



**Metro**

CONSTRUCTION COMMITTEE  
JANUARY 19, 2006

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

**CONTRACT:** CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER

**ACTION:** APPROVE UTILITY MASTER COOPERATIVE AGREEMENT WITH THE CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER

**RECOMMENDATION**

Authorize the Chief Executive Officer to execute a Utility Master Cooperative Agreement between the City of Los Angeles Department of Water and Power, (LADWP) and the Los Angeles County Metropolitan Transportation Authority (LACMTA) to define the responsibilities of each party for design and construction of the Department of Water and Power and/or LACMTA facilities.

**BACKGROUND**

This Utility Master Cooperative Agreement is needed to ensure overall effective development of the Department of Water and Power designs, design reviews and rearrangements for the Metro Gold Line Eastside Extension Light Rail Transit Project, Metro Orange Line Project, and future Bus and Rail Transit projects. This agreement establishes a clear and consistent framework of roles, responsibilities and procedures for coordination of the planning, design, and construction of all utility rearrangements and facilities.

The previous agreement expired upon completion of the Metro Red Line and did not address the Design/Build method of construction contracting. This agreement does set the LACMTA projects as a high priority for LADWP, but does not include fiscal responsibility for delays caused by either party. To date, LADWP has met every deadline LACMTA has asked them to meet due to the priority of LACMTA projects.

## FINANCIAL IMPACT

Funding for this scope of work is included in each major capital project's estimated total project cost. The annual work plans and specific project tasks have been, and will continue to be, included in each fiscal year project budget. The LACMTA FY06 budget included costs for LADWP designs and relocations necessary for the Metro Gold Line Eastside Extension Light Rail Transit Project, Metro Orange Line Project and the Exposition Light Rail Transit Project.

Since this is a multi-year agreement through December 31, 2009, the respective project managers and Chief Capital Management Officer will be accountable for budgeting necessary utility designs, reviews, relocation and implementation costs for each project in future years.

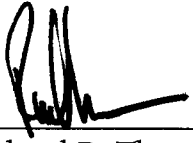
## ALTERNATIVES CONSIDERED

With respect to the overall Utility Master Cooperative Agreement, LADWP and LACMTA could develop and execute new agreements for each project. This duplicative effort would take months of extensive attorney and staff discussion, review and negotiation to draft each agreement, and is therefore not recommended. The previous agreement could have also been amended to include the Design/Build method of construction, but the previous requirements of LADWP and LACMTA were outdated and costly to LACMTA. This new Master Cooperative Agreement updates requirements, adds to the Design/Build method of contracting, and eliminates unnecessary LADWP and LACMTA requirements and therefore an amendment to the previous agreement is not recommended.

## ATTACHMENT

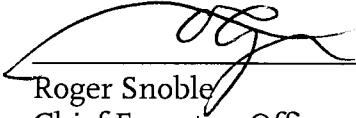
- A. Utility Master Cooperative Agreement

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



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Richard D. Thorpe  
Chief Capital Management Officer



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Roger Snoble  
Chief Executive Officer

**December 5, 2005 Final**

**MASTER COOPERATIVE AGREEMENT  
FOR DESIGN AND CONSTRUCTION OF RAIL AND BUSWAY  
TRANSIT PROJECTS**

**BETWEEN**

**CITY OF LOS ANGELES ACTING THROUGH ITS**

**DEPARTMENT OF WATER AND POWER**

**AND THE**

**LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION  
AUTHORITY**

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**DATED: \_\_\_\_\_**

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**MASTER COOPERATIVE AGREEMENT**

**FOR DESIGN AND CONSTRUCTION OF RAIL AND BUSWAY TRANSIT PROJECTS**

**BETWEEN**

**THE CITY OF LOS ANGELES**

**DEPARTMENT OF WATER AND POWER**

**AND THE**

**LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY**

THIS AGREEMENT, dated \_\_\_\_\_, 2006 is made by and between the Los Angeles County Metropolitan Transportation Authority (“LACMTA”) successor on interest to the Los Angeles County Transportation Commission (“LACTC”) and the Los Angeles, Department of Water and Power, (LADWP). As used in this Agreement, terms identified by initial capital letters shall have the meanings set forth in Article 1, or as elsewhere provided in this Agreement.

**RECITALS**

- A. LACMTA is a public entity created by the California State Legislature pursuant to PUC Section 130050.2 et.sq. 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.

LACMTA proposes to design, construct and operate Rail and Busway Transit Projects and facilities which will pass in, on, under, over, or along public streets, highways, bridges, parks and other public Right-of-Way of various municipal jurisdictions, including the City of Los Angeles, California. These Transit Projects include but are not limited to:



- 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 LACMTA from time to time).
- 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 LACMTA from time to time).
- The Exposition Corridor Light Rail Transit 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 LACMTA from time to time).
- The San Fernando Valley Metro Orange Line Project (the “SFV Orange Line”), which is defined as an approximately 14 mile Bus Rapid Transit line currently under construction will traverse portions of the City of Los Angeles between North Hollywood and Warner Center.

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

C. LADWP and LACMTA are parties to that certain titled Cooperative Agreement for the Metro Rail Project between LADWP and the Southern California Rapid Transit District (LACMTA's predecessor in interest). This Agreement shall not negate or modify the terms and conditions of any existing legally binding agreement or easement.

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, LADWP and LACMTA agree to develop an agreement as follows:

## **Article 1 General Provisions**

### **1.1 Scope of Agreement**

1.1.1 This Agreement addresses any LACMTA projects, which meet the definition of "Transit Project" set forth in Section 1.3.22 below. Among other things, this Agreement specifies (a) the procedures which LACMTA and LADWP will follow in identifying, planning, designing and effecting all Rearrangements of LADWP Facilities in order for LACMTA to design and construct Transit Projects within the City, and (b) the manner in which LADWP and LACMTA will be reimbursed, when applicable, for their respective Costs of such activities. LADWP agrees to designate LACMTA's Transit Projects as high priority projects, and will provide LACMTA with expedited review and approval procedures in connection with design, design reviews, and inspection, provided that the LACMTA follows the procedures set up in this Agreement.

1.1.2 The terms and conditions of this Agreement shall not negate or otherwise modify the terms and conditions of any existing easements, licenses or other use and/or occupancy agreements between LADWP and LACMTA with respect to the occupancy agreements between LADWP and any former owner of real property now or hereafter owned by LACMTA, and to which LACMTA has become or hereafter becomes a successor either by assignment or by operation of law.

## 1.2 Duration of Agreement

The initial term of this Agreement (the "Initial Term") shall commence on the Effective Date and shall terminate on December 31, 2009, or (b) one hundred twenty (120) days after LACMTA's written notice to LADWP that all construction for the Eastside LRT Project, the Wilshire BRT Project, the SFV Orange Line, and the Expo LRT Project that might directly impact LADWP Facilities has been completed. This Agreement shall automatically be renewed for consecutive one year terms commencing on the day following the last day of the Initial Term and on each subsequent anniversary of such day, unless either Party provides written notice of termination to the other no later than ninety (90) days prior to the end of any term (including the Initial Term). In the event this Agreement is terminated after a particular Rearrangement has commenced but not completed, the particular Rearrangement shall be completed under the terms herein. In the event this Agreement is terminated prior to the completion of all Project construction within the City of Los Angeles, such construction shall thereafter be subject to the LADWP's usual and customary procedures and processes applicable to other contractors.

## 1.3 Definitions

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

1.3.1 Abandonment is the permanent termination of service of an existing LADWP Facility or portion thereof, and, if the LADWP Facility or portion thereof is not being removed from its existing location, the work necessary to safely permit such LADWP Facility to remain in place in accordance with applicable law and/or LADWP standards.

1.3.2 Betterment is a Replacement Facility, or component thereof, that will increase or upgrade the level of service, capacity, capability, efficiency or function of a Replacement Facility over that which was provided by the corresponding Conflicting Facility ("upgrade"). However, the following shall not be considered Betterments:

- (a) An upgrade, which the Parties mutually agree, will be of direct and principle benefit to the Construction or operation of a Transit Project.

- (b) An upgrade resulting from Design or Construction in accordance with the applicable LADWP Standards as set forth in Section 2.5 and practices. Provided, however, that any upgrade beyond the equivalent level required by such applicable Utility Standards shall be a “Betterment.”
- (c) Measures to mitigate environmental impacts identified in the Transit Project's Final Environmental Impact Report or Statement, and any supplemental environmental reports which are mutually agreed to be a Transit Project responsibility, provided, however that any upgrade beyond equivalent applicable requirements shall be considered a “Betterment.”
- (d) Replacement of devices or materials no longer regularly manufactured with the next highest grade or size.
- (e) A replacement or rearrangement that is the consequence of changes made by the LACMTA or its contractors.
- (f) Replacement of Overhead facilities with underground facilities
- (g) Replacement of an existing facility due to the Project.

Design is defined in the following four phases:

1.3.3 Preliminary Engineering (PE) Design - takes the Transit Project from a conceptual state to a level of project design definition that describes the project technical and architectural approach in order to determine environmental and community impacts, interfaces with utilities and existing infrastructure/facilities, operational characteristics, an estimate of project costs and a project execution schedule. In this phase, LACMTA or its consultant shall progress the design to a point at which enough information is available to determine that a workable solution or location for all rearrangements exists.

