Attachment 2

December 13, 2011

MASTER COOPERATIVE AGREEMENT

FOR

THE EXPOSITION METRO LINE

BY AND AMONGST

THE CITY OF SANTA MONICA

AND

THE EXPOSITION METRO LINE CONSTRUCTION AUTHORITY

Dated December 13, 2011

December 13, 2011

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Exhibit A Exposition Metro Line Configuration Map (Phase II)
Exhibit B SPP Notification Matrix
Exhibit C Engineering Process for Design/Build Projects
Exhibit D Invoice Form (to be provided by Authority post-execution)
Exhibit E CMIR (attached separately)
Exhibit F LRIC (attached separately)

December 13, 2011

MASTER COOPERATIVE AGREEMENT
FOR
THE EXPOSITION METRO LINE CONSTRUCTION
BY AND AMONGST
THE CITY OF SANTA MONICA
AND
THE EXPOSITION METRO LINE CONSTRUCTION AUTHORITY

THIS MASTER COOPERATIVE AGREEMENT ("Agreement) FOR THE EXPOSITION METRO LINE CONSTRUCTION, dated December 13, 2011 is made by and among the City of Santa Monica ("City"), a charter city in the State of California and the Exposition Metro Line Construction Authority ("Authority"), a local public entity in the State of California. The Authority and the City are referred to collectively as the "Parties" and each individually as a "Party." 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. The Authority is a public entity created by the California State Legislature pursuant to Section 132600, et. seq. of the California Public Utilities Code ("CPUC") for the exclusive purpose of completing the design and construction of the Exposition Metro Line Project ("Expo Project"), of which is defined as the proposed light rail transit (LRT) line to traverse the City of Los Angeles, extending from the existing 7th/Metro Center station in downtown Los Angeles southward to Exposition Park, and then westward along Exposition Boulevard to Downtown Santa Monica. The Project will operate in a dual track configuration and electrically powered receiving its electric power from overhead power lines within the street; the design concept is for high-level center and side platform stations. Phase I of the Project will be from the 7th/Metro Center station to the Culver City station located at the corner of Venice Boulevard/Robertson Boulevard. Phase II of the Expo Project will be from the Culver City station to downtown Santa Monica. Phase I of the Expo will be approximately 8.6-miles, with 12 stations consisting of 2 existing stations and 10 new stations, three which are aerial, and a combination of reserved bike lanes on street and an off street Bike Path from Ballona Creek to National Boulevard. Phase II of the Expo Project ("Project") will continue the light rail system from the Phase I terminus in Culver City to 4th Street and Colorado Avenue in the City of Santa Monica for another approximately 6.6 miles-, with 7 stations, two of which are aerial, bicycle facilities from the terminus of Phase I to 17th St. and Colorado Avenue, crossing(s) at rail right-of-way(s) and streets, and a maintenance facility near Stewart Street, as depicted in Exhibit A.

B. The City is a chartered municipal government created pursuant to the California State Constitution for many purposes including, but not limited to, the design, construction and operation of transportation facilities in the City;

C. The City intends, by this Agreement, to facilitate the implementation of the Project, and the Design and Construction of all Project facilities located within the City or

otherwise subject to its jurisdiction, including rearrangement of some portions of City Facilities;

D. The construction, reconstruction or improvement of the Project will require the Rearrangement of all or portions of certain City Facilities. The Parties desire to cooperate to the end that such Rearrangements be consistent with City requirements and that when Rearrangements are required, all parties mutually agree on scope of Rearrangements prior to system design, including, but not limited to required improvements, project financing, design work, and betterments. The Parties desire to cooperate to the end that such Rearrangements be held to comply with City of Santa Monica requirements and standards which are (i) in effect as of December 22, 2010 (the applicable date under the Design/Build Contract for the Project ("D/B Standards Date") or (ii) defined as City Standards in Section 1.4.14 or (iii) as otherwise agreed to by the parties in writing. In the event that the City requires incorporation or implementation of revisions to the City of Santa Monica requirements and standards adopted after the D/B Standards Date, all such Project impacts, whether cost or schedule impacts, will be considered a Betterment for purposes of this Agreement.

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and Authority agree to the terms and conditions of this Agreement for the Design/Build methodology of project delivery and other methods that may be used to build the maintenance facility and other portions of the Project, as follows:

ARTICLE 1
GENERAL PROVISIONS

1.1 Scope of Agreement

This Agreement specifies (a) the procedures which Authority and City will follow in identifying, planning, designing and effecting the Project, including the Rearrangements of City Facilities and other impacts of the Project in order for Authority to Design and Construct the Project within the City, and (b) the manner in which City, and Authority will be reimbursed, when applicable, for their respective Costs of such activities. Both Authority and City agree that each agency will cooperate and coordinate with the other in all activities covered by this Agreement and any supplemental agreements hereto. Further, City agrees to assist Authority by providing engineering, technical, analytical, and administrative support services with respect to building and safety, landscaping, street lighting, transportation, civil engineering, public works inspection, fire/life safety, police protection and other areas deemed necessary by the City and Authority to successfully implement construction of the Project within the terms provided herein. Finally, City agrees to designate the Project as comprising high priority public works projects under the Special Permitting Process (SPP) in Section 3.2, to provide Authority with expedited review and approval procedures in connection with design, Design Reviews, permitting, property acquisition, and other authority to be exercised by the City with respect to the portions of the Project within the City Right-of-Way or Conflicting Facilities.

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 City and any former owner of real property now or hereafter owned by Metro, and to which Authority 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, 2016, unless otherwise extended by mutual agreement of the Parties. This Agreement shall automatically be renewed for 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 sixty (60) Days prior to the end of any term (including the Initial Term). In the event this Agreement is terminated prior to the completion of the Project construction within the City of Santa Monica, such construction shall thereafter be subject to the City's usual and customary permitting procedures and processes applicable to other contractors, except that, such permitting procedures and processes shall not apply if the Authority otherwise is exempted thereafter by written agreement or by law.

1.3 Conditions Precedent

The existence of each of the following shall be a condition precedent to the obligations of the Authority hereunder:

The Authority's payment obligations under this Agreement are subject to the Authority having received necessary appropriations, subsidies, grants, payments and contractual commitments from other parties, excluding the City, necessary for it to perform under this Agreement and otherwise to fulfill its obligations hereunder; and

Neither the Authority's performance under this Agreement, nor its obligations hereunder shall (i) violate any terms, covenants or conditions of its appropriations, subsidies, grants or financial assistance, (ii) breach any warranties or contradict any representation made in connection therewith, or (iii) violate any law, rule or regulation to which the Authority is subject.

1.4 Definitions

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

1.4.1 <u>Abandonment</u> is defined as the permanent termination of service or removal of an existing City Facility or portion thereof, and, if the City Facility or portion thereof is not being removed from its existing location, the work necessary to safely permit such City Facility to remain in place in accordance with applicable Law and/or City Standards.

1.4.2 Advanced Partial Design Submittal is defined as follows:

(a) An Advanced Partial Design Submittal by Authority, its consultants, or its Contractors to the City, shall be a complete segment or segments of a Design submittal containing work related to all City Facilities within the geographical area to be Rearranged. This will be submitted to the City, for review and approval, prior to submittal of a fully integrated Design submittal to the City, for review and approval, as set forth in this Agreement.

(b) Advanced Partial Design Submittals shall reference the limits of work with stationing and shall reference the plan sheets of each adjacent segment to such Advanced Partial Design Submittal.

1.4.3 Arbitrator has the meaning set forth in Article 13.

1.4.4 Authority has the meaning set forth in the Preamble to this Agreement.

1.4.5 Authority Representative is defined as the Chief Executive Officer of the Authority, or his/her representative who has been authorized in writing by the Chief Executive Officer, who has the power to conduct meetings, execute Work Orders, and reviews and approves actions, as required by this Agreement.

1.4.6 Baseline Documents is defined as the DB Contract, and all of those documents listed in the D/B Contract that set out the requirements that the D/B Contractor must comply with in its performance of the work for design and construction of the Project that are binding on the D/B Contractor and the Authority.

1.4.7 Betterment(s) means (i) any upgrading of the facility in the course of a Rearrangement that is not attributable to the Construction of the Project and is made solely for the benefit of and at the election of the City, including an increase in the capacity, capability, efficiency or function of a Conflicting Facility over that which was provided by the corresponding Conflicting Facility; or (ii) any enhancement or upgrade to the Project from the requirements set forth in the Baseline Documents that City requests. Betterments shall be entirely financed at the expense of the City except as provided for in Section 15.21. Authority shall not unreasonably withhold its consent for Betterments. Credits for Betterments are subject to the provisions of Article 9. Notwithstanding the foregoing, none of the following shall be considered Betterments:

(a) An upgrade, to which the Parties mutually agree, is necessary for the Construction, operation or maintenance of the Project.

(b) An upgrade required by applicable Law;

(c) Measures to mitigate environmental or other impacts of the Project arising from the construction or operation or maintenance of the Project, including measures identified in the Project's EIR or any supplemental or addenda environmental reports or any kind ("Environmental Documents"), and also including any other measures

agreed to by Authority as appropriate for the construction or operation or maintenance of the Project, regardless of whether they are identified in the Environmental Documents;

(d) Replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase);

(e) Replacement of devices or materials no longer regularly manufactured with the next highest grade or size;

(f) Any action undertaken by the Authority concerning the maintenance facility that is specifically required by the Memorandum of Understanding ("MOU") entered into between Authority and City.

(g) Any upgrade required by applicable City Standards;

(h) Any upgrade that merely extends the life of any item without meeting the definition of Betterment set forth in either (i) or (ii) above.

1.4.8 City is defined as the City of Santa Monica, California, including, but not limited to, City Council members, its officers, boards, commissions, departments, divisions, employees, staff and agents.

1.4.9 City Comment Due Date is defined as 30 Days from receipt of documents for Design Review.

1.4.10 City Facility is defined as any real or personal property located within or immediately adjacent to the Right-of-Way or other locations that impact the functionality of the system. City Facility includes, but is not limited to, structures, improvements, and other properties, which are under the ownership or operating jurisdiction of City, and shall include, but not be limited to, public streets, parkways, curbs, curb ramps, sidewalks, highways, bridges, retaining walls, alleys, storm drains, sanitary sewers, water distribution systems, utilities, street poles, street lights, signals, signs, markers, water lines, survey monuments, parking lots, parking spaces, parks, public landscaping and trees, traffic control devices, lighting equipment, fiber optic and other telecommunication or related facilities, and public police and fire alarms , fire hydrant and fire suppression systems and all other City owned or operated sub-structures of any kind.

1.4.11 City Project is defined as the construction by, or at the direction of the City of a new facility, other than as the result of a Rearrangement caused by the Project.

1.4.12 City Representatives is defined as the person(s), or the person(s) holding the specified position(s), designated by City pursuant to Section 1.5.

1.4.13 City Right-of-Way is defined as public streets and public easements as per applicable legal documents.

1.4.14 City Standards is defined as the City's design and building standards, codes and ordinances in effect for the design and construction of the Project, including all Rearrangements, as of the D/B Standards Date, including but not limited to:

(a) The Standard Specifications for Public Works Construction ("SSPWC"):

(b) Intentionally reserved;

(c) The California Manual on Uniform Traffic Control Devices (MUTCD) and the American National Standard Practice for Roadway Lighting, ANSI/IESNA RP8-2000;

(d) The latest California Department of Transportation (CALTRANS) Standard Plans and Standard Specifications and all applicable CALTRANS directives,

(e) Applicable CALTRANS Traffic Operations Policy Directives;

(f) CALTRANS Highway Design Manual;

(g) Intentionally reserved;

(h) Construction Mitigation & Implementation Requirements ("CMIR") issued by the City on or about November 25, 2010, as amended by the parties in writing, attached as Exhibit E; and

(i) Light Rail Integration Criteria, Standards, Practices and Guidelines ("LRIC"), as amended by the parties in writing, attached as Exhibit F.

