officer.

SECTION 7: DUTIES OF THE VICE CHAIR

The Vice Chair shall perform the duties of the Chair in absence or inability of the Chair, and, when so acting, shall have all the powers of and be subject to all the restrictions upon the Chair.

SECTION 8: COMMITTEES

- A. General. The Chair may, subject to concurrence of a majority of the Board: (a) designate standing and ad hoc committees; and (b) make appointments to all committees. The Board may delegate to committees any responsibilities authorized by law, except that no contract or expenditure of funds may be approved by a committee.

SECTION 9: MEETINGS OF THE BOARD - TIME AND PLACE

- A. Regular Meetings. Regular meetings of the Board of the Authority shall be held at the time and place set by the Board.
- B. Special Meetings. Special meetings of the Board may be called in the same manner provided by Section 54956 of the Government Code.
- C. Adjourned Meetings. The Board may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment in accordance with Section 54955 of the Government Code.

SECTION 10: MEETINGS OF THE BOARD - PROCEDURAL RULES

- A. Quorum. Four (4) voting Members of the Board shall constitute a quorum. For committees (which are composed of less than a quorum of the Board), all voting Members of the committee are required to be present to constitute a quorum for that committee.
- B. Approval of Actions. Except for any decision for which more than a majority vote is specifically required by the Applicable Laws or by this Code, all actions at a meeting of the Board or a committee shall require the affirmative vote of a majority of the voting Members present at the meeting. All actions authorizing the expenditure of funds shall require the affirmative vote of four (4) Board Members.
- C. Ralph M. Brown Act. All meetings of the Board and any committee of the Board are subject to the provisions of the Ralph M. Brown Act.
- D. Robert's Rules of Order. The proceedings of the Board shall be governed by the provisions of law applicable thereto, and, except as herein provided, suspended, or modified from time to time by the Board, by Robert's Rules of Order, newly revised. The failure to follow Robert's Rules of Order

shall not invalidate any action. The General Counsel shall act as parliamentarian and, on request of the Chair, shall give parliamentary advice. To the extent that the rules and procedures set forth in this Chapter are inconsistent with Robert's Rules of Order, these rules and procedures shall supersede Robert's Rules of Order.

SECTION 11: MEETINGS OF THE BOARD - MISCELLANEOUS PROVISIONS

- A. Agenda Format. The Board shall adopt a standard agenda format, providing for the efficient consideration of the Authority's business at all Board meetings.
- B. Board Member Discussion.
 - 1. All Board Members shall address the Chair to request to speak and shall be recognized in the order requested.
 - 2. If an item has been considered by a committee, the Committee Chair shall introduce the item.
 - 3. The Committee Chair or the maker of a motion shall have up to five (5) minutes to open debate on each agenda item. Each of the remaining Board Members may then speak for up to three (3) minutes each on each item.
 - 4. Board Members may speak again for up to three (3) minutes each on an item. All Board Members desiring to speak shall have the opportunity to speak once before other Board Members speak again.
 - 5. The maker of the motion or the Committee Chair shall each have up to three (3) minutes to close the debate.
- C. Request To Address The Board or Committee On Agenda Items. All requests by the public to address the Board or a committee on either agenda or non-agenda items shall be submitted to the Chair in writing. Requests to speak shall be taken in the order received. The Board reserves the right to limit redundant or repetitive public comment.
- D. Addressing The Board. No person shall address the Board or a committee until he/she has first been recognized by the Chair. All persons addressing the Board shall give their name for the record. The Board shall provide an opportunity at the commencement of each regular Board meeting for the public to address the Board on all agenda items and non-agenda items within the subject matter jurisdiction of the Board, for up to three (3) minutes per person for a total of up to twenty (20) minutes, or such lesser or greater time as the Chair, in his or her discretion, may deem appropriate under the circumstances.

- E. Board Members' Special Items. Any Board Member may request that the Chair agendaize a matter for a subsequent Board meeting. At the end of each agenda, after consideration of old business, new business, and any public hearings, shall be a place for "Board Members' Comments." In order for any written resolutions or reports submitted by individual Board Members to be considered at a Board meeting: (i) the written materials must be submitted at least 48 hours before the Board meeting; or (ii) a majority of the Board Members present at the meeting must approve consideration of the written resolution or report.

SECTION 12: MEETINGS OF THE BOARD - REMOVAL

- A. The Chair shall order removed from the meeting any person who commits the following acts at a meeting of the Board:
1. Disorderly, contemptuous or insolent behavior toward the Board or any Member thereof, or any staff member, interrupting the due and orderly course of the meeting;
 2. A breach of the peace, boisterous conduct or violent disturbance, interrupting the due and orderly course of the meeting;
 3. Disobedience of a lawful order of the Chair, including an order to be seated or to refrain from addressing the Board; or
 4. Any other interference with the due and orderly course of the meeting.
- B. Any person so removed shall be excluded from further attendance at the meeting from which he or she has been removed, unless permission to attend is granted upon a motion adopted by the Board.

CHAPTER 3 - BOARD APPOINTED OFFICERS

SECTION 1: BOARD APPOINTED OFFICERS

- A. In addition to the Chair and the Vice Chair of the Board, the Officers of the Authority shall include a Chief Executive Officer and a General Counsel, and such other or subordinate Officers, assistants and deputies as the Board may deem necessary and provide for by resolution.
- B. The Board appointed Officers shall have such powers and perform such duties as may be prescribed by the Board or by this Code. All Board appointed Officers shall attend meetings of the Board and shall be entitled to participate in Board deliberations, but shall not have a vote as to any matter before the Board.
- C. The Board appointed Officers shall serve at the pleasure of the Board.
- D. Compensation for the Board appointed Officers shall be set by the Board and reviewed annually. In addition, the Board appointed Officers shall be reimbursed for all actual and necessary expenses incurred by them in the performance of their official duties, subject to the provisions of the Reimbursement Procedures in Chapter 5 of this Title.
- E. The Chief Executive Officer shall furnish a corporate surety bond to be approved by the Board in such sum as may be determined by the Board, and which shall be conditioned upon the faithful performance of the duties imposed upon the Board appointed Officer as prescribed in this Code. Any premium for such bond shall be a proper charge against the Authority.

SECTION 2: APPOINTMENT AND REMOVAL OF CHIEF EXECUTIVE OFFICER AND GENERAL COUNSEL

The Chief Executive Officer and General Counsel shall be appointed by the affirmative votes of a majority of the Members of the Board. The Chief Executive Officer (subject to the provisions of any contract between the Authority and the Chief Executive Officer) and General Counsel may be removed at any regular or special meeting, by the affirmative votes of a majority of the Members of the Board.