1.3.4 Design Development –validates schematic design concepts and system criteria and develops a clear indication of design solutions for requirements outlined in the Preliminary Engineering design phase. At the completion of Design Development, major features of the

architectural, structural design and third party interfaces have advanced in conjunction with performance specifications thereby providing the basis for Final Design.

1.3.5 Advanced Partial Design – This is a submittal of a portion of the Transit Project scope that, upon approval, will allow construction to begin on this limited and specific scope prior to completion of the Final Design of the Transit Project scope.

1.3.6 Final Design – this design phase provides the detailed design and technical specifications for all temporary and permanent project facilities. This phase addresses and resolves all Design review comments, construction issues, and third party comments and finalizes all engineering, architectural, and system designs necessary for complete construction documents.

1.3.7 Conflicting Facility is defined as an existing LADWP Facility, which LACMTA determines is so situated as to require Rearrangement in order to construct or operate a Transit Project without adversely impacting the operations, maintenance, or access of that LADWP Facility.

1.3.8 Design/Build (“D/B”) is defined as the method of project delivery in which LACMTA engages a Design/Build Contractor to both furnish the Final Design of and to Construct a Project.

1.3.9 Design/Build Contract (“D/B Contract”) is defined as the documents that are used by LACMTA to contract with a Contractor to design, build, fabricate, install, and prepare for operations the facilities and systems necessary to operate the Project as specified in the documents, and to demonstrate the operability of the Project through the pre-revenue operations.

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

1.3.11 Design Review is defined as the process of critical evaluation of plans and specifications by LACMTA, the LADWP, and others as specified by LACMTA that are

developed by consultants and/or the Design/Build Contractor, which are necessary for the construction of the Project.

1.3.12 LADWP Facility is defined as real or personal property located within or near to the route of a Transit Project, such as structures, improvements, and other properties, which is under ownership or operating jurisdiction of LADWP.

1.3.13 LADWP Standards are defined as follows:

- (a) Water System: the latest editions of the LADWP's design and construction standards in effect at issuance of the Design/Build RFP for the design of all Rearrangements, including but not limited to: DWP Specifications D101, DWP Engineering Standards Manual, Field Notes & As-Constructed Drawings Manual, Standard Specifications for Public Works Construction (SSPWC), and all reference standards.
- (b) Power System: the latest editions of the LADWP's design and construction standards in effect at issuance of the Design/Build RFP for the design of all Rearrangements, including but not limited to: On-Line Power Distribution Standards, Specifications Nos. 104 and P178, all referenced standards, SSPWC, and written and unwritten policies.

1.3.14 Notification Matrix is defined as the matrix identifying, and providing telephone numbers for those individuals to which LADWP, LACMTA and contractor(s) should provide notices as required. This matrix is provided to assist both Parties in the coordination work.

1.3.15 Parties are LACMTA and LADWP collectively, and a "Party" is defined as each of LACMTA and LADWP individually.

1.3.16 Rearrangement or Rearrange is all work of removal, replacement, alteration, reconstruction, support, or relocation of a Conflicting Facility or portion thereof, whether permanent or temporary, which LACMTA and the LADWP determine must be rearranged in order to design, build, and/or operate the project. It is also used for the work of installing new and required LADWP infrastructure due to the impacts of the Transit Project construction.

1.3.17 Replacement Facility is defined as a LADWP Facility that may be constructed or provided under the terms of this Agreement as a consequence of the Rearrangement of a Conflicting Facility or portion thereof and which meets applicable LADWP Standards as set forth herein.

1.3.18 Rules are the entire body of orders enacted by resolution of the Board of Water and Power Commissioners, which set forth the applicability and other conditions of all charges and services when such applicability or conditions are not set forth in and as a part of the rate ordinance.

1.3.19 Schedule is defined as a timeline mutually agreed upon by both Parties that will, to the extent possible, be consistent with LACMTA's construction schedule for each Transit Project.

1.3.20 Substitute Facility is defined as a LADWP Facility, which is equivalent, in terms of service, and/or capacity to the corresponding Conflicting Facility that requires Rearrangement and which meets applicable LADWP Standards as set forth herein.

1.3.21 Temporary Facility is defined as a Facility constructed for the purpose of ensuring continued service while a Conflicting Facility is taken out of full or partial service while it undergoes its permanent Rearrangement and/or any work on a LADWP Facility to accommodate the construction of a Transit Project, but which will be removed or restored to its original condition after such construction activities are completed.

1.3.22 Transit Project is defined as an individual Rail Project or Busway Project, as the context may require and which necessitates such Rearrangement.

1.3.23 Transit Project Right-of-Way is defined as (a) real property owned (or intended for acquisition) or controlled by LACMTA and used (or proposed to be used) for Transit Project purposes, and (b) those portions of public streets or rights-of-way on which are located (or proposed to be located) any Transit Project Facilities or which are otherwise used and maintained (or proposed to be used and maintained) by LACMTA for Transit Project purposes.

1.3.24 Work Order is defined as that document which LACMTA shall issue to LADWP authorizing funding for a defined scope and schedule (unless otherwise agreed upon) for performance of design, design review, inspection, construction and/or supply of materials and equipment, under the terms and conditions of this Agreement, which will become effective with LADWP acceptance by signing of the Work Order.

1.3.25 Working Days is defined as any calendar day excluding Saturdays, Sundays, and those legal holidays identified in Los Angeles Administrative Code, Article 9, Section 4.119.

#### **1.4 Interpretation and Application of Utility Standards**

Any Design or Construction issues affecting Rearrangements which are not addressed by applicable Standards shall be resolved in such a manner as to impose the minimum requirements necessary to make a Replacement Facility the equivalent (in terms of capability, appearance, efficiency and function) of the Conflicting Facility which it replaces and to otherwise minimize Rearrangement work.

#### **1.5 Issue Resolution**

If a disagreement arises between LADWP and LACMTA with respect to a Design issue or if LACMTA receives a notice of nonconformance, the parties shall meet and confer within 5 working days in a joint working group consisting of appropriate members selected by each Party to attempt to resolve the dispute prior to proceeding with dispute resolution described in Article 11.

#### **1.6 Coordination of Rearrangement Scope**

1.6.1 The LACMTA Representative and the LADWP Representative shall establish general guidelines, working relationships and administrative policies, standards of Design and Construction, approval procedures with respect to Design review, and coordination of Construction, right-of-way acquisition and Rearrangement of LADWP Facilities pursuant to this Agreement in order to permit the timely design, construction, and operation of Transit Projects. All such guidelines, relationships, policies, procedures and coordination shall be considered part of this Agreement.



1.6.2 Identification of LADWP Facilities - Within thirty (30) days after request by LACMTA, LADWP shall identify and disclose to LACMTA commensurate with the level of Transit Project scope definition, the nature and location of all LADWP Facilities, which are located on, in, under or over the locations which LACMTA indicates may be affected by a Transit Project. LADWP and LACMTA shall take reasonable actions to verify such information. LADWP shall identify:

- (a) LADWP Facilities in which service must be maintained.
- (b) LADWP Facilities in which service may be abandoned during Construction.
- (c) LADWP Facilities, which may be temporarily removed from service and the maximum allowable duration of acceptable outage.
- (d) LADWP operational constraints, which impact the proposed sequence of facility rearrangements if a detailed sequence of relocations has been provided by LACMTA.

1.6.3 Rearrangement Design and Construction Plan – After LADWP has identified Facilities in accordance with Article 1.6.2, LADWP and LACMTA shall review and agree upon:

- (a) The responsible Party for performance of Design and Construction of Rearrangements.
- (b) The scope and proposed sequence of Construction of Rearrangements (Construction Staging Plans) and
- (c) The Schedule for Design and Construction of Rearrangements.

Agreement on these responsibilities shall form the basis of a Work Order as further described in Article 9.

#### 1.6.4 Priority and Scheduling by LADWP

LADWP recognizes that LACMTA projects within the scope of this agreement are high priority to the City of Los Angeles. Delays to LACMTA projects of this importance can impact the City and its residents as well as the project schedule

and budget. Accordingly, LADWP will assign High Priority to LACMTA projects and exercise due diligence to meet all Schedules.

## **1.7 Service Interruptions**

Certain components of the Transit Project Construction may require interruption of some LADWP services. LADWP and LACMTA will develop a mutually agreed upon plan for scheduled outages that will minimize disruption of service to LADWP customers. LACMTA must give LADWP confirmation at least three (3) working days prior to the interruption, in accordance with the Notification Matrix. LADWP will notify affected parties, residents, and businesses in advance of scheduled interruptions. No service interruptions will be permitted unless specifically agreed to by LADWP.

## **1.8 Coordination of New and Unrelated LADWP Facilities**

1.8.1 Throughout the term of this Agreement, if LADWP plans to construct new facilities unrelated to a Transit Project that would cross or otherwise occupy locations that might conflict with Construction or operation of a Transit Project, LADWP will coordinate the Design and installation of such Facilities with LACMTA such that these Facilities will minimize conflict with the Transit Project.

1.8.2 Throughout the term of this Agreement, if portions of the Transit Project that affect LADWP Facilities that were not addressed in the Contractor's plans or if subsequent changes are made to the project that impact LADWP Facilities, LACMTA shall design and propose a remedy utilizing the agreed upon design review process.

1.8.3 Once LADWP Facilities are installed, LACMTA shall ensure that those Facilities are protected in place. LACMTA shall ensure that its Contractor has an LADWP inspector on site when working on or around any LADWP Facilities.