1.4.15 Conflicting Facility is defined as an existing City Facility, which City and Authority determine is so situated within or immediately adjacent to the Right-of-Way as to require Rearrangement in order to construct, operate or maintain the Project without adversely impacting the access, use and maintenance of that City Facility. A Conflicting Facility that:

(a) runs parallel to the tracks will be at or rearranged to a location away from the Project Right-of-Way to allow for placement of shoring at a minimum of 9' horizontal distance from the outside rail to the edge of shoring closest to the rail. If relocation of the conflicting facility is not reasonably feasible, alternative access shall be provided such that maintenance of the facility can be safely performed without fouling the operating rail line; or

(b) crosses the tracks, and will be encased with Pipes Under Railroad Tracks (See BOE Storm Drain Design Manual Figure G 613B) at least 10 feet from the outside rail on both sides and under the trackway. Such work is to be designed and constructed in accordance with City Standards and design policies

If such Conflicting Facilities are not rearranged or encased per (i) or (ii), and remain in the Right-of-Way, Authority shall pay all City maintenance costs and fees associated with the

facility until the Conflicting Facility is relocated in accordance with Article 4 and per (i) and (ii) above. The Parties may mutually agree not to rearrange a City Facility that falls under the above criteria. If such an agreement is made, Authority will not be subject to pay for City maintenance costs and fees for the Conflicting Facility, unless otherwise provided in such agreement.

1.4.16 Construction is defined as work of removal, demolition, replacement, restoration, alteration, realignment, building, fabrication, landscaping, support or relocation, of all new and existing facilities to be constructed, systems, and equipment to be procured and installed that are necessary to build, operate and maintain the Project.

1.4.17 Cost is defined as all eligible direct and indirect costs as further defined in Article 8 for costs incurred by City, and in Article 9 for costs incurred by Authority.

1.4.18 Days are defined as calendar days.

1.4.19 Design is defined as the engineering and architectural, and other submittals and the resulting maps, plans, drawings, computer software, estimates, specifications and special provisions related to the design of the Replacement Facilities, which are necessary for the elimination of conflicts and the Construction of the Project, including Betterments pertaining to such Replacement Facilities, providing protection for the existing facilities and/or the Project under the terms of this Agreement. Design shall be performed in accordance with the provisions set forth in the D/B Contract and Exhibit C hereto.

1.4.20 Intentionally reserved.

1.4.21 Design/Build or "D/B" is defined as the method of project delivery in which Authority engages a Design/Build Contractor to both furnish the Final Design and Construction of a project.

1.4.22 Design/Build Contract or D/B Contract is defined as the documents that are used by Authority to contract with the D/B 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 period of pre-revenue operations.

1.4.23 Design/Build Contractor or D/B Contractor or Contractor is defined as the design/build contractor that has been engaged by Authority to complete the Design and construction of the Project pursuant to the Design/Build Contract and any other contractor engaged by Authority with respect to the design or construction of the Project, including the maintenance facility. .

1.4.24 Design/Build Standards Date or D/B Standards Date is defined in Recital D.

1.4.25 Design Development is defined as the phase of the Design process, which validates schematic design concepts and system criteria and develops a clear

indication of design solutions for requirements outlined in the Preliminary Engineering Design phase. At the completion of Design Development, major features of the architectural and structural Design and third party interfaces have advanced in conjunction with performance specifications, thereby providing the basis for Final Design.

1.4.26 Design Review is defined as the process of critical evaluation of Design documents, plans and specifications by the City that are developed by consultants and/or the Design/Build Contractor which are necessary for the construction of Betterments, a Replacement Facility or portions of the Project within City Right-of-Way. Design Reviews shall be conducted at three critical time frames: (i) the Initial Design (60% complete); (ii) the Pre-Final Design (85% complete); and (iii) Final Design (100% complete and issued for Construction). City may be asked by Authority from time to time to review Advanced Partial Design Submittals. Construction of Replacement Facilities shall not begin until the City verifies the Final Design submittal for such applicable Rearrangement work within City Right-of--Way or with respect to Replacement Facilities. City shall make all pertinent comments to the Design documents at the Initial Design and Pre-Final Design stages and verify at the Final Design stage that such comments have been satisfactorily addressed by Authority.

1.4.27 Dispute has the meaning set forth in Article 13.

1.4.28 Effective Date is defined as the date on which this Agreement has been fully executed on behalf of Authority and City, after having been approved by City's Council for the City and the Board of Directors of the Authority.

1.4.29 EIR is defined as the Exposition Corridor Transit Project Phase 2 FEIR certified on February 4, 2010, State Clearinghouse Number 2007021108.

1.4.30 Intentionally reserved.

1.4.31 Facility is defined as real or personal property now or in the future to be located within the Right-of-Way of the Project for the purpose of providing service to the public, including but not limited to, public streets, highways, bridges and alleys, storm drains, sanitary sewers, parking lots, parks, public landscaping and trees, traffic control devices/systems, street lighting systems, public police and fire alarm systems, easements, recreational facilities, and any equipment, apparatus and/or structure and substructures appurtenant thereto or associated therewith.

1.4.32 Final Design is defined as the phase of the Design process, which 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 systems of such phase of the Design process necessary for complete construction documents. The detailed Final Design may be furnished either by the D/B Contractor or by the Authority's design consultant. Authority shall review all submittals prior to submitting to the City to ensure they are complete and have addressed any prior comments by the City. Following the review and resolution of City comments to the reasonable satisfaction of the

City, the D/B Contractor will make the necessary changes and sign and seal as "Engineer of Record".

1.4.33 Governmental Authority is defined as any government or political subdivision, whether federal, state, local or foreign, or any agency or instrumentality of any such government or political subdivision, or any federal, state, local or foreign court or arbitrator, other than the City or the Authority.

1.4.34 Initial Term is defined in Section 1.2 and Section 1.4.32 of this Agreement.

1.4.35 Joint Development is defined as a term of partnership for many different forms of public/private sector cooperation in the development or redevelopment of structures and facilities to be built in and around Rail Transit Stations and Rail Transit Station areas.

1.4.36 Laws are defined as any law, rule, regulation, ordinance, statute, code or other requirement of any Governmental Authority.

1.4.37 List of Potential Arbitrators has the meaning set forth in Article 13

1.4.38 Metro is defined as the Los Angeles County Metropolitan Transportation Authority.

1.4.39 Fiscal Year shall mean each one-year period commencing on July 1 of a calendar year and terminating on June 30 of the following calendar year.

1.4.40 Parties are defined as Authority and City collectively, and a "Party" is defined as Authority or City individually.

1.4.41 Project has the meaning set forth in Recital A.

1.4.42 Punch List means an itemized list of construction work or components thereof which remains to be completed after the issuance of a notice of substantial completion. The Punch List items will include incomplete items, the existence, correction and completion of which will have no material or adverse effect on the normal and safe use and operation of the Replacement Facility.

1.4.43 Rearrangement is defined as the work of removal, replacement, encasement, restoration, alteration, reconstruction, support or relocation of a Conflicting Facility or portion thereof, whether permanent or temporary, which Authority and the City determine must be rearranged in order to design, build, operate or maintain the Project and which will be borne by the Authority unless otherwise set forth in this Agreement. It is also used for the work of installing new and required City infrastructure due to the impact of the Project construction.

1.4.44 Replacement Facility is defined as a facility, which may be constructed or provided under the terms of this Agreement as a consequence of the Rearrangement of a

Conflicting Facility or portion thereof, and which meets applicable City Standards as set forth herein.

1.4.45 Right-of-Way (ROW) is defined as the real property required to construct, operate, and maintain the Facilities and systems which comprise the Project.

1.4.46 Intentionally reserved.

1.4.47 Special Permitting Process ("SPP") is the special permitting process set forth in Article 3 Section 3.3.

1.4.48 SPP Notification Matrix is defined as that certain "Exposition Metro Line Construction Project, City of Santa Monica, Notification Matrix" as shown in Exhibit "B", identifying, and providing telephone numbers for those positions, individuals or departments to which Authority and its contractors should provide notices as required. This matrix is provided to assist Authority in the coordination work.

1.4.49 Street Lighting System is defined as a complete lighting system to illuminate City, bus and rail right-of-way, including, but not limited to, public roadways, detour roadways, parkways, alleys, sidewalks, detour sidewalks, bridges, underpasses, overpasses, walkways and other public improvements to meet applicable City Standards as set forth herein. Street Lighting System components include, but are not limited to, poles, foundations, luminaries, lamps, pull boxes, conduit, wires, power service points and other related equipment.

1.4.50 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 City Facility to accommodate the construction of the Project, but which will be removed or restored to its original condition after such construction activities are completed.

1.4.51 Traffic Management Plan is defined as a plan that addresses traffic control requirements in Construction areas through a Temporary Traffic Control Plan ("TTCP"), and along detour routes through a Construction Detour Plan ("CDP"). A TTCP is a site-specific design for temporary traffic control and diversion of vehicular and pedestrian traffic through or adjacent to a work area, incorporating base conditions, temporary conditions, construction impact areas, and all temporary/permanent traffic controls and advisory signage. On a larger scale, a CDP addresses operation along an alternate route which bypasses a work area, or multiple intersections affected by concurrent Construction, by means of striping, signing, signals, delineators, barricades, advanced warning signs, warning lights changeable message signs ("CMS") or other traffic control devices. The operation of a Traffic Management Plan is affected by Construction phasing plans and Construction schedules and shall be consistent with the requirements of the contractor, furnished by the City. The Traffic Management Plan will be submitted to the City for its review and approval.

1.4.52 Work Order is defined as that document which Authority issues to City authorizing City to perform a defined scope of work and services with respect to the design

or construction of a Rearrangement or Project Facility to be funded by Authority under the terms and conditions of this Agreement.

1.4.53 Work Plan is defined as that document which Authority issues to the City authorizing a specific annual dollar amount for the Fiscal Year for a defined scope of work and services to be performed by specified City positions to be funded by Authority under the terms and conditions of this Agreement.

1.5 Representatives

1.5.1 City Representative. For the Project, City's designated representatives are set forth in Exhibit B hereto with respect to each of the listed categories of approvals contemplated by this Agreement. City acknowledges and agrees that the City Representatives listed in Exhibit B have the full and requisite authority to make final decisions with respect to approvals and/or disapprovals of the specified subject matter. The City Representatives shall be dedicated to their assigned Project categories to assist the Authority in the delivery of the Project and each designated component thereof in a timely manner (as specified in Paragraph 1.4.9). The City Representatives will have the responsibility (i) to manage and coordinate interaction of City with the Authority, (ii) to produce the necessary work documents and reports, Cost and Work Plan status, and (iii) to undertake reviews and make final decisions and approvals as required by this Agreement. The City Representatives also will be responsible for coordinating among the applicable City departments, bureaus, divisions, or other constituent entities as necessary for the City Representative to make the designated decision or approval. The City may change a designated City Representative by providing ten (10) Days prior written notification to the Authority; provided, however, that any such change in a City Representative shall not relieve City of timely meeting its obligations under this Agreement. The Authority shall have the right to request a City Representative to be replaced if it is reasonably determined by Authority that performance of such individual is unsatisfactory and/or adverse to the timely completion of Design or Construction.