SECTION 3: CHIEF EXECUTIVE OFFICER

- A. In General. The Chief Executive Officer is the administrative head of the Authority under the direction and control of the Board except as otherwise provided in this Code. Subject to the provisions of this Code, the Chief Executive Officer shall have the powers and duties assigned to the “Executive Director” by Public Utilities Code Section **132620**. He or she

shall be responsible for the efficient administration of all the affairs of the Authority which are under his or her control. The Chief Executive Officer shall carry out the direction of the Board, and shall have all the powers necessary to carry out the duties of his or her office. In addition to general powers as administrative head, and not as a limitation thereon, the Chief Executive Officer shall have the duties and powers set forth in this Section 3.

- B. Pro Tempore Chief Executive Officer. On recommendation of the Chief Executive Officer, the Board may approve a list of Executive staff members authorized to serve as Chief Executive Officer Pro Tempore during any absence or disability of the Chief Executive Officer.
- C. Staff; Consultants. Subject to the limitations set forth in Chapter 4 (Personnel) of Title I and Chapter 2 (Procurement Generally) of Title III of this Code, the Chief Executive Officer may appoint staff and retain consultants as necessary to carry out the duties of the Authority. The Chief Executive Officer shall have the authority to control, order and give directions to all heads of departments and to subordinate Officers and employees of the Authority under his or her jurisdiction through their department heads.
- D. Rules and Regulations- Development and Enforcement. The Chief Executive Officer shall enforce all rules and regulations of the Authority and see that all contracts, permits and privileges granted by the Authority are faithfully observed. The Chief Executive Officer shall recommend to the Board for adoption such rules, regulations and policies as he or she deems necessary for the efficient operation of the Authority.
- E. Investigations and Complaints. The Chief Executive Officer shall conduct investigations into the affairs of the Authority and any department or division thereof, and any contract or the proper performance of any obligations of the Authority. Further, the Chief Executive Officer shall investigate all complaints regarding matters concerning the administration of the Authority. An investigation of a complaint involving the Chief Executive Officer shall be conducted by the Chair of the Board.
- F. Supervision of Authority Property. The Chief Executive Officer shall exercise general supervision over all real and personal property which is under the control and jurisdiction of the Authority.
- G. Board - Chief Executive Officer Relations. The Board and its Members shall deal with the administrative services of the Authority only through the Chief Executive Officer and other Board appointed Officers, except for the purpose of inquiry, and neither the Board nor any Member thereof shall give orders or instructions to any subordinates of the Chief Executive Officer. The Chief Executive Officer shall receive orders and instructions

from the Board only when sitting in a duly convened meeting of the Board; no individual Board Member shall give any orders or instructions to the Chief Executive Officer.

- H. Departmental Cooperation. The General Counsel, and all subordinate Officers and employees, shall assist the Chief Executive Officer in administering the affairs of the Authority efficiently, economically and harmoniously.
- I. Notice/Minutes of Authority Meetings. The Chief Executive Officer shall give, or cause to be given, notice of all meetings as required by this Code. The Chief Executive Officer shall record or cause to be recorded the official minutes of all meetings of the Board, and shall endeavor to present the draft minutes for approval by the Board at the next regularly scheduled Board meeting.
- J. Agent for Service of Process; Claims. The Chief Executive Officer is the Authority's agent for service of process. In addition, claims for money or damages against the Authority and wage garnishments, shall be referred to the Chief Executive Officer. The Chief Executive Officer is authorized to perform all functions of the Board prescribed by Part 3 of Division 3.6 of Title I of the Government Code regarding such claims, other than the allowance, compromise or settlement of such claims.
- K. Records Maintenance; Public Records Act Requests. The Chief Executive Officer shall keep or cause to be kept the official minutes of all meetings of the Board, and other records of the Authority, at the principal office of the Authority or such other place as the Board may direct. The Chief Executive Officer shall retain tapes of Board and Board committee meetings for a period of at least three (3) years. The Chief Executive Officer shall also be responsible for responding to requests for inspection or copies of documents pursuant to the Public Records Act.
- L. Authority Finances. The Chief Executive Officer shall serve as the Chief Financial Officer of the Authority, unless and until another person is appointed to that position by the Board. The CEO shall not delegate any of the duties set forth in this Paragraph "L", except as expressly authorized by the Board.
 - 1. The CEO shall keep the Board at all times fully advised as to the financial condition and needs of the Authority.
 - 2. The CEO shall prepare and submit the proposed annual budget and the proposed annual salary schedule to the Board for its approval. These items shall be presented to the Board on or before April 1st of each year, and shall be based on a fiscal year commencing July 1st.

3. The Chief Executive Officer shall cause to be prepared an annual audit of the Authority's finances by an independent accounting firm appointed by the Board, and shall present the results of the audit to the Board.
4. All expenditures submitted or recommended to the Board shall include the signature of the CEO, affirming that the expenditure conforms to the approved budget and that sufficient funds are available to make the expenditure.
5. The CEO shall be responsible for depositing all monies received by the Authority in a bank or other financial institution approved by the Board, and accounting for all income and expenditures of the Authority. The CEO shall establish a financial accounting system for the Authority, in accordance with generally accepted accounting principles for transportation construction authorities.
6. The CEO shall prepare an investment policy for the investment of the Authority's surplus funds. Upon approval of the investment policy by the Board, the CEO shall invest the Authority's surplus funds in accordance with the investment policy.

SECTION 4: GENERAL COUNSEL

- A. The General Counsel shall be a person admitted to practice law in the Supreme Court of California and shall have been actively engaged in the practice of law for not less than seven (7) years as of the date of appointment. The General Counsel shall be an officer of the Authority, and shall have such powers and perform such duties as may be prescribed by the Board or by this Code.
- B. The General Counsel shall advise and consult with the Members of the Board, the Chief Executive Officer, and with any other Officers that may be appointed by the Board, regarding the performance of their duties, as requested.
- C. The General Counsel shall review and approve "as to form" all contracts and resolutions of the Authority.

CHAPTER 4 - PERSONNEL

SECTION 1: AUTHORITY PERSONNEL

The Chief Executive Officer shall have the power to appoint, remove, promote, and demote any and all Officers and employees of the Authority, exclusive of the Board appointed Officers. The powers and duties of the Chief Executive Officer pursuant to this Section are subject to: (i) the existence and provisions of a Board approved Authority Budget, designating employee positions and appropriating sufficient funds for those designated positions; (ii) a Board adopted Personnel Policy; and (iii) the Applicable Laws.