1.8.4 LADWP has an ongoing responsibility to maintain, operate and construct new facilities to provide water and power within Los Angeles. LACMTA shall cooperate with

LADWP to allow work, unrelated to the rearrangement of facilities and minimize the impact on both parties.

## **Article 2 Design**

### **2.1 Los Angeles Department of Water and Power (LADWP)**

LADWP recognizes that time is of the essence for all Transit Projects, and that certain portions of Design/Build Transit Projects may involve Partial Design Submittals to facilitate early Construction of complete segments of a project prior to completion and approval of a completely integrated Final Design for the entire project. On a monthly basis or a more frequent basis if mutually agreed upon, each Party preparing design submittal packages relating to Rearrangements (including Partial Design Submittals) shall provide a status of the submittal schedule (and priorities) to the other Party to ensure compliance with the agreed upon Schedule identified in a Work Order.

2.1.1 **Advanced Partial Design.** Advanced Partial Design Submittal by LACMTA, its consultants, or its Design/Build contractors to the LADWP, shall be a complete segment or segments of a Project Design Submittal containing work related to all LADWP Facilities within the area, to be reconstructed or rearranged.

2.1.2 This submittal, identifying all affected Facilities or systems shall be submitted to the LADWP, for review and approval, prior to submittal of a fully integrated Project Design to the LADWP, for review and approval, as set forth in Section 2.1.3 of this agreement. Any Partial Design Submittal shall be complete with respect to Facility and systems to avoid any reduction in services.

2.1.3 Each complete segment shall include, but not be limited to, all proposed reconstruction and rearrangements for all LADWP facilities, streets, sanitary sewer, storm drain, water, telecommunications, fiber optics, gas, street lighting, and composite utility relocation plans. Each complete segment shall stand alone. LADWP agrees to review Partial Design Submittals and, when submittal is satisfactory to the LADWP, to approve for early construction

(subject to Section 2.1.4 and to timing and other requirements of this Agreement) all such Partial Design Submittals in order to facilitate such early Construction. LADWP's comments on Partial Design Submittals shall identify any aspects of the identified segments, which do not conform to applicable LADWP Standards, based on the information provided. Construction components identified by the LADWP, which do not conform to LADWP Standards, requirements, or practices shall not proceed to early construction.

2.1.4 The parties recognize that LADWP approval of Partial Design Submittals might result in Design or Construction of LADWP Facilities that are non-conforming to applicable LADWP Standards. LACMTA shall be responsible for correction of all such non-conforming Design and/or Construction so long as (i) requested by LADWP in connection with a written non-conformance notice submitted to LACMTA staff within five (5) working days of the date of discovery of the defect, and (ii) requested by the LADWP in connection with final design approval of an entire Facility in order to conform that Facility to applicable LADWP Standards. Both Parties will resolve any conflicts caused by Partial Design Submittals.

## **2.2 Design by LADWP**

2.2.1 If LACMTA and LADWP mutually agree that LADWP (or its consultants and/or its contractors) shall Design a specific Rearrangement LACMTA shall issue a Work Order as specified in Article 9 to LADWP and shall deliver to LADWP. Upon receipt of such Work Order, LADWP shall proceed to Design such Rearrangement and the activities referred to in the following subsections.

2.2.2 LADWP shall exercise its best efforts to perform its Design work in conformance with the Schedule and shall coordinate throughout Design with LACMTA as is necessary to develop plans satisfactory to both LACMTA and LADWP for each Rearrangement. The schedule for LADWP's completion of Design, coordination requirements, review procedures, and related provisions shall be mutually agreed to and included as attachments to the Work Order, which shall also include the estimate of completing the Design of the specific Rearrangement and agreed upon scope.

2.2.3 LACMTA's review and concurrence of any Design furnished by LADWP, its consultants or contractors shall be solely for purposes of assessing compatibility of the Replacement Facilities with the Transit Project, coordination with LACMTA's work on the Transit Project, and Cost issues. LACMTA shall review the Design plans and specifications for their compatibility with the overall design. LADWP shall submit a set of completed Design plans and specifications for each Rearrangement including LADWP's estimated Cost of Construction and LADWP's estimate of the time needed to perform the required Rearrangement work, to LACMTA for its review and concurrence.

2.2.4 During LADWP's Design process for each Rearrangement, LACMTA shall have the right to review and comment on the plans and specifications as well as on the Cost and time estimates. Unless otherwise expressly provided for herein, LADWP may not change the approved plans during the progress of Construction, except with prior concurrence of LACMTA. LADWP shall be responsible for errors in and omissions from any Designs prepared or provided by LADWP, its consultants or contractors.

LADWP shall deliver the Final Design for each Rearrangement to LACMTA for its review and concurrence in accordance with the schedule established in the applicable Work Order authorizing such Design work.

## **2.3 Design of Rearrangements Performed by LACMTA, its Consultants and Contractors**

2.3.1 If LACMTA and LADWP mutually agree, LACMTA (or its consultants and/or contractors) shall Design all Rearrangements including Betterments thereto. For design of Betterments, LACMTA must secure LADWP's approval in advance. For Design of any specific Rearrangements, which will be performed by LACMTA (or its consultants and/or contractors), LACMTA shall issue Work Orders for LADWP to review plans and specifications as required.

2.3.2 The parties will develop a mutually agreeable process, Schedule and electronic format for submittal of plans and specifications for each reconstruction and Rearrangement of LADWP Facilities.

2.3.3 LACMTA, its consultants and its contractors, are responsible for errors and omissions (other than due to the negligence of LADWP) in the plans, specifications, submittals, and all other related contract documents. LACMTA shall review all submittals prior to submitting to LADWP to ensure they are complete and have addressed any prior comments by the LADWP. Following review and comments the contractor will make the necessary changes and sign and seal as "Engineer of Record." LADWP will sign Final Design plans to signify that construction can commence.

2.3.4 LADWP agrees that during the Final Design stage, it shall not raise any new issues, or make any comments that are inconsistent with its comments on earlier submittals, or with any changes thereto agreed to by LADWP and LACMTA, provided the design has not changed or that such comment would avoid a design conflict not previously discovered and new information has not been added. LADWP's approval of the Final Design for any Rearrangement will not be withheld if the submittal is consistent with (a) the most recent previous submittal, modified as appropriate to respond to LADWP comments on such submittal (other than any such comments which are disallowed pursuant to the preceding sentence) and to reflect any subsequent changes agreed to by LADWP and LACMTA, or (b) earlier submittals for such Rearrangement which have been approved (or deemed complete and approved) by LADWP. However, LADWP shall have the right to make new comments on any material changes in Design from previous submittals.

## **2.4 Betterments**

2.4.1 As soon as possible preferably during the Preliminary Engineering Design phase but in any event not later than the Final LADWP comment due date for each Rearrangement, LADWP shall inform LACMTA what Betterments, if any, LADWP desires so that LACMTA can review the Betterments and determine whether they satisfy the requirements set forth in Section. Each Design furnished by LADWP shall specifically identify any Betterments included in such Design.

2.4.2 It is understood and agreed that LACMTA will not pay for or bear the Cost of any Betterment and that no Betterment may be performed in connection with any Rearrangement (whether Designed or Constructed by LADWP or by LACMTA), which is incompatible with a Transit Project. LADWP shall bear the Cost of all Betterments included in each Rearrangement, by crediting or paying LACMTA therefore, as applicable, in accordance with Article 7.

## **2.5 General Design Criteria for Rearrangements**

Both Parties understand that the design and construction of a Transit Project impose unique design constraints to which Design standards may not apply. Contractor proposed designs may require thorough review and the application of engineering judgment by LADWP staff rather than Design standards. Should special situations arise in which engineering, economic, environmental, or other PROJECT constraints make it impossible or extremely impractical to provide the minimum elements established by mandatory standards, LADWP and LACMTA shall consider the use of substitute or non-standard features when such use best addresses a given situation and the interests of the public. LACMTA understands that design constraints imposed by the unique nature of the Transit Project may require mitigation to protect the integrity of LADWP Facilities that shall not be considered as Betterments. Also, additional facilities may be installed to avoid impact to the Transit Project from future operation and maintenance of LADWP Facilities and shall not be considered as Betterments. Rearrangements of LADWP Facilities shall not be construed as Betterments. Rearrangements of LADWP Facilities shall not result in degradation to service, operation, or maintenance without mitigation.

2.5.1 The LADWP shall notify LACMTA of any revisions or additions to LADWP Standards. The Design of each Rearrangement, shall conform to the LADWP Standards together with revisions or additions.

2.5.2 If the Transit Project is placed on hold by LACMTA, for any reason, for a period of one (1) or more years, the LADWP will have the option to review and modify any LADWP Standards from the previous design. The LADWP will not be liable for any costs due to changes in standards due to this type of project delay.

2.5.3 LADWP agrees that it shall not adopt any new LADWP Standards, or otherwise amend or supplement any existing LADWP Standards, for the sole purpose or primary purpose of affecting any Transit Project.

2.5.4 All LADWP Standards shall be applied to the Rearrangements hereunder in the same manner as they are applied by the LADWP to projects, which are (a) financed primarily by LADWP, (b) comparable to the Rearrangements of LADWP Facilities hereunder, and (c) constructed for LADWP by its own forces or by its contractors.

## **2.6 Changes in Approved Designs**

Changes in Design shall require both LACMTA's and LADWP's approval. LACMTA shall not unreasonably withhold its consent or approval necessary to incorporate LADWP requested changes into approved plans or specifications. All changes required to accommodate different site conditions are the responsibility of LACMTA its consultants and/or contractors. Field changes due to differing site conditions must be reviewed and approved by both Parties.