1.5.2 Authority Representative. The Chief Executive Officer of the Authority shall designate a person, or the holder of a specified office or position, to act as the Authority's Representative. The Authority's Representative will have the responsibility to manage and coordinate Authority interaction with the City, and to produce the necessary Design and Construction documents for City review and/or approval, issue Work Plans, and make approvals as required by this Agreement. The Authority may change its designated Authority Representative by providing ten (10) Days prior written notification to the City. The Authority Representatives shall have the full and requisite authority to make final decisions with respect to approvals and/or disapprovals of the specified subject matter. The Authority Representatives shall be dedicated to their assigned Project categories to assist the City as appropriate and whenever necessary so that the City can carry out its obligations under this Agreement. Among other things, the Authority Representatives will have the responsibility (i) to manage and coordinate interaction of Authority with the City, (ii) to produce the necessary work documents and reports, and (iii) to undertake reviews and make final decisions and approvals as required by this Agreement. The Authority Representatives also will be responsible for coordinating among the applicable Authority representatives and

contractors, or other constituent entities as necessary for the Authority Representative to make the designated decision or approval. The Authority may change a designated Authority Representative by providing ten (10) Days prior written notification to the City; provided, however, that any such change in a Authority Representative shall not relieve Authority of timely meeting its obligations under this Agreement.

ARTICLE 2
DESIGN

2.1 Community Notifications and Review

The Authority is responsible to coordinate all designs of the Project with the City and those community groups that are affected by the Project. The Authority is responsible to work with the communities neighboring the Project to seek consensus of these design elements impacting the traffic circulation, safety, appearance, and quality of life. These design elements include but are not limited to architecture, aesthetic quality of the stations, noise and vibration controls, lighting and sound walls in accordance with the approved Phase II Final Environment Impact Report (FEIR). The Authority is responsible to collaborate with City Departments to determine proper and effective mitigation measures to address community concerns.

2.2 Coordination

The Authority Representative and the City Representatives shall work in good faith pursuant to the established guidelines and procedures set forth herein with respect to Design Review and coordination of Construction, right-of-way acquisition and Rearrangement of City Facilities pursuant to this Agreement in order to permit the timely design, construction and operation of the Project. The City Representative(s) shall attend the weekly coordination meetings to stay apprised of the Project schedule and activities within the City.

2.2.1 Certain components of the Project construction may require interruption of some City services except for street lighting service unless the public area is completely closed to both vehicular and pedestrian traffic. The Authority shall schedule its construction activities to cause the least amount of disruption. As set forth herein, City consents to schedule an interruption of service, deemed necessary by Authority; however, Authority shall provide prior notice in accordance with the SPP Notification Matrix before City services are interrupted. Authority will notify affected parties, including residents, businesses and the in advance of scheduled interruptions and will cooperate with City to minimize interruption of City service and resulting disruptions. Where the City determines that Temporary Facilities are reasonably necessary and appropriate and provides Authority with at least 14 Days prior written notice to provide the same, Authority shall provide such Temporary Facilities; provided, however, that Authority deems such request reasonable and necessary.

2.2.2 City recognizes that time is of the essence for the Project, and that certain portions of the Project 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. Each Partial Design Submittal will identify the

particular segment by station reference and cross reference all adjoining segments to be submitted for the designated City Representative's review and approval for early construction. The designated City Representative shall submit consolidated comments on Partial Design Submittals to Authority within 30 Days of receipt from Authority and shall identify any aspects of the identified segments that do not conform to applicable City Standards, based on the information provided; however, in the event the Partial Design Submittals are incomplete, the City has the right to reject said submission. The City shall notify the Authority at the earliest opportunity that said submittals are incomplete. Construction components identified by the City, which do not conform to City Standards, Requirements, or Ordinances shall not proceed to early construction. If the designated City Representative does not provide its consolidated comments within the specified 30 Day period, Authority may deem such Partial Design Submittal approved by City. The designated City Representative shall be responsible for consolidating all City-related comments from the applicable City departments and providing Authority one such set of its comments.

2.2.3 No more than six (6) Design submittals consisting of a reasonable number of sheets shall be scheduled for review and approval by the City at one time unless otherwise agreed upon. The determination of what constitutes a reasonable number of sheets will be agreed upon by the parties through their respective representatives in advance of each stage of design. Each Design submittal shall include AutoCAD design drawings, project specifications, supporting data, reports and such information as needed to advance to the next stage of design.

2.2.4 The Parties recognize that City approval of Partial Design submittals might result in Design or Construction of City facilities that are non-conforming to applicable City Standards. Authority shall be responsible for correction of all such non-conforming Design and/or Construction so long as (i) they are requested by the City in connection with Final Design approval of an entire Facility in order to conform that Facility to applicable City Standards or (ii) correction is necessary to prevent public health and/or safety risk.

2.3 Design of Rearrangements Performed by Authority, Its Consultants and Contractors

Unless otherwise mutually agreed, Authority (or its consultants and/or contractors) shall Design all Rearrangements, including Betterments thereto. For the Design of any specific Rearrangements, which will be performed by Authority (or its consultants and/or contractors), Authority shall issue Work Orders for City to review plans and specifications as required, and the following procedures shall govern.

2.3.1 Coordination of Design and the development of the Design plans and specifications shall be the responsibility of the Authority Representative (who shall confer from time to time with the City Representative), except to the extent that such responsibility has been delegated to Authority's consultants and/or contractors in accordance with this Agreement.

2.3.2 Development of Design, Performance Specifications and Technical Provisions - The Authority and its consultants will undertake the preparation of a set of technical drawings and technical specifications.

2.3.3 Design plans of Rearrangements performed by Authority, its consultants or D/B Contractor shall be prepared in AutoCAD.

2.3.4 The Parties will work in good faith through their designated representatives to develop and finalize a mutually agreeable schedule for submittal of plans and specifications for each reconstruction and Rearrangement of City Facilities at the Preliminary Engineering (30%) (new work not covered in Stage A), Initial Design (60%), Pre-Final Design (85%) and Final Design (100%) stages; provided, however, that the City's review, comment and approval regarding the same shall be in accordance with the requirements set forth in Section 2.12.

2.3.5 Authority, its consultants, and its contractors, are responsible for errors and omissions in the plans, specifications, submittals, and all other related contract documents. Subject to the approval standards below, the City shall have the right to approve or disapprove the Final Design Documents, but expressly agrees and acknowledges that during the Final Design stage at 100%, it shall not raise any new issues, or make any comments, which are inconsistent with its comments on earlier submittals, or with any changes already agreed to by City and Authority; however, this limitation shall not apply in circumstances where earlier submittals were incomplete or otherwise did not disclose sufficient information to disclose conflicts, noncompliance with City Standards or applicable Law. City'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 for such Rearrangement, modified as appropriate to respond to City 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 City and Authority, or (b) earlier submittals for such Rearrangement which have been approved (or deemed complete and approved) by City. City shall have the right to make new comments on any material changes in Design from previous submittals.

2.4 Design of Rearrangements Performed by City

If Authority and City mutually agree that City (or its consultants and/or contractors) shall Design a specific Rearrangement, Authority shall incorporate such work into the Work Plan and issue a work order to City, upon receipt of which City shall proceed to perform the Design of such Rearrangement, and the activities referred to in the following subsections:

2.4.1 City shall perform its Design work in conformance with Authority's Design schedule and shall coordinate throughout Design with Authority to develop plans satisfactory to both Authority and City for each Rearrangement. The schedule for City'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 not-to-exceed cost of completing the Design of the specific Rearrangement and agreed upon scope. Betterments shall be addressed in accordance with Section 2.6.

2.4.2 City shall submit a set of the completed Design plans and specifications, including City's estimate of the cost of Construction (less applicable credits in accordance with Article 9) and City's estimate for the time needed to perform the required Rearrangement work, to Authority for its review and approval. Unless otherwise expressly permitted herein, City will not change the approved plans during Construction, except with prior written concurrence of Authority. This constraint shall not apply to unapproved proposed plans. Authority's review and approval of any Design furnished by City, its consultants or contractors shall be limited solely to assessing compatibility of the Replacement Facilities with the Project, coordination with Authority's work on the Project, and Cost issues. Authority will review the Design plans and specifications for their compatibility with the overall Design.

2.4.3 City shall be responsible for errors and omissions for any plans and/or specifications prepared by City, its consultants or contractors.

2.5 City Review and Approval of Significant Changes

Authority shall not make any significant changes to the Project from the Baseline Documents as it pertains to the City Rights-of-Way or City Facilities, without the prior review and written approval of the City; however, nothing in this provision is intended to modify, alter or abrogate the requirements of the EIR. The procedures for review of the significant change shall be as follows:

2.5.1 Authority shall identify any proposed significant change to the City, along with a rationale for said change, and the City shall have thirty (30) Days from the date of receipt of any documents from the Authority's Representative to review and approve or disapprove any proposed significant change by written notice to the Authority Representative. Any such disapproval shall be accompanied by a detailed written explanation for the disapproval and a proposed resolution to obtain City approval of the same. There will be no extensions to the thirty (30) Day period allocated for review and approval or disapproval of significant changes. In the event the designated City Representative does not respond to Authority within the 30 Day period, City shall be deemed to have concurred with all the proposed significant changes in the submittal.

2.5.2 If the City Representative timely disapproves or indicates non-concurrence with a proposed significant change in writing, as required above, the Authority shall propose in writing and on drawings, as appropriate, another change that responds to the City's concerns which may constitute a significant change or non-significant change. Under these circumstances, the City shall have an additional twenty (20) Days to review any such proposed non-significant change or proposed significant change. The designated City Representative shall have the 20-Day period of time from the date of receipt of the documents from the Authority's Representative to complete the design review and to make the necessary and appropriate comments on the contents of the documents. There will be no extensions to the twenty (20) Day period allocated for this design review.

2.6 Betterments

2.6.1 City shall inform Authority what Betterments, if any, City desires at least 60 Days prior to the Design Review for the Initial Final Design with respect to the subject Rearrangement, so that Authority can review the Betterments and determine whether they satisfy the requirements set forth in Section 2.6.2. Subject to the provisions of Section 2.6.2, below, Authority shall review and determine in its sole discretion whether to approve a request by City for a Betterment, and such discretion shall not be unreasonably withheld provided that the requested Betterment does not adversely impact the critical path of the Design and/or Construction schedule for the Project. Each Design furnished by City shall specifically identify any Betterments included in such Design. In the event Authority approves a Betterment that City requests, City shall be responsible for all costs associated with the request for such Betterment, including costs related to additional time, engineering, staffing and design, as provided for in Section 9.3.

2.6.2 It is understood and agreed that Authority will not be responsible for the Cost of any Betterment, and that no Betterment may be performed in connection with any Rearrangement (whether designed or constructed by City or by Authority) which is incompatible with the Project or which cannot be performed within the constraints of applicable Law, any applicable governmental approvals and/or adversely impacts the critical path of the Authority's schedule for the Project. At City's request, Authority will cooperate with the City in good faith to accommodate the utilization of multiple crew shifts, at City's sole cost and expense, with respect to constructing a Betterment, in order to minimize any impact upon the Authority's Design and/ Construction schedule for the Project. City shall bear the Cost of all Betterments included in each Rearrangement, by crediting or paying Authority, as applicable, in accordance with Article 9 of this Agreement.

2.6.3 For a Rearrangement to be constructed by Authority, the City shall pay for each requested and included Betterment, as provided in Article 9 of this Agreement. Authority shall inform City when 75% of the budgeted amount for a Betterment has been incurred.

2.7 General Design Criteria

2.7.1 The City shall notify Authority of any revisions or additions to City Standards. The Design of each Rearrangement, whether furnished by City or by Authority (or by their consultants or contractors), shall conform to the City Standards and ordinances as defined in Section 1.4.14, together with revisions or additions thereto, which shall be incorporated into the design product pursuant to the provisions in Section 2.7 of this Agreement.