SECTION 2: PERSONNEL POLICY

The Chief Executive Officer shall develop, or cause to be developed, a Personnel Policy, for approval by the Board. The Personnel Policy shall set forth: (a) the rights and responsibilities of employees of the Authority; and (b) procedures for the appointment, removal, promotion, and demotion of employees of the Authority, exclusive of the Board appointed Officers.

SECTION 3: NON-DISCRIMINATION

The Authority shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex or sexual orientation. The Personnel Policy shall include procedures for ensuring that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex or sexual orientation. The Personnel Officer shall, in all solicitations or advertisements for employees placed by or on behalf of the Authority, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex or sexual orientation.

CHAPTER 5: EXPENSE REIMBURSEMENT AND TRAVEL PROCEDURES

SECTION 1: AUTHORITY TRAVEL AND EXPENSE REIMBURSEMENT PROCEDURES

The Chief Executive Officer shall prepare, or cause to be prepared, travel and expense reimbursement procedures and policies (the “Reimbursement Procedures”), for approval by the Board. All Authority related travel and expense reimbursement shall be governed by the provisions contained in the adopted Reimbursement Procedures, and in Title 21, Sections 2500 to 2503 of the California Code of Regulations.

CHAPTER 6 - REAL PROPERTY AND RELOCATION

SECTION 1: REAL PROPERTY MANAGEMENT

The Chief Executive Officer shall develop and implement procedures for the efficient and prudent management of all real property which is under the control and jurisdiction of the Authority. Such procedures shall include, but not be limited to, procedures for the insurance, maintenance, use, operation, and repair of all Authority real property.

SECTION 2: ACQUISITION AND RELOCATION

- A. In the event the Authority finds it necessary to acquire real property or relocate any person from property acquired by the Authority, the Authority shall comply with the procedures set forth in the Property Acquisition and Relocation Law (Chapter 16 of Division 7 of Title 1 of the Government Code, commencing with Section 7260, hereinafter the "Relocation Law"), and the Relocation Assistance and Real Property Assistance Guidelines (Subchapter 1 of Chapter 6 of Division 1 of Title 25 of the California Code of Regulations, commencing with Section 6000, hereinafter the "Relocation Guidelines").
- B. Pursuant to Government Code Section 7267.8 and Relocation Guidelines Section 6006, the Authority is required to adopt local guidelines that will implement the requirements of the Relocation Law and the Relocation Guidelines. The Authority hereby adopts the Relocation Guidelines as its local guidelines.

TITLE II - CODE OF CONDUCT

CHAPTER 1 - GENERAL PROVISIONS

SECTION 1: AUTHORIZATION AND EFFECTIVE DATE

The Exposition Metro Line Construction Authority adopts this Code of Conduct pursuant to the authority provided in Public Utilities Code Section 132610. This Code of Conduct shall be effective upon adoption.

SECTION 2: DEFINITIONS

The definitions contained in the Political Reform Act, regulations of the Fair Political Practices Commission (2 Cal. Code of Regs. Sections 18100, *et seq.*), and any amendments to the Act or regulations, are incorporated by reference into this Code of Conduct.

SECTION 3: GENERAL STANDARDS OF CONDUCT

Every Board Member, officer, employee and consultant of the Authority shall comply with the Political Reform Act, Government Code Section 1090, the Authority Conflict of Interest Code and every other applicable ethical or conflict of interest statute.

SECTION 4: PROCUREMENT STANDARDS OF CONDUCT

- A. The procurement business of the Authority shall be conducted in an ethical and proper manner above reproach and, except as authorized by law, with complete impartiality and without preferential treatment.
- B. Except for the persons designated to coordinate a particular procurement, no Board Member, Officer or employee shall upon release of solicitation document(s) have any ex parte communication with any prospective bidder or representative of a prospective bidder concerning any Authority procurement of property or services unless explicitly authorized to do so by the General Counsel and such authorization complies with Public Contract Code 20216.

CHAPTER 2 - SPECIFIC CONFLICT OF INTEREST PROVISIONS¹

SECTION 1: PROHIBITION ON RECEIPT OF GIFTS IN EXCESS OF \$10 FROM CONTRACTORS, POTENTIAL CONTRACTORS AND THEIR SUBCONTRACTORS

No Board Member or staff member of the Authority shall accept a gift valued at \$10 or more from contractors, potential contractors, or their subcontractors. For purposes of this Section, “staff member” shall mean all public officials of the Authority as defined in the Political Reform Act and the Regulations of the Fair Political Practices Commission.

SECTION 2: BOARD MEMBER DISQUALIFICATION-GIFTS OF \$10 OR MORE

No Member of the Board shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$10 or more provided to, received by, or promised to the Board Member within 12 months prior to the time when the decision is made.

SECTION 3: OFFICER DISQUALIFICATION-CAMPAIGN CONTRIBUTIONS

Every officer of the Authority shall comply with the requirements of Government Code Section 84308, except as modified herein. Each party or participant in an Authority proceeding who has made a contribution of \$250 or more to an officer of the Authority within 24 months prior to the proceeding shall disclose the contribution on the record of the Authority. The Chief Executive Officer shall provide a copy of Government Code Section 84308 and Section 18438, *et seq.*, to each officer of the Authority. Notwithstanding Government Code Section 84308, no Board Member or other officer of the Authority shall make, participate in making or in any way attempt to use his or her official position to influence a decision in a proceeding, as described in Section 84308 of the Government Code if the person has willfully or knowingly received a contribution in the amount of more than \$250 within the preceding 24 months from a party or his or her agent, or from any participant or his or her agent if the party or participant has a financial interest in the decision. The Chief Executive Officer of the Authority shall provide each year a list of Officers covered by this provision to the Board and each officer of the Authority.

¹ These provisions are required by Public Utilities Code Section 132610(b)(2)(B). All persons covered by the Authority Conflict of Interest Code must also comply with the provisions of the Conflict of Interest Code.

SECTION 4: OFFICERS-LEGALLY REQUIRED PARTICIPATION

In compliance with Public Utilities Code Section 132610 and notwithstanding the provisions of Government Code Section 87101 and Subsection (c) of Government Code Section 87302, no officer, including a Board Member, may participate in a decision in which he or she is financially interested under the Political Reform Act. In the case of a Board Member, the agency which appointed the Member may appoint a replacement to act in place of the disqualified Member on that matter. In the case of any other officer of the Authority, a different officer shall participate in that decision. If no other officer can participate in that matter, the Board shall appoint a replacement to act in place of the disqualified officer on that matter. The Chief Executive Officer of the Authority shall provide each year a list of Officers covered by this provision to the Board and each officer of the Authority.