## **2.7 Specific design Requirements**

2.7.1 LACMTA and LADWP recognize that the construction of rail facilities will impact the LADWP's ability to serve and maintain water system facilities where the water system facilities are isolated from the property to be served. Rearrangement facilities will be provided to maintain the LADWP's ability to serve where track alignment will separate private property from water system facilities. LADWP will work with LACMTA during the design of the rearrangements to minimize the amount of double main required to maintain service within the standards for water system facilities. Both parties recognize a standard does not exist for all possible circumstances.

2.7.2 Should the proposed alignment cross any services, a new main may need to be installed to provide for the water service lateral connection.

2.7.2.1 In areas where the proposed track alignment isolates properties from existing water mains, new mains will be installed as necessary. Mains shall be sized according to the standard installation size for that area.



(a) In areas where the proposed track alignment crosses a water main, the existing water main shall be replaced with steel main. Steel main pipe material shall be cement coated and lined. The steel main shall be encased in a steel casing which has the diameter at least two sizes greater than the distribution main. The limits of the casing shall be in accordance with appropriate railroad standards as well as LADWP Standards. Any gates or other appurtenances must be relocated outside of the encased area and at least 12' outside the track area. Cathodic protection for all steel pipes requires sacrificial anodes. If the existing main is situated parallel to the tracks, the Facility shall be rearranged to a location away from the Rail Right-of-Way to allow for placement of shoring at a minimum of 10 feet horizontal distance from the outside rail to the edge of shoring closest to the rail;

(b) For purposes of operations, maintenance, and safety, water mains shall not be within 10 feet of the proposed alignment. Existing water mains, service laterals, or other LADWP Facilities that cross under a proposed Project structure shall be protected. Any existing mains not meeting criteria shall be relocated.

Water mains shall remain at standard depths listed in the Engineering Standards Manual D101. Should any grading occur, mains must be relocated accordingly.

2.7.3 In areas where alignment crosses the water main, mains shall be lowered in accordance with the standard depth required. Any main impacted by construction operations of the project shall be protected in place according to LADWP water system standards.

## **2.8 Los Angeles Fire Department**

LACMTA shall meet with the Los Angeles Fire Department to determine the fire protection facilities required for the project. For any hydrants installed on existing mains, the LACMTA shall submit a request and payment in full for the fire protection facilities, including, but not limited to, any upgrades in mainlines that are necessary. The LACMTA will be responsible for any street damage restoration fee charges that are required for the release of the permit. The LACMTA will be responsible for installing any fire hydrants located on the new main.

Construction materials may come from LADWP inventory and be purchased by the LACMTA or its contractor. Fire hydrant assemblies to be used in the construction must be from LADWP inventory. Average lead-time to purchase parts is 60 to 90 days for stocks not on hand at LADWP. The LADWP Water "Engineering Standards Manual" includes a materials list of acceptable materials. Material must be paid for at time of receipt, unless arrangements are made with LACMTA.

## **2.9 LADWP Review of Transit Project Design Affecting LADWP Facilities**

2.9.1 The Parties will develop a mutually agreeable process for LACMTA submittal of plans and specifications for Transit Project Facilities located within, on, under, or over LADWP Rights-of-Way at the preliminary Engineering, Design Development, and Final Design Stages and for LADWP review and comment regarding same. LACMTA to schedule submittals to allow LADWP adequate time to review plans to meet the Schedule:

(a) Within seven (7) working days after receipt of a Design submittal for a Transit Project Facility, (i) LADWP shall inform LACMTA whether the plans and specifications are sufficiently complete for LADWP review purposes, and (ii) if not sufficiently complete, LADWP shall notify LACMTA, or shall return the plans and specifications to LACMTA together with an identification of those portions that are not

sufficiently complete and a description of the missing information listing the deficiencies. If no such notice or return is received by LACMTA within such seven (7) working days, the plans and specifications shall be deemed complete and acceptable for review purposes.

(b) Within twenty (20) working days after receipt of each submittal, LADWP shall review the plans and specifications and either advises LACMTA that it has no comments, or transmit its comments to LACMTA. Extensions may be requested by the LADWP and granted by LACMTA, if workload and lack of sufficient information justify this action.

(c) Resubmittals shall include LADWP's comments.

**2.10** LACMTA shall incorporate all LADWP comments made in accordance with the provisions of this Article 2. LACMTA shall conduct comment resolution meetings to address LADWP comments and reach a satisfactory resolution.

## **Article 3 Permits**

### **3.1 Permits**

Prior to commencement of any phase of Transit Project Construction that will affect private property, LACMTA or its contractor will secure and pay for any applicable required permits and give LADWP advance written notice of commencement of such construction.

3.1.1 Work in Streets LACMTA, its consultants, and Contractors performing work in City Right-of-Way shall take all appropriate actions to ensure safe operations of the work and the continuance of service of LADWP Facilities. LADWP reserves the right to stop work, if safety, and integrity or operations of power or water systems is or will be compromised as determined by LADWP staff. Upon notification by LADWP, LACMTA shall promptly commence to remedy the situation. In the event LACMTA fails to resolve the situation, LADWP reserves the right to take action necessary to restore the system. LACMTA shall reimburse LADWP for all costs relating to the remedy of the situation.

### **3.2 Replacement Rights-of-Way**

Replacement Rights-of-Way for the relocations of Conflicting Facilities shall be determined during Design and, if needed, shall be acquired by LACMTA for LADWP following approval by both Parties of the location and type of replacement rights-of-way. At a minimum the replacement shall be of the same type and rights as the original Right-of-Way.

If a Rearrangement is made so that the Replacement Facility will be located within Transit Project Right-of-Way owned by LACMTA, LACMTA shall provide LADWP with an equivalent Right-of-Way, if necessary, to accommodate the Replacement Facility, reasonably satisfactory to LADWP. It is hereby understood that in accepting such Replacement Right-of-Way and in releasing its rights, LADWP shall acquire reasonable rights to install, operate, maintain, and remove LADWP Facilities within the replacement Right-of-Way.

### **3.3 Right of Entry**

Each Party shall secure approval and permit the other 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 LADWP Facilities during Transit Project construction and where not inconsistent in time or manner of exercise either party's discharge of its responsibilities LACMTA with respect to the Transit Project. Both Parties shall comply with the provisions of Government Code §§ 4216, et seq., regarding all excavations.

### **3.4 Encroachment of Facilities Constructed by LACMTA into LADWP Property or Rights-of-Way (ROW)**

Facilities constructed as part of a Transit Project may be located or constructed within LADWP property or ROW, subject to the prior approval of LADWP. These Facilities may be part of the LACMTA's infrastructure or may be constructed for and transferred to other public agencies at the completion of the Transit Project. In these situations LACMTA shall provide full cooperation with LADWP and agrees that LACMTA's construction shall be secondary to

LADWP's operational concerns. In no circumstances shall LACMTA proceed to construct without first establishing the conditions of access and fully complying with those conditions.

All conditions of encroachment into LADWP property or ROW with Facilities constructed for or transferred to another public agency, including but not limited to another department of the City of Los Angeles, the Los Angeles County Department of Public Works, and the California Department of Transportation, shall be incorporated into that transfer and shall be binding on that public agency.

LADWP may need to temporarily remove any of the facilities allowed to encroach into its easement. LACMTA shall assist LADWP in identifying the correct agency or department with operational control over the affected facilities. Except in the case of an emergency, LADWP shall notify the affected City department a minimum of ten (10) working days in advance of the need for removal. LADWP will make its best effort to minimize the extent of any removal and will restore the improvements in accordance with standard construction practice.

Immediate notification shall be given should Facilities be damaged by either party (or its contractors) in the course of its construction work. The party responsible for the damage shall pay actual and reasonable costs to return the facility to its previous condition. The Party with care custody and control of the facility shall determine the contractor or organization to repair the damage.

## **Article 4**

### **Effecting Rearrangements**

#### **4.1 LACMTA Construction of Rearrangements**

Construction of any Rearrangement may only commence upon mutual agreement of the Parties. Each Party shall confirm 3 days prior to performing any Rearrangement work in accordance with the Notification Matrix. LADWP will inspect the materials, installation, and construction of all LADWP Facilities owned or operated, or to be owned or operated by the LADWP.

4.1.1 LADWP Construction of Rearrangements LADWP shall exercise its best efforts to perform the Construction of such Rearrangement to completion as authorized by Work Order. Such Construction shall coincide closely and be coordinated with the Schedule. LADWP shall coordinate its work with other Facility owners and contractors performing work that may connect, complement or interfere with LADWP's work hereunder or with LADWP Facilities.

4.1.2 In the event that Temporary Facilities are necessary to effect a Rearrangement being Constructed by LADWP, LADWP may use lands owned or controlled by LACMTA for the purpose of erecting such Temporary Facilities thereon, provided that LACMTA shall have approved in writing the location and duration of such Temporary Facilities. Upon completion of the Rearrangement, LADWP shall remove all such Temporary Facilities and shall restore the area as near as practical to its original condition (unless LADWP and LACMTA mutually agree to another arrangement), all at LACMTA's cost.

4.1.3 All work by LADWP's forces or its contractors pursuant to this Article 4, shall comply with the environmental controls established in the Construction Contract or D/B Contract between LACMTA and its contractor for the Subject Transit Project, including construction noise and vibration control, pollution controls, archeological and paleontological coordination.