2.7.2 With respect to Rearrangements procured on a Design/Build basis, the Design product shall incorporate any revisions or additions to the City Standards of which City has notified Authority on or before the applicable City Comment Due Date. In the event City does not provide notification within the City Comment Due Date, the Authority shall not be responsible for incorporating such changes, and any such changes shall be incorporated at the cost of City. The Design product also shall incorporate any subsequent revisions of or additions to the City Standards of which City notifies Authority prior to the deadline

scheduled by the parties pursuant to Section 2.5 for City's final comments on the Final Design, provided that (a) such subsequent revisions or additions (i) do not require Design product changes necessitating re-submittal of the Design product to the City and (ii) do not increase the cost of and/or time for Construction as initially estimated or require amendment of, or change order for, any related Construction documents, or (b) such revisions or additions result from changes in federal or state laws, rules or regulations which mandate incorporation of the changes into the Design product.

2.7.3 Intentionally reserved.

2.7.4 City agrees to comply with the provisions of this Section so long as the Project stays within the original general timeline and/or schedule for its design and construction. If for any reason, the Project is placed on hold by Authority for a period of twelve (12) months or more, the City will have the option to review and modify any City Standards from the previous design. The City will not be liable for any costs due to the changes in standards due to this type of project delay.

2.8 Changes in Approved Plans

Following City approval, changes in Design shall require both Authority's and City's approval. Authority shall not unreasonably withhold its consent to incorporation of City requested changes into approved plans or specifications. All changes required to accommodate differing site conditions are the responsibility of Authority, its consultants, and contractors. Field changes required due to differing site conditions must be reviewed and approved by the City. Authority, its consultants, and contractors must comply with all applicable City Standards and ordinances pursuant to Section 1.4.11 of this Agreement.

2.9 Specific Design Requirements for Rearrangements

2.9.1 Surface Openings. To the extent practical, Authority shall locate surface openings associated with the Project, if any, such as ventilation gratings, so as to cause the least effect on existing features of landscape and improvements and the least public disruption, and when practical, they shall be located in or on Metro-owned property, unless otherwise agreed to by City. In determining location of surface openings, health and safety concerns are paramount. Placement of ventilation gratings in sidewalks will be avoided, as much as possible at all times, and City concurrence shall be obtained prior to placement. Other openings, such as mechanical access openings shall be permitted in sidewalks provided said openings are enclosed by a mutually acceptable method. The City and Authority shall mutually agree on the exact location and size of such openings.

2.9.2 Landscaping. Trees and landscaped areas under ownership or control of City shall be preserved and trees shall only be removed with the consent of City. Trees in the Project's construction area which are to remain shall be adequately protected. Trees that must be removed due to Rearrangements shall be replaced in the ratio of two replacement trees for each one tree removed in accordance with applicable City Standards. Landscaped areas removed due to Rearrangements shall be restored in accordance with applicable City Standards, including the City's water conservation and sustainability standards. Preservation and/or replacement of trees and landscaping at parks affected by the Project

shall be coordinated with the applicable City Representative with the Public Landscape Division or other division designated by the City. A tree replacement report may be required, at City's discretion, depending on the extent and type of tree replacement.

2.9.3 Traffic Control Devices. Certain of the contemplated Construction will require the removal and reinstallation of traffic control devices. Provided that Authority's plan for same has been approved by City, City hereby consents to all removals, temporary installations, reinstallations and interruption of traffic control devices in compliance with such plan and deemed necessary by Authority and performed by Authority's contractors; however, Authority shall provide prior notice in accordance with the SPP Notification Matrix before service of traffic control devices is interrupted. Authority will cooperate with City to minimize interruption of services of traffic control devices. As required, Authority shall issue work orders to City for necessary removal and reinstallation of existing parking meters, traffic signals, and other traffic control devices, including but not limited to posts, signs, interconnect, cameras, loops, pavement markings, and striping, in accordance with Authority's Construction schedule.

2.9.4 Street Lighting. Certain of the contemplated Construction will require the removal, modification, and reinstallation of existing or installation of new lighting systems depending on the impact of the Project on City Facilities. Provided that Authority's plan for same has been approved by City, City hereby consents to all removals, temporary installations, reinstallations of existing, installation of new lighting systems in compliance with such plan, and interruptions of Street Lighting Systems in compliance with such plan and deemed necessary by Authority and performed by Authority's contractors; however, Authority shall provide at least three (3) Days prior notice in accordance with the SPP Notification Matrix before service of Street Lighting Systems is affected. Authority will cooperate with City to minimize interruption of street lighting service. Authority shall issue work orders for the Rearrangement of a Street Lighting System when required under the terms of this Agreement.

(a) Any work that will affect lighting systems, maintained by or under the jurisdiction of City, must be approved for compliance with applicable City Standards by the Public Works Department. Design for a Street Lighting System must be forwarded for Design Review to the City in accordance with this Agreement.

(b) Except as mutually agreed by the Parties, all lighting systems maintained by or under the jurisdiction of City within the boundaries of the Project, as well as all lighting systems on the same circuit in the direct vicinity of the Project, shall be maintained and kept in operation by the D/B Contractor at all times during Construction. City shall not unreasonably withhold its approval to interrupt service as necessary for the Project.

(c) In the event of any damage caused by Authority or its contractors to lighting systems maintained by or under the jurisdiction of City, the City must be notified in accordance with the SPP Notification Matrix. All damages shall be repaired as soon as reasonably possible by Authority's contractors under City inspection at no expense to

City. If City performs any lighting system Construction, City will be responsible only for repair of damage caused by City forces.

2.9.5 Private Projections in Public Ways. Upon a determination by Authority that a private projection in, over or under any City Facility, including streets, highways or other City Rights-of-Way, must be removed to accommodate the Project, Authority shall coordinate with City, and City shall cooperate with Authority and take all reasonable action within its jurisdiction to pursue the elimination of such projection prior to the scheduled start of the Construction in the affected location at Authority's sole expense, unless the encroachment is a one which the City has no right or ability to eliminate, move, remove, or otherwise terminate. In the event City is unable to effect the removal of such projection, Authority shall make its own arrangements for removal of any such projection, whether through exercise of its powers of eminent domain, through negotiation with the owner, or otherwise. If it is determined that the cost of removal is not the responsibility of the private owner, then Authority shall bear the cost of removal of said projection. City shall cooperate with and assist Authority in pursuing reimbursements from third parties with respect to such projections and with Authority's efforts to minimize the cost to eliminate, move, remove or otherwise terminate projections where determined necessary by Authority; provided, however, that City will not share in the cost of any such removal. .

2.10 Construction Staging Plans

Authority, through its consultants, contractors, subcontractors or agents, shall develop construction-staging plans. Construction staging plans shall provide, among other things, for the handling of vehicular and pedestrian traffic and street lighting on streets adjacent to the Construction with the Construction phasing showing street closures, detours, warning devices and other pertinent information specified on the plans. All construction staging plans, including related traffic control plans, shall be submitted to the designated City Representative for review and approval in accordance with Article 3 prior to implementation. Construction staging plans should be included or referred to in the Traffic Management Plan and any TTCPs and CDPs provided to the City, which may be amended from time to time as Authority determines that additional construction staging areas are necessary.

To assist Authority in the coordination and the development of construction staging plans, City will furnish to Authority during Design at the time required by Authority's schedule, the following information, in writing or when mutually agreed:

2.10.1 Worksite traffic control

(a) The traffic lane requirements for streets impacted by construction activities.

(b) Streets proposed for complete closure during Construction and the duration of the closure. Complete street closures require City approval in accordance with this Agreement and Exhibit B.

(c) Parking restrictions to be imposed during the construction period.

(d) Detours

(e) Preliminary Haul routes and overloads routes and truck staging areas.

2.10.2 All relevant City Facilities information (other than streets):

(a) City Facilities in which service must be maintained.

(b) City Facilities in which service may be abandoned during Construction.

(c) Proposed phasing or sequencing of Construction of Rearrangements.

(d) Rights-of-way that must be acquired for Replacement Facilities and Rearrangements.

2.11 Assistance by City

City agrees to assist Authority by providing those designated positions and/or individuals in Exhibit B for planning, engineering, technical, analytical and administrative support services with respect to of fire/life safety, police security, transportation engineering, civil and structural engineering, illuminating engineering, park engineering, storm drain and sanitation engineering, public works inspection and in other areas when mutually agreed. The designated positions and/or individuals in Exhibit B may be changed by ten (10) Days prior written notice to Authority; provided, however, that Authority shall not pay any invoices for work performed by positions and/or individuals who are not listed in Exhibit B or otherwise replaced by timely prior written notice.

2.11.1 Fire/Life Safety. Assistance in the Design, Construction and operations planning of the Projects as it relates to fire prevention, fire suppression, and emergency preparedness with respect to fires or other major disasters. The assistance shall also include reviews for conformance of fire/life safety codes, standards and regulations. Fire Department representatives will be invited to participate as active members of Authority-designated committees dealing with fire/life safety issues.

2.11.2 Police Security. Assistance in the Design, Construction and operations planning of the Projects as it relates to personal and property security, deterrence and detection of criminal activity and the apprehension of criminals. The assistance shall also include, if requested by Authority, participation by police department representatives as active members of Authority-designated committees dealing with police security.

2.11.3 Transportation Engineering. Assistance in the Design, Construction and operations planning of Project as it relates to facilitating movement of automobiles, buses, bicycles, and pedestrians into, through and from the Project. The assistance shall also include the review and approval of the Traffic Management Plan, temporary traffic signal, geometric striping, traffic signal software development, permanent traffic signal plans and

monitoring installation of those prepared or installed by Authority's contractors and consultants, in accordance with the Work Plan, City will review plans for final geometric striping and signal plans for the Projects.

2.11.4 Illuminating Engineering. Assistance in the Design and construction of Street Lighting Systems affected by the Project. The assistance shall also include review and approval of contractor-prepared temporary street lighting and street lighting demolition plans as well as final restoration Street Lighting System Designs prepared by Authority's contractors and consultants and administration of "Prop. 218":

2.11.5 Urban Forestry and Community Services. Assistance in the design, Construction and operations planning of the Project as it affects recreational areas and landscaping within City parks.

2.11.6 Civil and Structural engineering – Assistance in design, design review, construction, and operation of other City facilities.

2.11.7 All Other Areas. Assistance in Design, Construction and operations of other City Facilities.

2.12 City Review of Any Project Design Submittals

The following requirements and process shall apply to the City's review, comment and approval of any and all submitted plans, specifications, and shop drawings for the Project Facilities located within, on, under or over City Right-of-Way during the Design Review stages and for City review and comment regarding same. City agrees and acknowledges that all design and construction by Authority (or its consultants or contractors) pursuant to this Agreement shall conform to the standards and specifications set forth in herein.

2.12.1 Within seven (7) Days after receipt of a Design submittal for the Project Facility, (i) City shall inform Authority whether the plans and specifications are sufficiently complete for City review purposes, and (ii) if not sufficiently complete, City shall so notify Authority, or shall return the plans and specifications to Authority together with an identification of those portions that are not sufficiently complete and a description of the missing information listing the deficiencies. The City will have another seven (7) Days to determine the completeness of the re-submittal. If no such notice or return is received by Authority within such seven (7) Days, the plans and specifications shall be deemed complete and acceptable by City for review purposes.