SECTION 5: VIOLATIONS

Any Authority officer or employee violating any provision of this Code of Conduct applicable to the officer or employee is subject to disciplinary action, including possible termination. Any consultant violating any provision of this Code of Conduct is subject to possible termination or penalties as provided in the contract between the Authority and the consultant. In addition, any violation of this Code of Conduct by a Board Member, officer, employee, or consultant may constitute a violation of the Political Reform Act, Government Code Section 1090 or the Authority Conflict of Interest Code and subject the violator to additional remedies provided therein.

TITLE III - CONTRACTING AND PROCUREMENT

CHAPTER 1 - PROCUREMENT POLICY AND STANDARDS

SECTION 1: PURPOSE AND SCOPE

This Chapter sets forth a general procurement policy and set of standards that will govern the conduct of Authority procurement activities and of personnel engaged in those activities.

SECTION 2: PROCUREMENT POLICY STATEMENT

The underlying premise of Authority procurement policy is to foster free and open competition and to provide specified material and services and enter into Joint Development Agreements on a timely basis and in a cost-effective manner. The Authority should follow sound business and public policy principles in the procurement of goods, services and Joint Development Agreements so that these actions are performed efficiently and in a manner that serves the best interest of the Authority and the public.

SECTION 3: PROCUREMENT STANDARDS

- A. The Procurement Standards of the Authority are designed to ensure that materials, services and Joint Development Agreements are obtained in a timely, efficient and economical fashion, adhering to principles of good administrative practices and sound business judgment.
- B. The following Standards apply to the awarding and administering of all contracts by the Authority:
 - 1. The Authority will maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts.
 - 2. Members of the Board and Authority employees will adhere to the standards of conduct in Title II.
 - 3. Contractors and consultants will adhere to the applicable provisions of the Procurement Standards, as well as to the Code of Conduct in Title II.
 - 4. Authority procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.

5. The Authority will encourage the use of value engineering by using applicable clauses in contracts for appropriate equipment purchases and construction projects.
6. The Authority will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed contract. Consideration may be given to such matters as contractor integrity, compliance with public policy as implemented by applicable laws and regulations, record of past performance, and financial and technical resources.
7. Records sufficient to document the history of a procurement will be maintained and retained in accordance with policies and procedures approved by the Chief Executive Officer.
8. Time and material contracts will be used only after a determination that no other type of contract is suitable.
9. The Authority will have written selection procedures for procurement transactions that ensures fair, unbiased evaluation of competing proposals.
10. The Authority shall not make advance payments on any contract, except for contracts for the payment of rents, insurance premiums, subscriptions to publications and extension or connection of public utilities for Authority property, or any other contract where, based on extraordinary circumstances, the Board determines that advance payments are warranted.

CHAPTER 2 - PROCUREMENT GENERALLY

SECTION 1: IMPLEMENTATION BY CHIEF EXECUTIVE OFFICER; BOARD CONTROLS AND LIMITATIONS

- A. Final authority for purchasing actions and decisions rests with the Board, except as delegated to the Chief Executive Officer.
- B. The policies set forth herein shall be implemented by the Chief Executive Officer. The Chief Executive Officer has primary responsibility for ensuring that the Authority's procurement process is in accordance with Applicable Law and this Code, as interpreted by the General Counsel, and Authority policy.
- C. The Chief Executive Officer is authorized to approve and enter into contracts and contract modifications (including but not limited to change orders, amendments, and all other contract modifications) on behalf of the Authority, as follows: (i) contracts with a contract price that does not exceed \$250,000; (ii) modifications to contracts approved by the Chief Executive Officer that, cumulatively with the initial contract price and prior contract modifications, do not result in a total contract price in excess of \$250,000; and (iii) modifications to Board approved contracts that, cumulatively, do not increase the Board approved contract price by more than ten percent (10%), or such lesser amount as the Board may establish. The Chief Executive Officer shall not delegate this authority without express Board authorization. The powers of the Chief Executive Officer pursuant to this Paragraph are subject to: (i) the existence and provisions of a Board approved Authority Budget; (ii) the provisions of this Title; and (iii) the Applicable Laws.
- D. The Chief Executive Officer shall report to the Board at its next regularly scheduled meeting each new contract awarded on an emergency basis, and shall report monthly to the Board all other new contracts and contract modifications entered into by the Chief Executive Officer without express Board approval.

SECTION 2: PROCUREMENT OFFICER - DESIGNATION AND DELEGATION

The Chief Executive Officer is hereby designated as the "Procurement Officer" for the Authority. The Chief Executive Officer may delegate all or part of the Procurement Officer authority delegated to him or her by the Board, under guidelines approved by the Board.

SECTION 3: PROCUREMENT OFFICER - DUTIES

- A. The Procurement Officer shall oversee all procurement activities of the Authority, and implement the policies and standards set forth in this Title,

subject to the limitations of the authority that has been delegated to the Procurement Officer by the Board or the Chief Executive Officer.

- B. The Procurement Officer shall issue instructions for the implementation of Authority procurement policies.
- C. The Procurement Officer shall execute contracts, purchase orders, modifications, and supplemental agreements in accordance with established thresholds and delegated authority.
- D. The Procurement Officer shall ensure that a complete record of each procurement is maintained.
- E. The Procurement Officer shall issue instructions concerning the storage, distribution, and disposal of supplies and materials.

SECTION 4: PROCUREMENT POLICIES AND PROCEDURES MANUAL

The Chief Executive Officer, in his or her discretion, may adopt procurement and materials management procedures and guidelines needed to implement and supplement the policies and standards set forth in this Code. Any such procedures and guidelines shall provide for timely review and processing of all procurement actions, and shall ensure that materials, services, construction, and Joint Development Agreements are obtained timely, efficiently and economically, while adhering to principles of good public policy and practices and sound business judgment.

SECTION 5: AUTHORIZED METHODS OF PROCUREMENT; SELECTION

- A. Selection. As part of the procurement initiation process, the Procurement Officer shall determine which method of procurement is appropriate.
- B. Authorized Methods. The following methods of procurement may be used, as appropriate, in accordance with the policies and procedures included in the Procurement Manual:
 - 1. Sealed Bid, pursuant to Chapter 3 of this Title;
 - 2. Design-build, and Negotiated Design-Build pursuant to Chapter 4 of this Title;
 - 3. Competitive Negotiated Procurement, pursuant to Chapter 5 of this Title;
 - 4. Small Purchase Procedures, pursuant to Chapter 6 of this Title; and
 - 5. Non-Competitive or Emergency Procurement, pursuant to Chapter 7 of this Title.