## **4.2 Maintenance**

LADWP shall schedule, in concurrence with LACMTA, any routine maintenance of LADWP Facilities when possible so as not to interfere with the Transit Project Construction or Operations.

## **4.3 "As-Built" Drawings**

LACMTA and LADWP shall each maintain a set of "as-built" plans of Rearrangements performed by LACMTA and LADWP, respectively, during the progress of construction. Within sixty (60) days following the completion and acceptance of each Rearrangement, the Party that performed the work shall furnish the other Party with reproducible "as-built" drawings showing such Rearrangement as installed by the performing Party and all contract records pertaining to such as-builts. All "as-built" plans (whether provided by LACMTA or by LADWP) shall be in a mutually agreed upon format. If the drawings submitted by either Party are incomplete or nonconforming to such required format, they will be returned to that Party for correction at its expense.

## **4.4 LADWP Activities**

4.4.1 If LADWP plans to undertake or authorize any activities within or near any portion of a Transit Project Right-of-Way, LADWP will coordinate such activity with LACMTA to minimize impact, delay, or interference with such Construction, and LACMTA shall reasonably cooperate with LADWP with regard to same.

### **4.4.2 LADWP Emergency**

In an "emergency" as reasonably determined by LADWP, based upon facts known to it at the time, LACMTA shall fully cooperate with LADWP to facilitate the restoration of LADWP Facilities and services, and to reschedule construction activities, revise work sequences, and/or modify construction staging plans as necessary to assist LADWP in restoring services and affected LADWP facilities within the construction area of an LACMTA Transit Project. LADWP shall exercise its best efforts to restore LADWP facilities and services as expeditiously

as possible, and shall otherwise exercise its best efforts to prevent unnecessary delay and/or impacts upon LACMTA.

## **Article 5 Inspection**

### **5.1 Inspection During Construction**

5.1.1 Notwithstanding LADWP inspection or approval of any Construction, all work performed by either Party for Construction of a Transit Project shall be subject to LACMTA inspection and final approval. LACMTA also may inspect the Construction of Rearrangements to ensure that the work has been performed in conformance with the Designs.

5.1.2 All Rearrangement Construction of LADWP Facilities and construction of new LADWP Facilities and any additional work done on or around new or existing Facilities that must be protected in place, by LACMTA shall be inspected by LADWP. Such inspections services shall be authorized by LACMTA under an appropriate Work Order. LADWP shall provide a single point of contact for each Transit Project and inspectors who will be available with one (1) working days notice throughout Transit Project Construction, at LACMTA's expense, to observe and inspect the Rearrangement of LADWP Facilities.

5.1.3 Each Party shall inform the other of any deficiencies or discrepancies in any work discovered in the course of such inspection. LADWP will provide immediate verbal notice of nonconformance to LACMTA's, followed by a written nonconformance notice not later than five (5) working days after discovery. Likewise, LACMTA will provide immediate verbal notice of nonconformance to the LADWP, followed by a written nonconformance notice not later than five (5) working days after discovery. Each nonconformance notice shall include an explanation of the resolution desired by the notifying Party.

### **5.2 Final Inspection**

As soon as the work of any specific Rearrangement has been completed, the Party, which performed the Construction work shall notify the other party in writing that the Rearrangement is ready for final inspection. All final inspections by LADWP will be completed within seven (7)



working days. The final inspection of any Rearrangement shall be attended by the LACMTA and the LADWP, at LACMTA's expense. Each Party will provide to the other Party with a written nonconformance notice within five (5) working days thereafter. Each nonconformance notice shall include an explanation of the notifying party's desired resolution. Both Parties' inspectors shall observe and inspect any corrective work performed. Promptly upon completion of the Rearrangement LADWP Facility (including if applicable, completion of any corrective work performed), LADWP shall furnish its written notice of acceptance. LADWP acceptance is contingent upon LACMTA submitting to LADWP and securing LADWP's approval on all required post construction documents, such as as-builts.

### **5.3 Materials Testing**

LADWP shall have the right to test materials used in Construction of LADWP Facilities by LACMTA's contractors in accordance with LADWP standards. LACMTA shall have the right to have its witnesses attend all such tests. LADWP shall provide copies of the test reports if requested within seven (7) working days after each test, as well as providing to LACMTA access to the samples used and to the testing laboratory for inspection of its equipment.

### **5.4 Use of Rearrangements during Construction**

LADWP reserves the right to place in service and utilize all or any completed part of any LADWP Facility, unless such utilization would interfere with Transit Project Construction. LACMTA must be given reasonable advance notice thereof. If LADWP agrees in writing prior to such utilization, then such utilization will be deemed acceptance of that Facility or part thereof, and any subsequent damage thereto shall be LADWP's responsibility unless caused by LACMTA or its Contractors. Thereafter, LACMTA will not be required to re-clean such portions of the Facility except for cleanup made necessary by Transit Project Construction activities. Should, however, the utilization of the new Facility be required as a result of the Transit Project Construction to allow removal of interfering Facilities or for purposes of maintaining service to existing LADWP customers, such utilization shall not constitute acceptance of the LADWP Facilities.

## **Article 6 Reimbursements to LADWP**

### **6.1 Reimbursement to LADWP**

Except with respect to Betterments the issuance of a Work Order shall obligate LACMTA to reimburse LADWP, in a manner provided by this Agreement, for direct and indirect costs necessarily incurred by LADWP for activities, work or materials in accordance with the terms of this Agreement less credits to LACMTA as provided in Article 7. Indirect costs shall be computed based upon the Indirect cost Rates approved annually for the LADWP. Subject to the foregoing, direct costs shall include allowable direct labor, equipment and materials costs spent specifically for work performed under this Agreement. LACMTA

### **6.2 Reimbursement for Abandoned Conflicting Facility**

In those cases wherein LACMTA and LADWP agree that the construction of a Transit Project will eliminate the service need for a specific Conflicting Facility LACMTA shall not be required to replace or compensate LADWP for the Conflicting Facility, in which case LACMTA shall compensate LADWP only for necessary Costs of Abandonment.

## **Article 7 Reimbursements and Credits to LACMTA**

### **7.1 Credits to LACMTA Where LADWP Performs Work**

LACMTA shall receive a credit against work performed by LADWP to perform the work under this Agreement for Betterments. The amount of credits shall be determined as provided herein. All credits pertaining to a particular Rearrangement or other item of work hereunder shall be reflected on the applicable invoice(s) submitted by LADWP.

## **7.2 Payments to LACMTA Where LACMTA Performs Work**

LACMTA shall receive payment from LADWP for costs of Betterments. To the extent possible, LACMTA may take such compensation in the form of credits against amounts owed by LACMTA to LADWP in connection with the same Transit Project for which the compensation is owed. LACMTA shall invoice LADWP for such payment in accordance with Section 9.5, and LADWP shall make payments to LACMTA in accordance with Section 9.6.

## **7.3 Reimbursements to LACMTA**

The term "Cost" shall mean the direct and indirect costs actually incurred by the LACMTA and attributable to activity or work performed or materials acquired in performing a task pursuant to this Agreement. Indirect costs shall include administrative and overhead costs at the rate therefore established by LACMTA from time to time.

## **7.4 Betterments**

Betterment payments initially shall be based upon estimated incremental additional cost to construct the Rearrangement determined as the sum of the estimated cost of the Design and Construction of the Rearrangement with the Betterment less the estimated cost of Construction of the Rearrangement without the Betterment. All estimates of Construction costs shall be based upon the unit price schedules used by the LADWP in its usual estimating practices and agreed to by the Parties.

# **Article 8 Indemnity And Insurance**

## **8.1 Indemnification**

LADWP agrees to indemnify, protect, defend and save harmless LACMTA, its members, officers, employees, from and against any and all liability, expenses (including engineering and defense costs and legal fees), claims, damages, losses, suits and actions of whatever kind, and for

damages of any nature whatsoever, including but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with LADWP performance hereunder.

## **8.2 Indemnification by LACMTA**

8.2.1 LACMTA shall indemnify, protect, defend and save harmless LADWP, and its officers, employees, authorized agents, from and against any and all liability, expenses (including engineering and defense costs and legal fees) claims, losses, suits and actions of whatever kind, and for damages of any nature whatsoever, including but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with LACMTA's performance hereunder.

8.2.2 Any Design Contract, Construction Contract or Design/Build Contract entered into by LACMTA or LADWP 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 that names as additional insureds to such policy (not subject to any premiums or assessments) LADWP and LACMTA and their respective directors, officers, employees and authorized agents, as well as such other additional insureds as either Party shall reasonably require (provided that the risk and cost assumed by either Party under this Agreement does not increase as a result of naming such other additional insureds). The parties referred to in the previous sentence are collectively referred to herein as the "Additional Insured Group." If LADWP is itself performing work (including, without limitation, design or inspection by its own forces), LADWP shall itself comply with requirement of this Section 8.2.2. Required coverages and liability amounts for Construction Contractors, Design contractors and Design/Build Contractors shall be determined and agreed upon by both Parties and indicated in each Work Order. A Certificate evidencing the required coverage shall be provided directly by the insurer to LADWP and LACMTA, providing that said coverage shall not be reduced in scope or cancelled without thirty (30) days prior written notice to LACMTA and LADWP. LADWP recognizes and agrees that all or part of such insurance can be provided by LACMTA through an owner-controller insurance program.