2.12.2 Within 30 Days after receipt of each submittal, City shall review the plans and specifications and either advise Authority that it has no comments, or transmit its consolidated comments to Authority, including all applicable comments from third-parties and City departments. City's consolidated comments will be submitted on a comment matrix and annotated plans as a single submission. The designated City Representative shall be responsible for consolidating all City-related comments from the applicable City departments and providing Authority one such set of its comments.

2.12.3 Authority will revise the applicable submittal to address the undisputed City comments and shall notify City within five (5) Days of any outstanding disputed comments. In the event there are outstanding disputed comments under this Section, Authority shall conduct a comment resolution meeting with the City within ten (10) Days of notification of the disputed comments, to address and resolve any such outstanding City comments. The designated City Representative shall participate in the comment resolution meeting and shall invite any support staff reasonably necessary to address and resolve the outstanding comments at such meeting. .

2.12.4 The provisions of this Section will also apply to any re-submittal of plans and specifications by Authority, whether in response to a City notice or return of incomplete plans and specifications, or in response to substantive City comments. Re-submittals shall include the City's comment matrix, City's annotated plans, and confirmation of comment resolution.

2.13 Coordination of New and Unrelated City and Other Facilities

2.13.1 The Authority acknowledges that the City may implement certain new or improved City facilities adjacent to the Project. Throughout the term of this Agreement, if City plans to construct new facilities unrelated to the Project that would cross or otherwise occupy locations that might conflict with Construction or operation of the Project, City will coordinate the design and installation of such facilities with Authority such that any conflict with the Project is minimized.

2.13.2 Metro and City will establish a ZI-1117 permit process to require projects within or adjacent to the Project's right of way to obtain Metro concurrence prior to final plan sign off. Metro shall have the right to final permit sign off.

2.14 Relocation of City Utilities and Private Utilities

Authority shall be providing a composite utility plan to the City to be reviewed and approved in advance, and the City and Authority shall jointly determine the priority of any utility conflicts. If mutually agreed to, within 10 Days of receipt of Authority's written request, the City will send a written notice to all utilities whose facilities conflict with the Project, instructing them to relocate or remove the conflicting facilities. The determination of which party shall be responsible for the cost of such removal or relocation shall be resolved by Authority, City and the affected utility. Private utility costs and related Authority Costs shall not be borne by the City in part or in whole, except for Betterments.

ARTICLE 3
AUTHORIZATION, CONSTRUCTION, AND PROPERTY RIGHTS

3.1 Community Notifications

The D/B Contractor and the Authority, in consultation with the City, will be responsible for establishing public outreach programs to provide proper notifications to the affected communities prior to and during construction. These notifications include but are not limited to public announcements in radio stations and local newspapers,

changeable message signs, road advisory signs, community notice mailing, and posting of notices. The Authority shall require its contractors to schedule their activities so as to minimize construction duration.

3.2 Permits

3.2.1 For this Project and pursuant to applicable Laws, City agrees to a Special Permitting Process and Waiver of Certain Permit Fees ("Special Permitting Process" or "SPP") as set forth in this Article to cover certain work affecting the public Right-of-Way by Authority. Except as provided for in this Article, City agrees that it shall not exercise permitting authority over, and shall not require the payment of fees or the posting of bonds for the Project Facilities located within, on, under or over the City's Right-of-Way for the period of time in which this Agreement is in effect. Authority's plans and specifications for construction of the Project Facilities located within, on, under or over the City Right-of-Way shall be submitted for City's review and comment as provided in Section 2.9. Notwithstanding the foregoing, the City's Standards, plans, specifications, general provisions, and approved materials shall be adhered to by Authority except as provided for in this Agreement.

3.2.2 City waives the payment of certain permit fees identified in this Article. In lieu of payment of these permit fees, Authority agrees to reimburse City for the cost of City's permit processing staff time pursuant to a work plan or authorization process as provided for in this Agreement. City agrees to accept such reimbursement in satisfaction of the otherwise applicable permit fees. However, Authority will be required to pay for all permit costs and user fees associated with capital entitlement fees and temporary use fees during construction of the Project as provided in this Agreement.

3.2.3 Prior to commencement of any phase of the Project construction affecting non-Metro property within the City, Authority or its contractors will apply, take out and pay for any required City permit not otherwise exempted by this Article, and Authority or its contractors will give City advance written notice of commencement of such construction as agreed to between the parties. No fees or costs shall be assessed against Authority with respect to work affecting non-Metro property that is already included in the Project and/or which is included in work being performed by City under a Work Authorization or Work Order.

3.3 Special Permit Process and Waiver of Certain Permit Fees

3.3.1 All work for the Project that is within or affects the City's Right-of-Way is subject to the Special Permitting Process set forth in this Agreement, including any portion(s) of private properties dedicated for public right of way purposes. This Article shall not relieve the Authority or its contractors from plan checks, permits, or inspections required by the Santa Monica Police Department, and plan checks, permits, or inspections required for fire and life or safety matters by the Santa Monica Fire Department, (i.e., hazardous materials soil removal, abatement of hazardous material storage tanks, special extinguishing systems, State Fire Marshal Code requirements, Certificates of Occupancy, etc.). All City staff costs for design review, coordination, construction inspection and testing related to work required by this Article shall be reimbursed by the Authority through City

Work Plans, as specified in Article 8 of this Agreement; provided, however, that no fees or costs shall be assessed against Authority with respect to work affecting non-Metro property that is already included in the Project and/or which is included in work being performed by City under a Work Authorization or Work Order.

3.3.2 The Special Permitting Process is intended to serve in lieu of the following permits for work in the public right of way:

(a) Use of Public Property Permit (including temporary traffic control plans)

(b) Street Construction Permit

(c) Utility Excavation Permit

(d) Encroachment Permit (for encroachments into the public right-of-way)

(e) Sewer Permit

(f) Storm Drain (Connection) Permit

(g) Oversized Load Permit

(h) After Hours Construction Permit

(i) Temporary No Parking Fee, but only if the following conditions are met:

(1) The Authority diligently and expeditiously works with City in establishing a comprehensive replacement parking plan on adjacent streets prior to Authority or its DB Contractor commencing any Construction; and

(2) As provided for in this Agreement, Authority minimizes to the maximum extent possible the removal of parking spaces in a Construction zone to that which is necessary to safely execute the Construction. City may require clarification to or changes in the amount of proposed parking loss if this is not adequately documented by Authority or its DB Contractor.

The Authority or its DB Contractor will be required to pay any applicable City Temporary No Parking Fee for any parking space that is removed as a convenience to Authority or as a convenience to any of its contractors. As used in this subpart, "convenience" includes utilizing parking spaces for employee parking which is related to the Construction, or staging any Construction related vehicle in a parking space when other reasonable alternatives exist.

3.3.3 The following capital, entitlement and temporary use fees will not be waived by this Special Permitting Process:

(a) Industrial Waste Discharge Permit

(b) Water Capital Facility Fee

(c) Water Demand Mitigation Fee

(d) Wastewater Capital Facility Fee

(e) Temporary Water Meter Fee

3.3.4 The SPP is intended to facilitate an expedited review and approval of improvement plans and authorize the construction of facilities in the public right of way. Work subject to the terms of this SPP shall include all types of construction, excavation and exploration, testing, installation of traffic control devices and detours within the right of way that affects the flow of vehicular and pedestrian traffic.

3.3.5 The following plan check and plan approval and construction implementation applies to the Project:

(a) Plan Check/Plan Approval Process

(1) The City will designate a Permit Coordinator and a Permit Specialist to facilitate the plan check/plan approval process.

(2) The Permit Coordinator will be the point of contact for Authority regarding the establishment of plan check priority and resolution of technical issues.

(3) Plan check will be performed electronically using ProjectDox and Authority's comment matrix form, unless otherwise agreed to in writing by the parties.

(4) Plans are to be submitted as follows:

(i) Two sets of hard copies (1-11"x17" and 1-24"x36").

(ii) Electronic files submitted in .DWG or .PDF format.

(5) Construction Plans for the Project will be submitted by the D/B Contractor or other Authority designee to the Permit Specialist through ProjectDox, unless otherwise agreed to in writing by the parties; provided, however, that no additional fees shall apply for alternative types of submittals.

(6) The Permit Specialist will be responsible for logging and tracking plan submittals and distribution and notification to all City staff responsible for plan review.

(7) Plan check comments from various Divisions will be compiled and will be returned to Authority electronically in a mutually agreed upon format.

(8) The Permit Coordinator will be responsible for managing internal plan review process in accordance with the timelines designated in the MCA and coordinating/resolving any technical plan check issues.

(9) Plan checks will be performed by various City departments and divisions under the direction of the Permit Coordinator.

(10) Each City department and division responsible for review of plans will designate a primary and secondary contact.

(11) The Permit Coordinator or Construction Coordinator will approve construction plans by stamp and signature.

(b) Construction Implementation Process

(1) The City will designate a Construction Coordinator to facilitate the construction coordination and inspection process.

(2) The Construction Coordinator will be the point of contact for Authority regarding the resolution of all technical issues related to construction of City facilities.

(3) Construction management document control will be performed electronically using Expedition.

(4) Submittals, RFI's, Work Plans, etc., shall be submitted to the Construction Coordinator by Authority in PDF format.

(5) The Construction Coordinator will be responsible for logging and tracking submittals and coordinating all internal City staff responsible for submittal review.

(6) The Construction Coordinator or Permit Coordinator will approve Work Plans by stamp and signature. An approved Work Plan for a specific component(s) and/or segment(s) of work, constitute authorization to proceed with said work in the public right of way.

(7) Inspections and substantial approval-acceptance will be performed by various City departments or divisions under the direction of the Construction Coordinator.

(8) Each department or division responsible for inspections and approval-acceptance will designate a primary and secondary contact.

(9) Construction Coordinator will facilitate substantial or final approval-acceptance of City facilities.

(10) Facilities determined to be in non-compliance with the approved construction plans will be subjected to the issuance of an appropriate

non-compliance order in writing by the Construction Coordinator, for which Authority shall have a reasonable cure period.

(11) Work determined to be in non-compliance with the approved work plans will be subjected to the issuance of an appropriate non-compliance order in writing by the Construction Coordinator, for which Authority shall have a reasonable cure period.

(12) A "Notice of Completion" (NOC) or a "Notice of Substantial Completion" (NOSC) will be issued by the Construction Coordinator for a final or substantial completion-acceptance of City facilities.

3.4 Special Permitting Process Conditions

3.4.1 The provisions of this Article do not apply to any utility company doing advance relocation work, prior to the Notice to Proceed (NTP) for the Project. Individual project construction contracts will require individual permits, such as excavation permits. This permit requirement will be waived upon the Effective Date for all the utility work on behalf of Authority within the contract limits of work as shown on Authority's unit construction plans reviewed and approved by City Staff. Change orders and new work on City Facilities not shown on City-approved Authority construction plans shall be reviewed and approved by the City prior to permit issuance.

3.4.2 Authority shall be responsible for the relocation or Rearrangement work for all Conflicting Facilities, such as water, sewer, street, storm drain, street lighting, structural, traffic signal, striping, signing, fiber optic, telecommunication and other utility facilities affected by the Project. Such work will be designed and constructed in accordance with current City Standards and design policies.

3.4.3 Authority shall provide City with a video log and electronic imagery in a format acceptable to the City for work performed in, on or around the City Facilities.

3.4.4 Authority shall provide "As-Built" drawings within ninety (90) Days of the completion of the work on either temporary or permanent facilities in a format acceptable to the City.

3.4.5 Authority shall ensure that the design of all shoring and lateral support on public rights of way is performed in accordance with the California Department of Transportation – Trenching and Shoring Manual. Authority shall be responsible for the review and approval of designs for shoring and lateral support, including soils reports and engineering calculations. Authority shall submit a signed certification, with two sets of shoring, and lateral support system plans and calculations to the City not less than thirty (30) Days prior to the start of construction. All submittals shall be signed and stamped by a California Registered Engineer.