SECTION 6: CONTRACTING WITH DISADVANTAGED BUSINESS ENTERPRISES, WOMEN BUSINESS ENTERPRISES AND OTHER BUSINESS ENTERPRISES.

- A. The Authority will take reasonable and appropriate steps to ensure that Minority Business Enterprises (“MBEs”), Women Business Enterprises (“WBEs”), and Other Business Enterprises (“OBEs”) have a full and equal opportunity to compete for and participate in all Authority contracts and subcontracts. To the extent permitted by law, the Board will establish guidelines regarding the inclusion of MBEs, WBEs, and OBEs in Authority procurements.
- B. For purposes of this Section 6, the terms “Minority Business Enterprises”, “Women Business Enterprises”, and “Other Business Enterprises” shall have the meanings set forth in the Guidelines adopted by this Board pursuant to Section 6.
- C. The Authority will honor certification of MBEs and WBEs from the State of California Department of Transportation, the Los Angeles County Metropolitan Transportation Authority and the City of Los Angeles.
- D. The Authority shall comply with all applicable Federal Requirements as they relate to MBE’s, WBE’s and OBE’s including the Disadvantaged Business Enterprises (DBE) Regulation of the U. S. Department of Transportation, 49 CFR Part 26 and the U. S. Federal Transit Administration utilizing the approved goal and program submitted annually by Metro as the recipient on behalf of the region. The Authority will develop a DBE contract goal for the Project consistent with the Metro DBE approved program.

SECTION 7: NON-DISCRIMINATION IN PROCUREMENT

All contracts entered into by the Authority shall contain appropriate clauses prohibiting discrimination by the contractor against any person or group of persons on account of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex or sexual orientation in the performance of the contract.

SECTION 8: DUTIES OF AUTHORITY STAFF REGARDING PROCUREMENT

Procuring goods, services, and Joint Development Agreements for the Authority must be a cooperative effort, and it shall be the responsibility of all Authority staff involved in procurement to employ sound judgment and appropriate standards of ethics and fairness to procure in a manner most advantageous to the Authority. All employees and departments are instructed to follow the policies and standards set forth in this Title, and the procedures set forth in the Procurement Manual, as well as any instructions issued by the Procurement Officer, regarding

procurement of goods and services and the storage, distribution, and issuance of material.

SECTION 9: APPLICABLE LAWS

The Authority shall comply with all Applicable Laws in its procurement activities, including but not limited to the provisions of Part 1 of Division 2, commencing with Section 1100, and Articles 1, 1.5, 1.7, and 1.8 of Chapter 1 of Part 3 of Division 2, commencing with Section 20102, of the Public Contract Code.

SECTION 10: PROTEST PROCEDURES

- A. A party that has timely submitted a bid or proposal in response to any procurement of the Authority may file a Protest objecting to the award of a contract.
- B. In order for a protest to be considered properly and timely filed, the protest must:
 - 1. Be filed in writing with the Chief Executive Officer of the Authority, within five (5) calendar days after publication of the written recommendation for award.
 - 2. Be filed by an actual bidder or proposer responding to the procurement. No other party has standing to protest.
 - 3. Identify the specific procurement number involved.
 - 4. Identify the specific recommended action or decision being protested.
 - 5. Specify in detail the grounds of the protest, the facts supporting the protest and the status of the protester.
 - 6. Include all relevant supporting documentation with the protest at the time of submittal.

If a protest does not comply with each and all of the above six (6) requirements, the protest will not be considered and will be returned to the protester.

- C. The Chief Executive Officer of the Authority will attempt to resolve a properly filed protest or perform additional fact-finding. If the Chief Executive Officer is able to resolve the protest at this stage, a letter confirming resolution shall be sent to the protester. If the Chief Executive Officer is unable to resolve the protest within five (5) calendar days from receipt, he/she may establish an independent team to evaluate the merits of

the protest. The Chief Executive Officer will review the recommendation of the evaluation team and notify the protester in writing of the decision on whether or not to deny the protest.

- D. If the Chief Executive Officer's decision is to deny the protest, the contract shall be recommended to the Board for award, or executed, if previously awarded by the Board subject to resolution of the protest. If the Chief Executive Officer's decision is to uphold the protest, a recommendation will be made to the Board to reject all proposals or bids, cancel the Request for Proposals or Invitation for Bids and solicit new proposals or bids, or award the contact to another proposer. If the recommendation for award is overturned by the Board, the previously recommended proposer may itself file a protest with the Chief Executive Officer within five (5) calendar days of the Board's decision.

CHAPTER 3 - SEALED BIDS

SECTION 1: SEALED BIDS - GENERALLY

When deemed by the Chief Executive Officer that it is in the best interest of the Authority, a sealed bid competitive solicitation which results in a fixed price contract awarded to the lowest responsive and responsible bidder will be utilized. Advertisement and public opening of bids is required. Except as set forth in Chapters 4, 5 and 7 of this Title, sealed bids shall be generally used for all procurements that require an expenditure of Fifty Thousand Dollars (\$50,000) or more.

SECTION 2: USE OF PROCEDURES SET FORTH IN PUBLIC CONTRACT CODE

- A. Although not otherwise applicable to the Authority, the Authority hereby adopts the procedures set forth in Article 4 of Chapter 1 of Part 3 of Division 2 of the Public Contract Code (“PCC”), commencing with Section 20161 (“Article 4”), except as set forth herein, for use when sealed bids are called for.
- B. For purposes of this Chapter 3:
 - 1. All references in the Public Contract Code provisions set forth in Paragraph “A” to “city” or “state agency” or “public agency” shall mean the Authority, and all references to “legislative body” shall mean the Board;
 - 2. Notwithstanding PCC Section 20162, the threshold expenditure for a “public project” that triggers the requirement for sealed bidding is Fifty Thousand Dollars (\$50,000); and
 - 3. PCC Section 20169 shall be of no force or effect.

SECTION 3: NOTICE AND ADVERTISEMENT

Notwithstanding PCC Section 20164, the notice inviting bids shall be posted at the offices of the Authority, or other place(s) designated by resolution of the Board, and advertised in a newspaper designated by resolution of the Board.