## **Article 9**

### **Work Orders and Billings**

#### **9.1 Work Performed by LADWP**

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

9.1.2 All work to be performed by LADWP under this Agreement will coincide closely with LACMTA schedules. LADWP shall allocate sufficient staff and other resources necessary to provide the level of service required to meet the scope of work and said schedules as identified in Work Orders submitted by LACMTA.

#### **9.2 Work Orders**

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

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

### **9.3 Work Order Changes**

9.3.1 LADWP shall not order or direct work, which would cause Construction Costs to exceed the maximum amount allowable therefore in any Work Order, without the prior approval of LACMTA. LADWP agrees to use its best efforts to perform such work within the maximum amount specified therefore in each Work Order. LADWP agrees to notify LACMTA if at any time LADWP has reason to believe that the Construction Costs which it expects to incur under any Work Order in the next 60 days, when added to all Construction Costs previously incurred under such Work Order, will exceed 75% of the maximum Construction Costs specified in the Work Order, or if at any time LADWP has reason to believe that the total Construction Costs under said Work Order will be in excess of ten percent (10%) greater or less than previously estimated. LADWP may request revision of Work Orders to increase the maximum allowable Construction Costs thereunder, in the event of anticipated Construction Cost overruns. LACMTA will consider, and may not unreasonably withhold its approval of, any increase in the maximum allowable amount of Construction Costs which is due to a necessary change in the scope of the subject Construction or to field conditions not anticipated in the original estimate, provided that LADWP notifies LACMTA within three (3) business days after becoming aware of the event or situation causing such anticipated change. LACMTA may withhold its approval, in its sole discretion, of any other increase in Construction Costs above the maximum allowable amount authorized in the applicable Work Order. Without LACMTA's prior approval, LADWP will not be reimbursed for Construction Costs expended in excess of maximum amounts allowable therefore and authorized in a Work Order

9.3.2 LADWP shall not order or direct work which would cause Non-Construction Costs to exceed the maximum amount allowable therefore in any Work Order, without the prior written approval of LACMTA. LADWP agrees to use its best efforts to perform such work within the maximum amount specified therefore in each Work Order. LADWP agrees to notify LACMTA if at any time LADWP has reason to believe that the Non-Construction Costs which it expects to incur under any Work Order in the next 60 days, when added to all Non-Construction Costs previously incurred under such Work Order, will exceed 75% of the maximum Non-Construction Costs specified in the Work Order, or if at any time LADWP has reason to believe that the total Non-Construction Costs under said Work Order will be in excess of ten percent (10%) greater or less than previously estimated. LADWP may request written revisions of Work Orders to increase the maximum allowable Non-Construction Costs thereunder, in the event of anticipated Non-Construction Cost overruns; provided, however, that any such revision is subject to LACMTA's prior approval. Without LACMTA's prior approval, LADWP will not be reimbursed for Non-Construction Costs expended in excess of maximum amounts allowable therefore authorized in a Work Order.

9.3.3 LADWP agrees to notify LACMTA if at any time LADWP has reason to believe that the estimated finishing date of any work under a Work Order will be later than the date authorized in the Work Order. LADWP will request written revisions of Work Orders in the event of anticipated completion delays LACMTA may withhold its approval of any modification of scheduling requirements in its sole discretion.

9.3.4 Any revision to a Work Order requested by LADWP shall be submitted in writing to LACMTA for its prior approval. If LACMTA fails to respond in writing to a requested revision within fourteen (14) days after receipt thereof, the revision shall be deemed rejected; provided, however, that LACMTA may extend such period by giving written notice to LADWP before its expiration. Notwithstanding the foregoing, any proposed revision occasioned by emergency field construction difficulties may be submitted to LACMTA orally, by telephone, and later confirmed in writing by LADWP; in such event, LACMTA agrees to act on such oral request as promptly as possible, and the LACMTA Representative may convey LACMTA's decision orally, to be confirmed later in writing. All Work Order revision requests shall include an estimate for the Work Order revision in the form then required by LACMTA (currently Form 60

as set forth in Exhibit 4, as the same may be amended or replaced from time to time by notice from LACMTA to LADWP). Without LACMTA's prior approval, LADWP will not be reimbursed for costs to correct defective performance by LADWP, its consultants or contractors.

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

#### **9.4 Procedures for LADWP Billings to LACMTA**

The following procedures will be observed for submission of monthly billings by LADWP to LACMTA, on a progress basis, for work performed by LADWP under a specific Work Order, which is reimbursable by LACMTA. LADWP's billings shall begin as soon as practicable following the commencement of a specific Rearrangement or other work under a given Work Order. Each billing (a) shall specify Costs incurred for that billing period, (b) shall bear LACMTA's Work Order number, (c) shall be supported by copies of invoices and other Cost data, including without limitation a breakdown of the direct and indirect Costs (including personnel names), and the equipment and material cost incurred during the billing period, (d) shall be addressed to the LACMTA Representative, and (e) shall be maintained for inspection and, at LACMTA's option, audit on file in LADWP's Accounting Center. Each billing shall be noted as either progress or final, and shall include a certification that the charges identified in such billing were appropriate and necessary to performance of the referenced contract and have not previously been billed or paid. Should the LACMTA determine that daily task descriptions are required for LADWP labor charges, the LACMTA shall notify LADWP and LADWP shall include this information thereafter in Project Labor Reports. LADWP shall submit the Electronic Billing Invoice Packet (including all time sheets and materials billings) to LACMTA by the next to last business day of the month. LADWP agrees to submit a final report of expenditures to LACMTA within 60 days after completion and acceptance of the work covered by the Work Order. The final billing, with a notation that all work covered by a given Work Order has been performed, shall recapitulate prior progress billings and shall show inclusive dates upon which



work billed therein was performed. The final billing for each Rearrangement shall be submitted to LACMTA as soon as practicable, but no later than 90 days, following completion of the Rearrangement. Any costs not billed before the end of said 90-day period shall be deemed abandoned, and any right to collect the same shall be deemed waived.

LADWP agrees to retain, or cause to be retained, for inspection, copying and, at LACMTA's option, audit by LACMTA or other governmental auditors for the period required pursuant to Section 9.7, all records and accounts relating to the Work Order or other work performed under this Agreement; provided, however, that if any actions brought under the dispute resolution provisions of this Agreement have not been finally resolved by the foregoing deadline, then any records which pertain to any such actions shall be maintained until such actions have been finally resolved.

## **9.5 Procedures for LACMTA Billings to LADWP**

9.5.1 In those cases in which LACMTA performs Rearrangement, Betterment or other work payable by LADWP under the terms of this Agreement, LACMTA shall submit regular monthly progress billings to LADWP indicating actual work performed during the billing period, the direct and indirect Costs thereof, LADWP's share of such Costs, and any amount thereof being paid through the application of credits against amounts owed by LACMTA to LADWP. LACMTA billing shall begin as soon as practicable following the commencement of a specific Rearrangement or other work, and shall follow LACMTA's standard billing procedures. Each billing shall be noted as either progress or final, shall be addressed to the LADWP Representative, and shall include a certification that the charges identified in such billing were appropriate and necessary to performance of the referenced contract and have not previously been billed or paid. The final billing, with a notation that all work covered thereby has been performed, shall be submitted to LADWP as soon as practicable following the completion of the Rearrangement or other work.

9.5.2 LACMTA agrees to retain, or cause to be retained, for audit by LADWP or other governmental auditors for the period required pursuant to Section 9.7, all records and accounts relating to Construction of the Rearrangement or other work performed under this Agreement;

provided, however, that if any actions brought under the dispute resolution provisions of this Agreement have not been finally resolved by the foregoing deadline, then any records which pertain to any such actions shall be maintained until such actions have been finally resolved.

#### **9.6 Payment of Billings**

Payment of each bill properly submitted pursuant to Sections 9.5 or 11.5 shall be due within sixty (60) days of receipt thereof; provided, however, that (a) all such payments shall be conditional, subject to post-audit adjustments, (b) final payment for each Rearrangement shall be contingent upon final inspection (and acceptance, where applicable) of the work by the Party billed for such work, which inspection (and acceptance, where applicable) will not be unreasonably withheld or delayed, and (c) LACMTA may withhold credit amounts due LACMTA if LADWP has not posted such credits within sixty (60) days after submittal of requests for same by LACMTA.

#### **9.7 Inspection and Audit**

Upon reasonable notice, each Party (and its authorized representatives) shall have reasonable rights to inspect, audit and copy, during normal business hours, the other's relevant records relating to its performance hereunder (and all Costs incurred with respect thereto) for each Transit Project and related Rearrangements, from the date hereof through and until expiration of three (3) years after the later of (a) the accepted completion of all Rearrangements for such Transit Project and (b) payment of all final billings owed to such Party related to such Transit Project and related Rearrangements, or such later date as is required under other provisions of this Agreement. Each Party shall bear its own costs and expenses in connection with undertaking any inspection, copying and audit, and in responding thereto. Examination of a document or record on one occasion shall not preclude further or reexamination of such document or record on subsequent occasions. By providing any of its records to the other Party for examination, the Party providing such records represents and warrants that such records are accurate and complete. The Parties shall mutually agree upon any financial adjustment found necessary by any audit. If the Parties are unable to agree on such adjustment, then the matter shall be resolved pursuant to Article 11. The rights granted pursuant to this Section 9.7 shall not obligate either Party to inspect, audit, or copy the other Party's records nor shall either Party be

entitled to utilize or rely on the other Party's audit results, absent such other Party's consent. LADWP and LACMTA shall insert into any contracts entered into by LADWP or LACMTA, respectively, for the performance of work on Rearrangements hereunder the above requirements, as appropriate, and also a clause requiring their respective contractors to include the above requirements, as appropriate, in any subcontracts or purchase orders. In the case of such contractors, subcontractors and suppliers, the records subject to the above requirements shall include, without limitation, any relevant records as to which a tax privilege might otherwise be asserted.