3.4.6 Authority shall require its contractors to submit their haul route and overload permit applications with route maps to the City for review and approval. Such submittal shall clearly state the proposed haul route(s), truck staging area(s), truck size,

truck volumes/hour and the duration of the hauling operation and shall be submitted not less than thirty (30) Days prior to the actual commencement date of the hauling operations.

3.4.7 Authority shall ensure that all construction work conform to the City's Construction Mitigation and Implementation Requirements for the Expo Light Rail Project. Authority shall require its contractors to provide advance notification to the City before implementing any street or sidewalk closures for which the construction plans have been reviewed and approved by the City. Authority shall require that its contractors be responsible for installation, maintenance and removal of all traffic control devices and markings that may be required.

3.4.8 Authority shall obtain written approval from the City for any work impacting traffic on City streets or affecting existing traffic signal equipment or its operation in any way not covered by any pre-approved plan. Authority shall require its contractors to provide advance notification in accordance with the SPP Notification Matrix, unless otherwise permitted, before the implementation of such plans.

3.4.9 Authority shall require its contractor(s) to inform the City of Project emergencies or accidents that impact the operation of the City's surface street system in accordance with the SPP Notification Matrix.

3.4.10 Authority shall require its contractors to minimize the number of City street closures. Authority shall direct its Contractors to strictly adhere to the City's directives regarding construction during peak hours. No more than one freeway on and off ramp shall be closed at any given time for construction activities. No more than one primary north-south corridor, as defined below, or freeway on and off ramp shall be fully closed at any given time for construction activities. Any additional proposed closures must be approved in writing by the City and adhere with Table 1 – Traffic Lane Requirements of the Construction Mitigation and Implementation Requirements for the Expo Light Rail Project.

The primary north-south corridors referenced above include:

- Centinela Avenue
- Cloverfield Boulevard
- 26th Street
- 20th Street
- 17th Street
- 14th Street
- 11th Street
- Lincoln Boulevard
- 5th Street

- 4th Street
- Stewart Street

3.4.11 Authority shall not allow any City Right-of-Way to be used by its employees or contractors for the parking of personal vehicles unless otherwise specifically authorized in writing by the City.

3.4.12 Authority shall require its contractors to continuously provide safe and adequate pedestrian access and circulation throughout the construction areas in compliance with the provisions of the Americans with Disability Act (ADA). Pedestrian crossings for streets at construction areas shall be provided with adequate signage and street lighting to direct pedestrian traffic through the construction areas. To accommodate pedestrians, the minimum unobstructed temporary walkway width shall be 5 feet unless otherwise approved by the City.

3.4.13 Authority shall maintain pedestrian access and traffic circulation to all residences, businesses and schools adjacent to the construction area. Accessible routes for physically disabled pedestrians shall be maintained at all times during construction. Temporary fencing and walking surfaces shall be approved by the City.

3.4.14 Authority and its contractors shall take necessary measures to continuously control nuisance dust, in accordance with Regulation 403, "Air Quality Management District Standards", the "Standard Specifications for Public Works Construction", Sections 7-8.1 and 7-8.2, and with the Storm Water Pollution Prevention Plan ("SWPPP") for the Project.

3.4.15 Authority and its contractors shall ensure that discharges to the City's storm drain system comply with the requirements of the Regional Water Quality Control Board.

3.4.16 Authority shall ensure that its contractors comply with applicable local, state, and federal regulations for the disposal of wastewater caused by construction activities or contaminated soil or water encountered during boring, excavation, and grading operations. All costs and other liabilities for these activities shall be borne by Authority and its contractors. Potentially contaminated soil or groundwater encountered shall be tested as necessary and mitigation and disposal measures shall be established and undertaken in accordance with applicable Law.

3.4.17 Authority and its contractors shall notify Underground Service Alert not less than two (2) Days or more than ten (10) Days before each excavation.

3.4.18 Authority, upon completion of the work subject to this Agreement, shall arrange for incremental subsurface and surface final inspections by notifying the City of what work is requested to be final inspected and which plan sheets and change orders are applicable. Thereafter, final inspection shall be made as soon as possible. If the work is found to be in compliance with the approved plans and specifications, the City will furnish its acceptance in writing. However, if corrective work is found to be necessary to conform to the

plans and specifications, a final correction list will be issued by the City and Authority shall direct or perform such corrective work at its own expense. Further inspection will be required for any corrective work noted on the Punch List.

3.4.19 Neither Authority nor any of its contractors shall engage in any construction activity during the following times and days anywhere in the City:

(a) Before eight a.m. or after six p.m. on Monday through Friday;

(b) Before nine a.m. or after five p.m. on Saturday;

(c) All day on Sunday;

All day on New Year's Day, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, as these days are officially observed by the City.

Authority shall require its contractors to obtain written approval and permission from the City, in accordance with Section 3.13 below, before engaging in any construction activity during any time or day when construction activity is not authorized or permitted.

3.4.20 No utility disruption shall be permitted during the week of Thanksgiving or between December 15th and January 2nd unless approved in writing by the Director of Public Works and all appropriate utility providers. In approving any such utility disruption, the Director of Public Works may impose conditions that, in the Director's sole discretion, mitigate the impacts of any such work so that it causes the least disruption and inconvenience to the public, including any affected neighborhood or business, and so that it is not detrimental to the public health, welfare and safety.

3.5 Work in Streets

3.5.1 Authority shall give City advance written notice where the Project Construction requires work in City's Right-of-Way and shall allow City adequate time for review of relevant plans for such work in accordance with Section 2.12. Authority shall secure written approval of all plans from the City for all such work.

3.5.2 Authority and its consultants and contractors performing work in City's Right-of-Way shall take all appropriate actions to ensure safe operations of the work and the continuance of service of City Facilities. City reserves the right to stop work, if public health and safety is at risk, as determined by the City staff.

3.5.3 City, after consultation with Authority, may require, if Authority's contractors fail to perform work called for by the Design plans prepared hereunder and required by any authorizations issued by City in connection with such work consistent with such Design plans, upon notice (non-compliance citation) from City, that contractor shall promptly commence to cure its failure. If the contractor fails to cure or is not diligently prosecuting such cure to completion, City shall notify Authority. Upon receipt of notice from City, Authority shall cause the contractor to cure its failure within the requested time.

3.5.4 All work performed in a City Right-of-Way that will control pedestrian or vehicular access will be in accordance with this SPP and the Construction Mitigation and Implementation Requirements for the Expo Light Rail Project.

3.6 Temporary and Permanent Street Closures

Authority and City may agree that a street, highway, bridge, sidewalk or other City Right-of-Way be temporarily closed for the necessity and convenience of the Project. Any such closure must comply with the Construction Mitigation and Implementation Requirements for the Expo Light Rail Project. Nothing in this Article shall preclude City from requesting that certain streets not be closed to accommodate "Special Events" utilizing those streets, such as parades, and Authority shall cooperate with City to accommodate such requests. Authority, its consultants, and contractors will cooperate with City to minimize closures of City Right-of-Way. The City will notify the Authority and its contractors as to all known major events thirty (30) Days prior thereto.

3.7 State and Federal Requirements

3.7.1 Nothing in this Agreement shall be deemed to abridge any applicable federal or State law or State agency authority regarding permits, orders, licenses and authorizations that may be required or available in connection with the design and construction of the Project.

3.7.2 The California Public Utilities Commission ("CPUC") has jurisdiction over establishment of street and pedestrian crossings with Metro's rail transit tracks, their subsequent maintenance or alteration, and their operation. Formal application for establishment or alteration of said crossings is required by the CPUC. Unless otherwise agreed between Metro and City, Authority may prepare, subject to concurrence and agreement by City, appropriate CPUC plans and applications therefor. To the extent required by law, the State Fire Marshall, and City Fire Department shall review plans for and shall perform inspections as needed throughout the term of this Agreement.

3.8 Grant of Rights

If, prior to Authority's scheduled date of commencement of work in a section or portion of the Project, any Rearrangement is necessary to eliminate a conflict, City may grant to Authority or its designee sufficient rights, if necessary, to allow Authority to proceed with investigation of existing conditions and the construction of that section or portion of the Project in accordance with Authority's schedule; provided, however, that such grant does not unreasonably and adversely interfere with provisions of City's services to the public, or affect public health and safety; and provided further, that City is authorized under applicable law to grant such right.

3.9 Replacement Rights-of-Way

3.9.1 The City agrees to consider requests by Authority to convey to Metro at no cost to Authority, any City owned street crossings, slivers, surface easements and temporary construction easements that may be required for Construction and/or operation

of Project subject to this Agreement (including both temporary and permanent easements and other interests), without requiring Authority or Metro to go through the appraisal, negotiations, offer, closing and transfer process, as permitted by applicable Law. Authority will prepare or cause to be prepared, the title documents and documents of conveyance. If City agrees to such a conveyance, said documents will be transmitted by Authority's Representative to City's Representative who shall process them through the required departments for execution and return them to Authority within 90 Days after receipt, but in any event in accordance with the applicable Project schedule.

3.9.2 City agrees and acknowledges that this Agreement satisfies any Authority or Metro obligations to City relating to the certification of rights of way, and that City shall cooperate with Authority and Metro, and assist Authority and Metro, with any right of way certification processes involving other entities or agencies.

3.9.3 Authority agrees to consider or cause Metro to consider requests by City to convey to City at no cost to City, any street crossings, slivers, remnant property, surface easements and temporary construction easements that may not be required for Construction and/or operation of Project subject to this Agreement (including both temporary and permanent easements and other interests), without requiring City to go through the appraisal, negotiations, offer, closing and transfer process. City will prepare or cause to be prepared, the title documents and documents of conveyance. If Authority, on behalf of Metro, agrees to such a conveyance, said documents will be transmitted by City's Representative to Authority's Representative who shall process them and return them to City within 90 Days after receipt, but in any events in accordance with the applicable Project schedule.

3.9.4 Authority agrees and acknowledges that this Agreement satisfies any City obligations to Metro relating to the certification of rights of way, and that Authority shall cooperate with City, and assist City, with any right of way certification processes involving other entities or agencies.

3.10 City Licenses within the Project Right of Way Owned by Metro

If a Rearrangement is made so that the Replacement Facility will be located within a Project Right-of-Way owned by Metro, Authority shall provide (or cause Metro to provide) City with an equivalent property right, if necessary, to accommodate the Replacement Facility, reasonably satisfactory to City. The parties agree that in accepting such an equivalent right and in releasing its existing rights, City shall acquire reasonable rights to install, operate, maintain and remove City Facilities, including the Replacement Facility, to the same extent as the City previously exercised.

3.11 Temporary Authority Facilities

Temporary Facilities may be necessary to facilitate Construction of the Project (including Rearrangements). Authority or its designee may use, without cost, lands owned or controlled by City for any Construction related purpose, including, but not limited to, the erection and use of Temporary Facilities thereon; provided that, City shall first approve in writing the availability, location and duration of the Temporary Facilities.

Upon completion of the related Construction and Authority's determination that the Temporary Facilities no longer are needed, Authority shall remove all Temporary Facilities and restore the area to its original condition unless Authority and City mutually agree otherwise. If this agreed upon duration of a Temporary Facility has expired, the City reserves the right to request turning over the City owned land at any time prior to completion of the Project. Authority shall return the land to the City within forty (40) Days from the requested date and restore the area as much as practicable to its original condition, unless otherwise agreed to in writing by the City.