CHAPTER 4 - DESIGN-BUILD AND NEGOTIATED DESIGN-BUILD CONTRACTS

SECTION 1: PURPOSE

- A. As set forth in Public Utilities Code Section 132605 and Section 3 of Chapter 1 of Title I of this Code, the purpose of the Authority is to award and oversee all design and construction contracts for completion of the Project. In some cases, it may be efficient to have one contract for both the design and construction of one or more components of the Project. Such a contract shall be known as a “Design-build” or “Negotiated Design-Build” contract.
- B. For the purposes of this Chapter, “Design-build” or “Negotiated Design-Build” means a method of procuring design and construction from a single source. The selection of the single source occurs before the development of complete plans and specifications.

SECTION 2: PROCEDURES FOR DESIGN-BUILD AND NEGOTIATED DESIGN-BUILD CONTRACTS

- A. Use of the design-build and negotiated design-build procedures set forth in this Chapter requires authorization by an affirmative vote of four members of the Board. If the Board has authorized the solicitation of a design-build or negotiated design-build contract for a particular procurement, the Procurement Officer shall follow the procedures set forth in this Chapter 4 and otherwise determine the methods, procedures, and criteria for selection and set them forth in the procurement documents. The Chief Executive Officer may adopt any lawful methods, procedures and criteria that he or she determines are in the best interest of the Authority.
- B. The Procurement Officer shall cause to be prepared estimates, and prepare documents, for the solicitation of proposals on a design-build or negotiated design-build basis.
- C. The procurement documents shall include all of the following:
 - 1. A reasonable description of the services to be provided and work to be performed;
 - 2. A description of the format that proposals must follow and the elements they must contain, including the qualifications and relevant experience of the design professional and the contractor, and the criteria that shall be used in evaluating the submittal, including the proposal price;

3. The date on which the proposals are due, and the timetable that will be used in reviewing and evaluating the proposals.

CHAPTER 5 - COMPETITIVELY NEGOTIATED CONTRACTS

SECTION 1: USE OF COMPETITIVELY NEGOTIATED PROCUREMENT PROCEDURES

This Chapter outlines the Authority's procedures for competitively negotiated procurements, also known as a competitive Request for Proposals ("RFP") process. The procedures used in this Chapter may be used in the following circumstances:

- (a) Contracts for personnel services, or for other services which the Board has determined are to be competitively negotiated;
- (b) Purchases to be made from or the contract is to be made with the Federal or any State government or any agency or political subdivision thereof or pursuant to any open end bulk purchase contract of any of them;
- (c) Purchases of specialized rail equipment, computers, telecommunications equipment, fare collection equipment, microwave equipment and other related electronic equipment and apparatus, if the Board has approved, by a two-thirds vote, the use of the procedures set forth in this Chapter 5 for a particular procurement; or
- (d) Joint Development Agreements, including but not limited to those relating to fiber optic facilities.

SECTION 2: SOLICITATION OF PROPOSALS - GENERAL

- A. An RFP shall be the solicitation used to communicate the Authority's requirements to prospective contractors when the negotiated method of seeking competitive proposals is used. The Procurement Officer shall furnish identical information concerning a proposed procurement to all prospective contractors receiving the RFP.
- B. In determining sources to solicit, the Procurement Officer shall use all means available to ensure that an adequate number of potential qualified proposers receive the solicitation in order to obtain maximum open and competitive competition. Pre-solicitation announcement notices shall be published in a manner reasonably likely to attract prospective proposers or proposers.

SECTION 3: PROPOSAL EVALUATION

- A. The evaluation factors that will be considered in evaluating proposals shall be tailored to each procurement and shall include only those factors that will have an impact on the source selection decision. The evaluation factors that apply to a particular procurement and the relative importance of those factors are within the broad discretion of , the Chief Executive Officer, and the Board.
- B. The Chief Executive Officer, in his or her discretion, may establish a formal evaluation board to evaluate proposals and either recommend a selection to the Chief Executive Officer or itself select the source for contract award.
- C. Unless the Chief Executive Officer designates another Authority official, or establishes a formal evaluation board to make the selection, the Procurement Officer is responsible for selecting the source for contract award. For purposes of this Chapter, the Officer or board charged with responsibility to select the source for contract award is referred to as the “Selecting Party”.
- D. The Selecting Party shall evaluate each proposal in accordance with the evaluation criteria in the solicitation. The Selecting Party’s selection decision is subject to the approval of the Board.

SECTION 4: REJECTION OF PROPOSALS

- A. The Selecting Party may reject all proposals received that are determined not to be in the competitive range, including those proposals made by offerors who refuse to execute any required representations and certifications.
- B. The Board, based upon the recommendation of the Selecting Party or the Chief Executive Officer, may reject any or all proposals received. The Selecting Party or Chief Executive Officer may recommend rejection by the Board because:
 - 1. All otherwise acceptable proposals received are at unreasonable prices or, in the case of Joint Development Agreements, offer inadequate compensation;
 - 2. The proposals were not independently arrived at in open competition, were collusive or were submitted in bad faith; or
 - 3. For other reasons, rejection is clearly in the Authority’s best interest.

SECTION 5: NEGOTIATION; SELECTION

The methods and procedures for selection and negotiation shall be determined by the Procurement Officer and set forth in the request for proposals. The Procurement Officer may adopt any lawful methods and procedures that he or she determines are in the best interest of the Authority.

SECTION 6: SPECIAL PROVISIONS APPLICABLE TO ARCHITECT - ENGINEER AND RELATED SERVICES

- A. This Section prescribes guidelines and requirements for the procurement of Architect-Engineer (“A-E”) and related services (“A-E Services”). A-E Services are defined as professional services of an architectural or engineering nature that are required by law to be performed by a California registered or licensed architect or engineer. For the procurement of A-E Services, the Procurement Officer shall follow the procedures set forth in this Section 6, in addition to the procedures set forth elsewhere in this Chapter 5.
- B. If the procurement is for A-E Services, the selection shall be based on the demonstrated competence and qualifications of prospective contractors, and shall follow the procedures set forth in Government Code 4525, et seq. In addition to the provisions of Section 2 of this Chapter, the Authority shall provide timely notice statewide to publications of architectural and engineering societies.
- C. This Section 6 does not apply to the procurement of Design-build contracts. This Section 6 does not apply to the procurement of Joint Development Agreements unless the sole purpose of the joint development procurement is to procure architectural or engineering services.

CHAPTER 6 - SMALL PURCHASE PROCEDURES

SECTION 1: USE OF SMALL PURCHASE PROCEDURES

- A. This Chapter sets forth the procedures for small purchases and other simplified purchase procedures. These purchases shall be made competitively except where it is clearly in the best interests of the Authority to accomplish such purchases non-competitively.
- B. The Small Purchase Procedures set forth in this Chapter 6 may only be used when the total amount of the procurement does not exceed Fifty Thousand Dollars (\$50,000).
- C. The Procurement Officer shall use the Small Purchase Procedures that are most suitable, efficient, and economical based on the circumstances of each procurement.