### **9.8 Payment Control**

This Agreement (and any Supplemental Agreements hereto) shall provide the sole authority and guidance for Cost reimbursements, credits and payments with respect to work, which is the subject of this Agreement.

## **Article 10 Hazardous Materials and Protected Materials**

### **10.1 Scope**

The responsibilities of the Parties with respect to the 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 LADWP Facilities to accommodate a Transit Project shall be governed by applicable law, except as otherwise provided in this Article 12.

### **10.2 LADWP Environmental Representations**

LADWP represents and warrants to LACMTA that, to the best of LADWP's knowledge, there has not been a material release of Hazardous Materials at, on, or under the existing LADWP Facilities. LADWP shall be responsible for, and shall indemnify, defend and hold harmless LACMTA, its respective governing boards, officers, directors, employees, authorized agents, engineers, contractors and subcontractors, and their respective successors and assigns,

from and against any claims, liabilities, losses or actions arising out of any breach of LADWP's representations and warranties in this Section 10. 2.

### **10.3 Investigation of Sites and Preparation of Environmental Impact Reports**

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

10.3.2 LACMTA shall, at its sole cost and expense, prepare all environmental impact reports required by local, state or federal law for the Construction of a Transit Project or a Rearrangement of LADWP Facilities hereunder.

### **10.4 Responsibility for Notification and/or Remedial or Protective Action**

10.4.1 At least seven days before LADWP commences its Construction activities for a Rearrangement, LACMTA shall provide to LADWP a copy of all environmental impact reports and soils tests relating to the site of the Rearrangement work and prepared in connection with the Transit Project, and shall disclose to LADWP all information of which LACMTA is aware concerning the existence of any Hazardous Materials and/or Protected Materials at such site. If the information provided reveals the existence of a Hazardous Material or Protected Material in an area in which LADWP will be working on a Rearrangement and LACMTA is required by an Environmental Law or otherwise to take some action with respect to the Hazardous Material or Protected Material, such as containment, cleanup, removal, restoration or other remedial work ("Remedial Work"), LADWP shall not commence its Rearrangement work until the required Remedial Work has been completed by LACMTA.

10.4.2 If, after it commences Rearrangement work, LADWP discovers the existence of a Hazardous Material or Protected Material in, on, or under the site of such work, LADWP shall immediately suspend its work and notify LACMTA of its discovery. LACMTA shall promptly determine if any Remedial Work is reasonably necessary or required by any Environmental Law or other applicable law. If any Remedial Work is reasonably necessary or required by any Environmental Law or other applicable law, LACMTA shall promptly

commence, or cause to be commenced, and thereafter diligently prosecute to completion, all such Remedial Work. LADWP shall not continue its Rearrangement work until the required Remedial Work has been completed by LACMTA.

10.4.3 LACMTA shall make any required notifications to federal, state and/or local agency(ies) in accordance with applicable law.

10.4.4 LACMTA shall perform the Remedial Work required pursuant to Sections 10.4.1 and 10.4.2 at its sole cost and expense, except that LADWP shall be responsible for such costs and expenses (a) to the extent that the actions or omissions of LADWP, its employees, contractors or agents contributed to or caused the Hazardous Materials giving rise to a remediation requirement, (b) LADWP is responsible for such costs pursuant to applicable law, and/or (c) as otherwise provided in Section 12.1. Any costs incurred by either Party for which the other Party is responsible pursuant to this Article 12 may be billed and collected as Costs pursuant to the applicable provisions of this Agreement.

10.4.5 Nothing contained in this Section 10.4.5 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 or other applicable laws in order to proceed with a Transit Project or the Rearrangement of LADWP Facilities hereunder. Moreover, nothing herein shall be deemed to prohibit either Party from collecting some or all of the costs of Remedial Work for which it is responsible hereunder from other potentially responsible parties.

## **Article 11 Resolution Of Disputes**

### **11.1 Attempts to Resolve**

In the event of a claim or dispute arising out of or relating to this Agreement, both Parties shall make good faith efforts to resolve the claim or dispute through negotiation. Where

applicable, the "joint working group" meeting(s) required pursuant to Section 1.5 shall satisfy this requirement.

## **11.2 Arbitration – No Work Stoppage**

11.2.1 Failing a resolution of the dispute through good faith efforts, in the absence of good faith efforts to resolve the dispute, or in the event the Parties are unable to agree upon the terms of such further agreements as are herein required to be executed by the Parties, either Party may serve upon the other a written demand for arbitration. The Parties shall, within ten (10) days after receipt of such demand, or within such extended period of time to which they agree in writing, attempt to agree upon a mutually satisfactory arbitrator. If they are unable to agree, each Party, prior to the expiration of the ten-day or agreed extended period, shall designate one person to act as arbitrator. The two designated arbitrators shall promptly select a third arbitrator (“neutral arbitrator”). If either Party fails to designate its arbitrator within the ten (10) days after the date of delivery of the demand for arbitration or the agreed extended period, or if the two designated arbitrators are unable to select a neutral arbitrator within five (5) days after their appointment, a neutral arbitrator shall be appointed pursuant to Section 1281.6 of the California Code of Civil Procedure who shall hear the matter as sole arbitrator.

11.2.2 Section 1283.05 of the California Code of Civil Procedure, except as modified by the provisions in Section 11.12, is specifically made applicable, except where its application would impede timely resolution of a dispute that is necessary to permit stopped work to recommence pursuant to Section 11.3. A hearing date shall be set as promptly as possible following selection of the arbitrator(s). The arbitrator(s)' award shall follow promptly the hearing's conclusion, and shall be supported by law and substantial evidence, as well as written findings of fact and conclusions of law. An award that does not comply with the requirements of the immediately preceding sentence shall be deemed to be in excess of the arbitrator(s)' powers and the court shall vacate the award if after review it determines that the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.

### **11.3 Arbitration – Work Stoppage**

11.3.1 In no event shall work be stopped in the event of a claim or dispute, except where it is absolutely necessary to first resolve the claim or dispute in order to be able to continue work. In the event that work is stopped, the provisions of this Section 11.3 shall apply. Upon stoppage of work, either Party may serve upon the other a written demand for arbitration. A neutral arbitrator shall be immediately designated pursuant to Section 1281.6 of the California Code of Civil Procedure, and the arbitration proceeding shall commence within five (5) days after appointment of the arbitrator.

11.3.2 No neutral arbitrator shall be selected who is unable to hear the dispute and render a decision within five (5) days after being selected. The arbitration may proceed in the absence of a party who, after due notice, fails to appear. Notwithstanding Section 1282.2(b) of the California Code of Civil Procedure (regarding postponement of the hearing), where work is stopped, the neutral arbitrator may not postpone nor adjourn the hearing except upon the stipulation of all parties to the arbitration or except as provided in the next sentence. In addition to all other issues, the neutral arbitrator shall also determine whether it was necessary to stop work, and if it was not necessary the other Party shall be entitled to damages arising out of such work stoppage, which damages shall also be determined by the neutral arbitrator; provided, however, that the neutral arbitrator may adjourn the hearing solely with respect to the foregoing issues and any other issues whose resolution is not necessary in order to recommence the stopped work. The provisions of Section 11.2.2 as to the making of the award shall also apply.

### **11.4 Impartiality of Arbitrator**

No person shall act as neutral arbitrator who in any way has any financial or personal interest in the results of the arbitration or has any past or present relationship with any of the parties or their counsel. Failure to disclose any such interest or relation shall be grounds for vacating the award.

### **11.5 Compensation of Arbitrator/Costs**

If the Parties agree upon and select a mutually satisfactory arbitrator in accordance with Section 11.2.1, they shall initially equally share the expenses and fees of that arbitrator(s). If the

Parties are unable to agree upon a mutually satisfactory arbitrator in accordance with Section 11.2.1, each Party shall initially pay the expenses and fees of the arbitrator it selects. The expenses and fees of the neutral arbitrator shall be paid in accordance with the provisions of Section 1284.2 of the California Code of Civil Procedure. However, the prevailing party in such proceeding shall be entitled to recover, in addition to reasonable attorneys' fees and all other costs, its cost of the arbitrator(s) as an item of recoverable costs. If any party to the arbitration refuses to pay its share of the costs of the proceeding, at the time(s) required, the other party may do so, in which event that party will be entitled to recover (or offset) the amount advanced, with interest at the maximum rate permitted by law, even if that party is not the prevailing party. The arbitrator shall include such costs in his or her award.

### **11.6 Cooperation**

The Parties shall diligently cooperate with one another and the arbitrator(s) as applicable, and shall perform such acts as may be necessary to obtain expeditious resolution of a dispute. If either Party refuses to cooperate diligently, and the other Party, after first giving notice of its intent to rely on the provisions of this Section 11.6, incurs additional expenses or attorneys' fees solely as a result of such failure to cooperate diligently, then the arbitrator(s) may award such additional expenses and attorneys' fees to the Party giving such notice, even if such Party is not the prevailing Party in the action.

### **11.7 Provisional Relief**

Notwithstanding, California Code of Civil Procedure Section 1281.8, no provisional remedy of any type or nature shall be available to stop or otherwise interfere with any Construction relating to a Transit Project, or any portion thereof, unless requested by LACMTA, or required to prevent imminent danger to public health or safety.