3.12 Temporary City Facilities

In the event that Temporary Facilities are necessary to effect a Rearrangement being constructed by City, City or its designee may use, without cost, lands owned or controlled by Authority for the purpose of using or erecting Temporary Facilities thereon; provided that, Authority shall first approve in writing the availability, location and duration of the Temporary Facilities. Upon completion of the rearrangement in its permanent location, City shall remove all Temporary Facilities and restore the area as nearly as practicable to its original condition unless City and Authority mutually agree otherwise in writing.

3.13 Night, weekend, early hours and holiday construction activity

The Authority and its contractors shall not perform any construction activity during any time or day not permitted by this Agreement or applicable Law, unless the Authority or its contractors obtain the prior written approval of the Director of Public Works. The Director of Public Works may approve such construction activity if the Director determines that the construction activity during the requested times or days is in the best interests of the City, that this construction activity will substantially expedite the construction of the Project or that it will further the public welfare. In approving the construction activity, the Director of Public Works may impose conditions that, in the Director's sole discretion, mitigate the impacts of the construction activity so that it causes the least disruption and inconvenience to the public, including any affected neighborhood and business, and is not detrimental to the public health, welfare and safety.

ARTICLE 4
EFFECTING REARRANGEMENTS

4.1 Authority Construction of Rearrangements

Unless otherwise agreed between the Parties, Authority shall perform all design and Construction of Rearrangements. Authority or its contractors shall commence and thereafter diligently prosecute such Rearrangement work to completion in conformance with Design plans and specifications prepared pursuant to Article 2 and 3 of this Agreement and such work shall coincide closely and be coordinated with Authority's Construction schedule for the Project, including the established schedule for Construction of Rearrangements. If changes in the Final Design plans or specifications are necessary, Authority shall first submit such changes to City for review and approval before Construction. City shall respond to any such submittal in accordance with the provisions

of Section 2.12 of this Agreement. Authority shall notify the City prior to performing any rearrangement work in accordance with the SPP Notification Matrix. The City will inspect and test backfills for utilities within City Rights-of-Way as well as all City Facilities owned or operated, or to be owned or operated by the City. When traffic signal construction is involved, or traffic control devices are impacted, contractor must also arrange for inspection by calling the City in accordance with the SPP Notification Matrix.

4.2 City Construction of Rearrangements

If the Parties mutually agree that City shall perform Construction of a specific Rearrangement, Authority shall issue a Work Order to City for such Construction and the following provisions shall govern:

4.2.1 City shall commence and thereafter diligently prosecute the Construction of such Rearrangement to completion as authorized by Work Order, in conformance with the Design plans and specifications prepared and approved pursuant to Article 2 of this Agreement and in conformance with the time schedule set forth in the Work Order. Such Construction shall coincide closely and be coordinated with Authority's Construction schedule for the Project, including the schedule for Construction of Rearrangements of other utility, cable, pipeline, and other facilities in the same segment or portion of the Project. City shall coordinate its work with other facility owners and contractors performing work that may connect, complement or interfere with City's work hereunder or with City Facilities.

4.2.2 City shall notify Authority at least five (5) Days prior to commencing each Rearrangement so that Authority may make arrangements for inspection and record keeping.

4.2.3 All work by City's forces or its contractors pursuant to this Article 4 of this Agreement shall comply with the environmental controls established in the Design/Build Contract, including without limitation construction noise and vibration control, pollution controls, archeological coordination, and paleontological coordination.

4.3 Maintenance

In concurrence with Authority, City shall schedule, when possible, any routine maintenance of City Facilities so as not to interfere with Project Construction or operations.

4.4 "As-Built" Drawings

Authority and City shall each maintain a set of "As-Built" plans of Rearrangements performed by Authority and City, respectively, during the progress of construction. "Red line mark ups" for temporary lighting systems, traffic signal systems, and other city facilities shall be submitted to the City within ten (10) working days of construction. All design changes shall be documented on RFI/RFC forms. The contractor shall update the contract plans with the City approved changes. The City representative shall meet with Authority and its contractor once a month, prior to Authority's approval of the contractors monthly progress payment, to check and verify that as-built plans are being maintained

by the contractor and that contract plans are being updated with all approved design changes. Authority's approval of contractor's progress payment may be subject to updating and maintaining a complete set of as-built drawings.

Once the as-built work done by the contractor is approved by the City, Authority shall arrange for the transfer of as-built information on the contract plans electronic files in electronic format. Hard copies of the updated plan sheets for every month shall be submitted to City. Upon completion of the Rearrangement work, the Party that performed the work shall furnish the other Party with reproducible "as-built" drawings showing all Replacement Facilities installed by the performing Party, within sixty (60) working days after completion of work for each set of plans. All "as-built" plans (whether provided by Authority, by Consultant, or by Contractor) shall be in a format, which conforms to the electronic formats of the following:

In lieu of providing documents under this Agreement in AutoCAD, Authority may, in its sole discretion, provide the documents in Micro Station, subject to the requirement that Authority provide City with a one-year Micro Station license at Authority's sole cost and expense. If City desires to extend the MicroStation license beyond such one-year period, City may do so at its sole cost and expense.

Street Improvements Plans – AutoCAD, plot style files and hard copies to be scanned with Pdf w/ 300 DIP min. after all signatures.

Stormdrain plans – AutoCAD, plot style files, and hard copies to be scanned with Pdf w/ 300 DPI min. after all signatures.

Structure plans – AutoCAD, plot style files and hard copies to be scanned with Pdf w/ 300 DPI min. after all signatures.

Sewer plans - AutoCAD, plot style files and hard copies to be scanned Pdf w/ 300 DPI min. after all signatures.

Street Light Plans – AutoCAD, plot style files and hard copies to be scanned with Pdf w/ 300 DPI minimum after all signatures.

Street Landscape Plans - Micro Station and hard copy after all signatures.

Traffic signal, signing and striping plans – AutoCAD, 2009 files compliant to City Standards, Pdf, latest version, as approved by the City, and plot style files latest version, as approved by City and plot style files compliant to City Standards, Pdf style files (e.g., pen tables, plot settings), and original signed Mylar sheets.

All other plans - AutoCAD and hard copies to be scanned Pdf w/ 300 DPI minimum after all signatures.

4.5 City Activities

If City plans to undertake or authorize any activities, during the period of Construction of this Project, within or near any portion of a Project Right-of-Way (including without limitation construction of new facilities, repairs or modifications to existing facilities, parades, and similar activities) City will coordinate such activity with Authority to minimize impact, delay or interference with such Construction, and Authority shall reasonably cooperate with City with regard to same.

ARTICLE 5
CITY CONSTRUCTION SERVICES, INSPECTION AND QUALITY ASSURANCE

5.1 Construction Support and Services

In accordance with the provisions of Section 2.11 entitled "Assistance by City," the City shall assist the Authority through the designated positions and/or individuals in Exhibit B and reimbursement of their services shall be in accordance with Article 8. Where authorized by a Work Order, Construction support and services provided by these City departments and bureaus shall include the following:

i) City construction inspection services and acceptance;
ii) Materials testing and acceptance, including independent assurance sampling and testing (IAST) for materials used for construction of City facilities.
iii) Change order review and approval for City Facilities.
iv) Review and approval of required material and shop drawing submittals by the appropriate City office for City Facilities.
v) Timely responses to requests for information.
vi) Traffic and detour management.
vii) Traffic Service Officer deployment.
viii) Miscellaneous permitting and haul route approvals.
ix) Other support and services, as requested or necessitated.
x) Review of all Fire/Life Safety plans and field inspection of systems installed as well as System Acceptance sign-off.

5.2 Inspection during Construction

City and Authority agree that all work on City facilities will conform to standard policies and practices of the designated on-site City inspector as it relates to inspection, sampling, and testing. The Authority will require adherence to such policies and practices by its contractors.

5.2.1 Notwithstanding City inspection or approval of any Construction, all work performed by either Party for Construction of the Project shall be subject to Authority inspection and final approval. Authority also may inspect the Construction of Rearrangements to ensure that the work has been performed in accordance with the approved Designs.

5.2.2 All Rearrangement Construction of City Facilities and construction of new City Facilities by Authority shall be inspected by the designated on-site City inspector. Such inspection services shall be authorized by Authority under the Work Plan. City shall provide inspectors dedicated to Authority's Projects who will be available throughout Project Construction, at Authority's expense and as needed to support Authority's schedule for the Project, to observe and inspect the Rearrangement of City Facilities so that upon completion of Construction, City will have a basis for acceptance of the work. City's inspectors shall cooperate and coordinate with the Authority Representative and Authority's contractors. City's inspection shall also include planned field reviews for compliance with construction staging plans, including the Traffic Management Plans. Inspection will involve the verification of vehicular and pedestrian access and circulation immediately adjacent to the Construction area, and maintenance of appropriate access to directly affected businesses, as provided for in said plans. All City inspectors may be required to submit copies of daily written inspection reports to Authority, within 48 hours after the subject inspection. The City may remove and replace any inspector for cause within 5 Days after Authority's written request therefor.

5.2.3 At the inspections provided in accordance with Sections 5.2.1 and 5.2.2 above, each Party shall inform the other in writing of any deficiencies or discrepancies in any work discovered in the course of such inspection. City will provide immediate verbal notice of nonconformance to Authority's construction manager as well as to Authority staff (as designated by the Authority Representative), followed by a written nonconformance notice no later than 48 hours after discovery. Likewise, Authority will provide immediate verbal notice of nonconformance to the City Representative (or to such other City staff as may be designated by the City Representative), followed by a written nonconformance notice no later than 48 hours after discovery. Each nonconformance notice shall include an explanation of the resolution desired by the notifying Party. All non-conformances with respect to Project Facilities constructed by City or its contractors pursuant to Article 6 of this Agreement must be corrected or resolved so that the Construction conforms to the Final Design and other requirements of the procurement documents approved by Authority (or in the case of work performed by City's own forces, to the Final Design approved by Authority and the requirements imposed pursuant to Section 6.1 of this Agreement). All notices of nonconformance provided by City with respect to City Facilities shall be addressed in accordance with Section 2.2.4 of this Agreement.

5.3 Final Inspection

As soon as the work of any specific Rearrangement has been completed (and tested when called for by the approved Design), 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 City will be started within seven (7) Days following request for it by Authority's contractor in accordance with the SPP Notification Matrix. The final inspection of any Rearrangement shall be attended by the Authority Representative and the City Representative at Authority's expense. Each Party will provide to the other Party's Representative immediate written notice of any deficiencies or discrepancies in any Construction work discovered in the course of the final inspection. Each nonconformance notice shall include an explanation of the resolution desired by the

notifying Party. All non-conformances with respect to Project Facilities Constructed by City or its contractors pursuant to Article 6 of this Agreement must be corrected or resolved so that the Construction conforms to the Final Design, all approved changes, and other requirements of the procurement documents approved by Authority (or in the case of work performed by City's own forces, to the final design approved by Authority and the requirements imposed pursuant to Section 6.1). All notices of nonconformance provided by City with respect to City Facilities shall be addressed in accordance with Section 2.2.4 of this Agreement. Both Parties' inspectors shall be available to observe and inspect any corrective work performed, as needed to support Authority's schedule for the Project. Promptly upon completion of the Rearranged City Facility (including if applicable, completion of any corrective work performed), the City Engineer or other designated City representative shall furnish its written notice that construction of the City Facility is accepted. City's acceptance is contingent upon Authority submitting to City and securing City's approval on all required post construction documents, such as the as-built drawings.