SECTION 2: PROHIBITED USE OF SMALL PURCHASE PROCEDURES

- A. The Procurement Officer shall not split a procurement totaling more than the Authority's small purchase limitation into several purchases that are less than the limit in order to use the Small Purchase Procedures.
- B. A procurement requirement shall not be parceled, split, divided, or purchased over a period of time in order to avoid the dollar limitations for use of Small Purchase Procedures.

SECTION 3: TYPES OF AND REQUIREMENTS FOR SMALL PURCHASES

- A. Small purchases for Ten Thousand Dollars (\$10,000) or less may be accomplished by securing one proposal if the Procurement Officer considers the price to be fair and reasonable.
- B. For purchases that have a total value exceeding Ten Thousand Dollars (\$10,000) but not more than Fifty Thousand Dollars (\$50,000), a minimum of three (3) written quotations are to be requested. Efforts shall be made to include at least one DBE vendor.

SECTION 4: DETERMINATION OF REASONABLENESS OF PRICE AND AWARD

The Procurement Officer shall determine, in writing, that the price to be paid to the successful offeror is fair and reasonable. When only one (1) response is received to a request for quotations, or the price variance between multiple responses reflects a lack of adequate competition, the Procurement Officer shall include a statement in the contract file giving the basis for the determination that the price is fair and reasonable.

CHAPTER 7 - NON-COMPETITIVE AND EMERGENCY PROCUREMENTS

SECTION 1: USE OF NON-COMPETITIVE AND EMERGENCY PROCEDURES

- A. Procurement of supplies, services, and (to the limited extent of subparagraph B.7 below) Joint Development Agreements without competition is authorized under limited conditions and subject to written justification documenting the need. The need for non-competitive procurements is recognized when the Authority's interests are best served thereby, and when competitive bidding would not produce an advantage.
- B. Procurement by noncompetitive negotiation may be used pursuant to the procedures set forth in this Chapter 7 only when the Chief Executive Officer (for amounts \$250,000 or under) or the Board (for amounts over \$250,000) determines that the award of a contract pursuant to the competitive procedures set forth herein is either infeasible or would not produce a competitive advantage; a written statement of determinations and Findings ("D&F") is approved by the Chief Executive Officer; and at least one of the following circumstances applies:
 - 1. An emergency situation, as defined in Section 2 of this Chapter;
 - 2. The delay resulting from competitive procurement would cause an increase in the cost of the Project and/or a delay in the completion of the Project;
 - 3. The Board may direct the purchase of any supplies, equipment or material without observance of competitive bidding requirements, upon a finding by a majority of the Members present that:
 - (a) there is only a single source of supply available; or
 - (b) the contractor is uniquely qualified to provide the service or product;
 - 4. The equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts in the public interest;
 - 5. The goods are for testing or experimental purposes;
 - 6. The contract is with a contractor who has entered into a contract (the "MTA Contract") with the Metro for the Project or a subcontractor of such a contractor, if (a) the proposed Authority contract is for the same scope of work as the MTA Contract or subcontract; (b) the proposed Authority Contract contains

substantially the same terms as the MTA Contract; and (c) the MTA Contract was entered into pursuant to procedures substantially the same as those set forth in this Title; or

7. The Joint Development Agreement is with any governmental agency.

SECTION 2: EMERGENCY PROCUREMENTS

- A. The Authority may conduct a procurement on an emergency basis if the procurement is essential to an Authority requirement to deal with an existing emergency condition, as defined in Paragraph “B”. The emergency procurement of supplies or services shall be limited to quantities and time periods sufficient to meet the immediate threat and shall not be used to meet long-term requirements.
- B. For purposes of an emergency procurement under this Chapter, an “emergency condition” is a situation (such as a flood, epidemic, riot, equipment failure, or any other reason declared by the Chief Executive Officer) which creates an immediate threat to the public health, welfare, or safety. The existence of an emergency condition creates an immediate need for supplies, services, or construction which cannot be met through normal procurement methods, and the lack of which would seriously threaten one (1) or more of the following:
 1. The health or safety of any person;
 2. The preservation or protection of property; or
 3. The continuation of necessary Authority functions.
 4. Contract Delays that could result in an increase to the cost of the project.
- C. The Board hereby authorizes the Chief Executive Officer to expend funds, in an amount not to exceed Five Hundred Thousand Dollars (\$500,000), for purposes of this Section 2, without prior Board action. Any funds in excess of that amount shall require Board approval. The Chief Executive Officer shall, after such expenditure, submit to the Board a full report explaining the necessity for the expenditure.

SECTION 3: PROCEDURES FOR EMERGENCY AND OTHER NON-COMPETITIVE PROCUREMENTS

- A. For non-competitive procurements, the Procurement Officer must use a negotiated method of procurement. In each instance where the non-competitive procurement procedures set forth in this Chapter are used, the Procurement Officer shall do the following:
 - 1. Prepare a written statement of determinations and findings (D&F) recording all the facts that provide justification to negotiate the non-competitive or emergency procurement. General Counsel must approve the D&F before the procurement can proceed; and
 - 2. Ensure that all of the steps required under this Chapter for the justification, documentation, and approval of the procurement are completed before the contract is awarded.

- B. The Chief Executive Officer shall establish other procedures and standards to be used in implementing this Chapter 7.

CHAPTER 8 - PAYMENT OF LIVING WAGE

SECTION 1: PURPOSE AND SHORT TITLE

This Chapter is adopted for the purpose of improving the quantity and quality of services received by the Authority from its service contractors. This Chapter shall be known as the Living Wage Policy of the Authority.

SECTION 2: DEFINITIONS

For the purpose of this Chapter, unless it is plainly evident from the context that a different meaning is intended, the following definitions shall apply:

Contractor shall mean any person that enters into a service contract with the Authority.

Employee shall mean any person that both: (i) is employed by an employer; and (ii) expends any of his or her time in the performance of work related to a service contract. Employee shall not include managerial, supervisory, and confidential personnel. "Employee" also shall not include persons required to possess an occupational license.

Employer shall mean any contractor or subcontractor. Employer shall not include government entities, exempt non-profit organizations or temporary employment agencies.

Exempt non-profit organization shall mean a corporation that both: (i) is organized under 26 United States Code Section 501(c)(3); and (ii) has a chief executive officer who earns a salary that, when calculated on an hourly basis, is less than eight (8) times the lowest wage paid by the corporation.