### **11.8 Consolidation**

At LACMTA's request, the Parties agree that arbitration proceedings arising under this Agreement may be joined or consolidated with arbitration proceedings pending between LACMTA and other parties, and vice versa, if those arbitration proceedings arise out of the same general transaction or relate to the same subject matter or portion of a Transit Project. Such



joinder or consolidation shall be ordered solely upon the request (and not over the objection) of LACMTA. If an arbitration proceeding arising under this Agreement is joined or consolidated with a proceeding between LACMTA and any other party(ies), then at LACMTA's election the dispute resolution procedures governing such other proceeding shall govern the entire consolidated proceeding, and such consolidated proceeding shall be decided by the arbitrator(s) appointed for such other proceeding. Similarly, LADWP agrees that, at LACMTA's request, LADWP will allow itself to be joined as a party in any dispute resolution proceeding between LACMTA and a third party that relates to a LADWP Facility or Transit Project Construction.

### **11.9 Continuing Performance**

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

### **11.10 Implementation**

Each Party will take any action required of it in order to implement an agreed-upon resolution between the Parties

### **11.11 Incorporation in Contracts**

In order to ensure the timely completion of Rearrangements, LADWP shall include the provisions of this Article 11 or equivalent in its agreements with contractors, material suppliers, equipment renters and others who are involved in effecting Rearrangements.

## **11.12 Non Binding Arbitration**

The parties' arbitration agreement shall be as set forth in this Article 11.1 through 11.12. Neither LACMTA nor the LADWP shall be bound by any judgment, ruling, award, or decision issued by any arbitrator pursuant to this arbitration agreement.

## **Article 12 Federal and Other Requirements**

### **12.1 Compliance with Laws, Regulations, and Other Requirements**

Notwithstanding any contrary provision of this Agreement, the Parties shall comply with all federal, state, and local laws, rules, regulations and written policies governing the work hereunder, as the foregoing may be amended from time to time (collectively referred to in this Article 14 as the "applicable laws"), as well as with all requirements that are imposed pursuant thereto on Rearrangement activities as a condition to or requirement of funding obtained by LACMTA from the U.S. Department of Transportation, Federal Transit Administration ("FTA") and/or other governmental agencies, including, without limitation, requirements and policies for construction and design contract procurement, plans, specifications, Cost calculations, estimates and billings submitted by LADWP to LACMTA and all financial record keeping and reporting obligations imposed thereby (provided that LACMTA gives reasonable notice of such requirements and obligations to LADWP). Without limiting the generality of the foregoing, (a) LADWP acknowledges that current policies and practices of the FTA for LADWP relocation to accommodate FTA-funded projects coincide with those of the U.S. Department of Transportation, Federal Highway Administration, including those established in 23 CFR Part 645 Subpart A, and (b) LADWP agrees that notwithstanding any contrary provision of this Agreement, if a Transit Project receives funding from the FTA, then for any Rearrangements made to accommodate such Transit Project, only costs which are eligible for FTA reimbursement shall be considered Costs hereunder, and all credits against such costs that are required by FTA shall be taken.

## **12.2 Inspection and Audit**

LADWP shall permit the authorized representatives of LACMTA, the U.S. Department of Transportation, the Comptroller General of the United States, and any other government agency providing funding or oversight on a Transit Project, to inspect and audit (and if required by applicable laws to copy) during normal business hours and upon reasonable notice, all relevant records maintained by LADWP relating to performance by LADWP, its contractors and subcontractors (as appropriate) under any Work Order issued to LADWP for such Transit Project or Rearrangements of LADWP Facilities related thereto, from the date of this Agreement through and until expiration of three years after the later of (a) the accepted completion of all Rearrangements for such Transit Project and payment of all final billings owed to LADWP related to such Transit Project and related Rearrangements, or (b) such later date as is required by the rules and regulations of any such government agency (provided that LACMTA gives reasonable notice of such later date to LADWP). Each Party shall bear its own costs and expenses in connection with undertaking any audit, and in responding thereto. Examination of a document or record on one occasion shall not preclude further examination of such document or record on subsequent occasions. To the extent, if any, required by applicable laws, LADWP shall insert into any contracts it enters into for the performance of work hereunder the above requirements and also a clause requiring the contractors (or consultants) to include the above requirements in any subcontracts or purchase orders. In the case of such contractors, consultants, subcontractors and suppliers, the records subject to the above requirements shall include, without limitation, any relevant records as to which a tax privilege might otherwise be asserted.

## **Article 13 Miscellaneous Provisions**

### **13.1 Approvals, Further Documents and Actions**

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

- (a) must be in writing to be effective (except as otherwise specifically allowed by this Agreement);
- (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 14 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.

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

**13.2 Notices**

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 LADWP:

City of Los Angeles  
Department of Water and Power  
Power Distribution Division  
111 North Hope Street, Suite 819  
Los Angeles, California 90012  
Attention: Mr. John D. McMahon

To LACMTA:

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

13.2.1 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. LADWP or LACMTA may from time to time designate any other address or addressee or additional addressees for this purpose by written notice to the other Party.

13.2.2 Alternate Notice. The Parties may also designate other procedures for the giving of notice as required or permitted under the terms of this Agreement.

### **13.3 Assignment; Binding Effect**

Neither Party shall assign its interest in this Agreement without prior consent of the other Party. Any permitted assignment shall bind and inure to the benefit of the respective successors and permitted assigns of the Parties. Notwithstanding the foregoing, LACMTA shall have the right to act pursuant hereto by and through its contractors.

### **13.4 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.

### **13.5 Amendment; Entire Agreement; Modification**

- (a) This Agreement restates and amends in full the Original Agreement. As of the Effective Date, the provisions of this Agreement supersede in their entirety the former provisions set forth in the Original Agreement; provided, however, that notwithstanding any contrary provision of Section 13.5(b) the Original Agreement shall apply in their original form with respect to any rights accrued and/or obligations incurred prior to the Effective Date.
- (b) Except as otherwise provided in Section 13.5(a) or in Section 1.1.2, (i) this Agreement contains the entire agreement of the Parties with respect to the matters addressed herein and supersedes all prior written and oral agreements, understandings, and negotiations with respect to the subject matter hereof, and (ii) any and all prior agreements, understandings or representations relating to the transactions referred to herein are hereby terminated and cancelled in their entirety and are of no further force and effect.
- (c) This Agreement may not be amended, modified, superseded or canceled, nor may any of the terms, covenants, representations, warranties or conditions hereof be waived, except by a written instrument executed by the Party against which such amendment, modification, supersedure, cancellation or waiver is to be charged.

### **13.6 Time**

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

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

### **13.7 Legal Rights**

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California, County of Los Angeles, and the Rules governing LADWP. The

rights and remedies of LACMTA and LADWP for default in performance under this Agreement or any Work Order are in addition to any other rights or remedies provided by law.

### **13.8 Interpretation**

In this Agreement, the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation", and unless otherwise specified, lists contained in this Agreement shall not be deemed all-inclusive.

### **13.9 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.

### **13.10 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.

### **13.11 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.

### **13.12 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, 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, LADWP agrees, if requested by LACMTA, to accelerate its efforts hereunder if reasonably feasible in order to regain lost time, so long as LACMTA agrees to reimburse LADWP for the incremental actual costs of such efforts.

### **13.13 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.

### **13.14 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.

### **13.15 Benefit**

The D/B Contractor is an express intended third-party beneficiary of this Agreement. Except for the foregoing and except to the extent that specific provisions (such as the indemnity provisions) identify third parties and state that they are entitled to benefits hereunder, nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement. Nothing in the provisions of this Agreement is intended to affect the legal liability of either Party to the Agreement to third parties by imposing any standard of care with respect to the development, design, construction, operation or maintenance of highways, Transit Projects and other public facilities, which is different from the standard of care imposed by law.



### **13.16 Maintenance of Records**

LADWP agrees to keep and maintain (and to require all contractors and subcontractors connected with the performance of this Agreement to keep and maintain) records showing actual time devoted and all costs incurred in the performance of all work subject to a Work Order under this Agreement, until three (3) years after the accepted completion of all Rearrangements for the Subject Transit Project, or until such later date as is required under (or necessary to permit audit under) other provisions of this Agreement; provided, however, that if any actions (including arbitration) brought to resolve any disputes under this Agreement have not been finally resolved by the foregoing deadline, then any records which pertain to any such actions shall be maintained until such actions have been finally resolved.

### **13.17 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 13, or otherwise by a court having proper jurisdiction, such finding shall not invalidate the remaining portions hereof, but such provisions shall remain in full force and effect to the fullest extent permitted by law; provided, however, that the Parties shall immediately renegotiate, reasonably and in good faith, the terms or provisions found to be invalid, as well as any other terms and provisions as necessary to achieve as nearly as possible the Parties' original contractual intent.

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

“LADWP”

CITY OF LOS ANGELES, DEPARTMENT  
OF WATER AND POWER

By: \_\_\_\_\_  
Ronald F. Deaton  
General Manager \_\_\_\_\_

APPROVED AS TO FORM:

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

“LACMTA”

LOS ANGELES COUNTY METROPOLITAN  
TRANSPORTATION AUTHORITY

By: \_\_\_\_\_  
ROGER SNOBLE  
Chief Executive Officer

APPROVED AS TO FORM:

Office of County Counsel

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