Service contract shall mean a contract that: (i) is let to a contractor by the Authority primarily for the furnishing of services to, or for, the Authority; (ii) involves an expenditure in excess of twenty-five thousand dollars (\$25,000) and (iii) has a term of at least three (3) months.

Subcontractor shall mean any person that enters into a contract with a contractor to assist the contractor in the performance of a service contract. "Subcontractor" shall not include any person that is an employee of a contractor.

SECTION 3: PAYMENT OF LIVING WAGE AND BENEFITS

- A. Wages. Employers shall pay employees a wage of no less than the living wage set pursuant to paragraph D of this section.
- B. Compensated days off. Employers shall provide at least twelve (12) compensated days off per year for sick leave, vacation, or personal necessity at the employee's request.
- C. Uncompensated Days off. Employers shall provide employees at least ten (10) uncompensated days off per year for sick leave for the illness of the employee or a member of his or her immediate family where the employee has exhausted his or her compensated days off for that year.
- D. Living wage rate. The initial rate of the living wage shall be: (i) \$7.25 per hour with health benefits, as described in paragraph E of this section; or (ii) \$8.50 per hour without health benefits, as described in paragraph E of this section. The Procurement Officer shall annually adjust the rate of the living wage to correspond with any adjustments to retirement benefits paid to members of the California Public Employment Retirement System. The adjustment of the living wage rate shall be effective upon publication by the Procurement Officer of a bulletin announcing such adjustment and shall apply prospectively.
- E. Health benefits. Health benefits required by this Chapter shall consist of the payment of at least \$1.25 per hour towards the provision of health care benefits for employees and their dependents. Proof of the provision of such benefits must be submitted to the Procurement Officer to qualify for the wage rate in paragraph D of this section for employees with health benefits.

SECTION 4: FEDERAL EARNED INCOME CREDIT NOTIFICATION

Employers shall inform employees making less than twelve (\$12.00) dollars per hour of their possible right to the federal Earned Income Credit ("EIC") provided for in 26 United States Code Section 32. Employers shall make available to employees forms describing the EIC, as well as forms required to secure advance EIC payments from the employer.

SECTION 5: PENALTIES FOR VIOLATIONS

All service contracts shall provide that violation of this Chapter shall entitle the Authority, at its option, to impose the following penalties:

1. For failure to pay the minimum wages and overtime required by this Chapter, double back pay for all time worked during which the violation continued.

2. For failure to pay medical benefits required by this Chapter, double the difference between the minimum wage required herein without benefits and such minimum wages required herein with benefits, during the period of the violation.
3. For failure to allow an employee to take requested compensated or uncompensated time off as required by this Chapter, damages in an amount equivalent to that employee's wages for the time off requested and not received, or, at the employee's election, additional compensated time off in an amount equivalent to the time off requested and not received.
4. Termination of the contract.
5. Other legal remedies that may be available.

SECTION 6: PROHIBITION AGAINST RETALIATION

An employer shall not retaliate in any way against an employee who asserts any violation of the provisions of this Chapter. Any such retaliation shall be grounds for termination of the contract. Any employer that takes adverse action against an employee within sixty (60) days of the employee's assertion of a violation shall be presumed to have done so in retaliation for the assertion of a violation.

SECTION 7: APPLICABILITY

- A. General. Except as provided in this section, the provisions of this Chapter shall apply to: (i) employers with whom the Authority executes a service contract after the effective date of this Chapter; and (ii) employers with whom the Authority executes an amendment to a service contract existing on the effective date of this Chapter.
- B. Inapplicable to employers when waiver issued. This Chapter shall not apply to any person that has been issued a waiver pursuant to paragraph C of this section.
- C. Waiver authorization. The Procurement Officer may, in such officer's sole discretion, issue a waiver of the requirements of this Chapter to any person submitting a bid for a service contract upon making a finding that such waiver is necessary to allow the person to compete fairly in the bidding process.

SECTION 8: ADMINISTRATION

- A. Implementation regulations. The Procurement Officer shall promulgate implementing regulations consistent with this Chapter. At a minimum, such regulations shall include the following: (i) a list of contracts that shall be regarded as service contracts for purposes of Section 2; and (ii) requirements for employer reporting of employee compensation.

- B. Compliance monitoring. The Procurement Officer shall monitor compliance with this Chapter. Such monitoring shall include investigation of complaints by employees of claimed violations. The Procurement Officer shall annually submit to the Authority a written report on compliance with this Chapter.

CHAPTER 9 - DISPOSAL OF SURPLUS PROPERTY

SECTION 1: DEFINITIONS

“Surplus personal property” shall mean personal property of the Authority which is no longer needed or fit for the purpose intended.

“Surplus real property” shall mean real property of the Authority which is not needed for the Project. Real Property conveyed pursuant to a Joint Development Agreement is not surplus real property.

SECTION 2: DISPOSAL OF SURPLUS REAL PROPERTY

- A. Upon recommendation by the Chief Executive Officer, the Authority may authorize the Procurement Officer to dispose of surplus real property by a competitive bidding process to the highest bidder and in accordance with the provisions of the public notice inviting bids.
- B. Upon the Authority’s determination to authorize the sale of surplus real property by competitive bid, the Procurement Officer or his or her designee shall publish a notice inviting bids. The notice shall specify the terms of the same and other appropriate information.
- C. Notwithstanding Paragraphs A and B of this Section 2, the Procurement Officer shall first offer the surplus real property to the City in which the property is located. The property shall be sold at a price not less than its fair market value, as determined by an independent appraisal.
- D. The Procurement Officer shall adopt regulations which shall be approved by the Authority pertaining to the conduct of sales, appraisals, the process of declaring property surplus, public availability of lists of surplus real property, the giving of public notice regarding sales of surplus real property, and amount of time a City has to respond to an offer pursuant to Paragraph C, and such other factors as are required to dispose of property in accordance with this section. All sales of surplus real property shall be made in accordance with such regulations.

SECTION 3: DISPOSAL OF PERSONAL PROPERTY

- A. The Procurement Officer shall have the authority to dispose of all owned surplus and obsolete personal property by bid, auction, negotiated sale or exchange. If the disposal of such items is conducted by bid, the sale shall be conducted in accordance with Chapter 3 or Chapter 6 (as applicable) of this Title III. The Procurement Officer shall attempt to obtain the best value for the property that can be reasonably be obtained.
- B. The Procurement Officer may donate any owned surplus and obsolete personal property to any nonprofit organization providing services to the

residents of those cities or portions of cities in which the Project route is located if the Authority finds that the nonprofit entity will use the donated property to further a statutory purpose of the Authority.

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