5.4 Materials, Equipment and Prototype Testing

City shall have the right to test materials used in construction of City facilities by Authority's contractors. Authority or its contractor shall notify City by noon of the Day before plant inspection is required. Plant inspection sites outside a 50-mile radius of the City require prior authorization of the City inspector and Authority shall notify City three (3) Days in advance when a plant inspection is required. Authority shall have the right to have its witnesses attend all such tests. City shall provide copies of the testing reports within seven (7) Days after each test, as well as providing to Authority access to the samples used and to the testing laboratory for inspection of its equipment.

5.4.1 Equipment and Prototype Testing. Equipment and/or "or equal equipment" not approved by the applicable City representative for lighting (as set forth in Exhibit B) will require evaluation and testing prior to installation. The Contractor shall submit shop drawings stamped and signed by a licensed structural or civil engineer registered in the State of California and a prototype to the Bureau of Street Lighting 45 Days prior to starting construction. Written approval from the applicable City representative on the shop drawing and for the prototype are required prior to fabrication of any new equipment intended for use on a City Facility.

5.5 Use of Improvements during Construction

The Authority is responsible to direct its contractor to allow the City the use of improvements during construction, if deemed necessary by the City and agreed to by the Authority. City reserves the right to take over and utilize all or any completed part of any City Facility ("Utilization"), unless such Utilization would interfere with Project Construction; provided, however, that subject to the warranty obligations of Authority or its DB Contractor, City shall be responsible for the performance of all maintenance obligations and costs. Authority will be given reasonable advance notice thereof. If City agrees in writing prior to the Utilization, such Utilization will be deemed acceptance of that Facility or part thereof, and any subsequent damage thereto shall be City's responsibility

unless caused by Authority or its contractors or unless otherwise covered by the warranty provisions in the D/B Contract and this Agreement. Thereafter, Authority will not be required to re-clean such portions of the Facility except for cleanup made necessary by Project Construction activities.

5.6 Acceptance by City

City shall accept all Rearrangements and City Projects in accordance with the Design Review process set forth herein. Final Design approval of a City Facility is contingent on the completion of As-Built documents as provided in Article 4 of this Agreement, as applicable.

5.7 Reproducible Contract Documents

The Authority and City agree to provide the other with suitable reproducible copies of final contract documents which they have prepared or caused to be prepared to govern the performance of a given Construction project by a contractor of either Party so that each Party may compile a complete set of contract documents. Each Party shall prepare or cause to be prepared the contract documents for which it is responsible in accordance with its drafting standards, as mutually agreed to by the Parties.

5.8 Underground Service Alert

Prior to any commencement of underground work by either Party, Underground Service Alert shall be notified in accordance with state law by the Party contemplating the work or its contractor.

ARTICLE 6
PROJECT WORK BY CITY

In addition to specific Rearrangements which City may construct pursuant to Section 4.2 of this Agreement, Authority and City may agree that City shall design and construct or cause to be designed and constructed certain Project facilities (or components thereof). In such event, design and construction for such work shall proceed as follows:

6.1 Standards

All design and construction by City (or its consultants or contractors) pursuant to this Article shall conform to the standards and specifications set forth in this Agreement and the EIR.

6.2 Work Order for Design

When mutually agreed between Authority and City, Authority shall issue a Work Order to City, within 60 Days of City's request for such Work Order, for the design of such Project facilities (or components thereof).

6.3 Design

If City agrees to perform the design work, upon completion of the Initial Final Design, City shall provide Authority with a preliminary estimate of the Cost of the construction work, and City's estimate of Authority's share of such Cost, together with preliminary plans, specifications, and draft bid package. Upon Authority's approval thereof, City shall finalize all of the foregoing. Authority reserves the right to reject the preliminary plans, specifications and draft bid package. In such case, Authority shall reimburse the City for all authorized costs incurred in preparing the plans, specifications, and bid package.

6.4 Procurement

Upon Authority's approval of the final plans, specifications, bid package and construction cost estimate, City shall advertise the contract for bids in accordance with applicable Law and consistent with the applicable procurement requirements for Authority. City shall inform Authority of Authority's share of the Cost, based upon the winning bidder's unit prices, and shall furnish Authority with copies in accordance with applicable Law of the extract of bids, together with sets of the final plans and specifications. Authority shall have the right to require a minimum number of bids, to specify certain of the Parties to whom bid requests are submitted, to review the bids, and to approve the contract award recommendation prior to presentation to the City Council for award of the contract. City shall not award a contract until the lowest responsive responsible bidder has been approved by Authority. Authority reserves the right to request rejection of all bids, but in such cases Authority shall still reimburse the City for the design and review costs to the Project.

6.5 Construction by Contractor

After review and approval of the bids by Authority, Authority shall issue a Work Order to City for City staff work. City shall notify Authority of the amount of advance monies needed to award the contract and monies for contract progress payments thereafter. Authority shall reimburse the City pursuant to the terms of this Agreement or as mutually agreed within the Work Order. City shall thereafter obtain Authority's approval for modifications to the contract which will affect the Project. City shall inform Authority promptly when City has reason to believe that the cost estimate is likely to be exceeded, and shall obtain Authority approval prior to granting of any such increase.

6.6 Construction by City Forces

Should City and Authority agree that work may be performed by City forces, the cost estimate to perform the work and Authority's share thereof shall be furnished to Authority for approval. Authority reserves the right to reject such cost estimate, but agrees to reimburse the City for all costs of the work performed up to that point. Upon Authority's approval of the cost estimate and Design, Authority shall issue a Work Order to City for the City's cost of design and construction. The Work Order shall also reimburse the City for all costs that City incurred prior to issuance of the Work Order by Authority, if the work

is authorized by Authority. City shall obtain Authority's prior approval for any changes from the approved Design or increase to the approved cost estimate.

6.7 Inspection

All Construction performed by a contractor for the City pursuant to this Article shall be subject to inspection in accordance with the provisions of Article 5 of this Agreement. City inspection services on the work performed pursuant to this Subsection shall be authorized by Work Order and shall be reimbursable in accordance with the procedures set forth in Article 5 of this Agreement.

6.8 Reports and Invoices

City shall furnish to Authority a monthly progress and accounting report for the work performed pursuant to this Article in a mutually agreeable format. Upon request by Authority, City shall additionally furnish an invoice and request for payment based on the Cost of the Construction work performed, in accordance with Article 8 of this Agreement.

6.9 Requirements

6.9.1 All Design, Construction and other activities to be performed by City pursuant to this Article shall be carried out in conformance with the time schedule(s) set forth in the applicable Work Order. Such schedules shall accommodate variables, including changes in the contractor's schedule, availability of information, or passage of a Proposition 218 vote for Lighting System Work. Such time schedule(s) shall coincide closely and be coordinated with Authority's schedule for the Project. City shall coordinate its work with other facility owners and contractors performing work that may connect, complement or interfere with City's work pursuant to this Article or with the Project Facilities (or components thereof) being constructed by City.

6.9.2 All work by City's forces or its contractors pursuant to this Article shall comply with the environmental controls established in the construction contract or Design/Build Contract between Authority and its contractor for the Project, including without limitation construction noise and vibration control, pollution controls, and archeological and paleontological coordination.

ARTICLE 7
DISPOSITION OF SALVAGED MATERIALS

7.1 Salvage

The Parties may salvage certain materials during the course of Rearrangement as mutually agreed during the design stage. If materials are to be reused, the Authority's contractor shall exercise reasonable care in removal and storage of such materials. Materials shall be inspected and stored until such time as the progress of work allows the reinstallation of such materials. Materials which are not to be reused in a Rearrangement but which City desires to reclaim may be recovered by City forces within a mutually agreed upon time frame or be returned by Authority to a location approved by the City.

Subject to acceptance by Authority, materials removed by Authority not reused or desired by City, shall become the property of Authority, unless otherwise mutually agreed to.

7.2 Salvage Credits

Authority shall receive a credit for salvage and transporting of such materials described herein that are used or reclaimed by City, as provided in Article 9 of this Agreement.

ARTICLE 8
REIMBURSEMENTS TO CITY

8.1 Reimbursement to City

Authority shall reimburse City for services performed in accordance with a Work Plan in the manner provided by this Agreement. Except with respect to Betterments, the issuance of a Work Order shall obligate Authority to reimburse City in the manner provided by this Agreement. The term "Cost" shall mean the direct and indirect costs actually incurred by City for activities or work performed or materials acquired in accordance with the terms of this Agreement, less credits to Authority as provided in Article 9. Direct costs shall include allowable direct labor costs spent specifically for work performed under this Agreement by approved and designated positions and/or individuals. Indirect costs shall be computed based upon the Indirect cost Rates approved annually for the City by its cognizant agency (currently the United States Department of Labor pursuant to Circular A-87 of the Office of Management and Budget and Publication OASC-10), for allocation to Federally funded or State funded contracts. Unless the Internal Revenue Service and the California Public Utilities Commission issue regulations or rulings to the contrary, reimbursable costs will not include taxes purportedly arising or resulting from Authority's payments to City under this Agreement. Notwithstanding and in lieu of the foregoing, a fixed price for certain Design and/or Construction by City may be established upon mutual agreement of the Parties, as set forth in the applicable Work Order. Any such fixed price shall include all applicable credits due pursuant to Article 9 with respect to such work.

8.2 Reimbursement for Abandoned Facility

In those cases in which Authority and City agree that the construction of the Project will eliminate the service need for a specific Conflicting Facility, Authority shall not be required to replace or compensate City for the Conflicting Facility, in which case Authority shall compensate City only for necessary Costs incurred in abandoning the Conflicting Facility; provided, however that Authority shall not be responsible for any Abandonment or other Costs relating to the presence or existence of any environmental hazard on, in, under or about a Conflicting Facility or other City Facility, including but not limited to any "hazardous substance" as that term is defined under the Comprehensive Environmental Response, Compensation and Liability Act unless Authority or its contractor caused the environmental hazard through its actions. Authority will assist with the determination of the party responsible for the "hazardous substance" and assist in making such party accountable and responsible for the measures necessary to remediate the site.

ARTICLE 9
REIMBURSEMENTS AND CREDITS TO AUTHORITY

9.1 Survey; Review of Records

The amount of credits or payments, as applicable, due Authority for salvage shall be mutually agreed on by Authority and City based upon applicable books, records, documents and other data of City. To assist in the determination of credits or payments due Authority under this Agreement, Authority and City may conduct an inspection survey of each Conflicting Facility during the Design stage. Pursuant to a Work Plan, City shall provide Authority with drawings, plans or other records necessary to conduct such survey. The survey shall describe the physical attributes, date of construction or installation and present condition of each Conflicting Facility; shall report the expected service life of each Conflicting Facility as derived from City's records; and shall state whether City intends to salvage materials contained in each City Facility.

9.2 Salvage

As applicable, salvage credit shall be allowed or City shall pay for salvage, for items of materials and equipment recovered from existing City Facilities that the City intends to re-use, in the performance of Construction work specified herein. The amount of salvage credit or payment, if any, shall equal the depreciated value of like or similar materials as determined by mutual agreement, plus storage and transportation costs of such materials salvaged for City's use as directed by the City.

9.3 Cost Determination and Payment of Betterments

Upon written notification by City that it desires to pursue a Betterment, Authority shall obtain a cost proposal from the D/B Contractor for such Betterment in accordance with the terms of the D/B Contract. Authority shall provide City with a detailed written cost proposal and schedule for the Betterment, including a draft Work Order for the performance of such Betterment, based upon the obtained prices from the D/B Contractor. Concurrently with obtaining the cost proposal from the D/B Contractor, Authority shall perform an independent assessment of the cost of the Betterment and consult with City on its independent assessment upon delivery of the cost proposal for the Betterment. Authority shall work in good faith to assist City in negotiating a reasonable cost for the performance of the Betterment; provided, however, that City shall have 20 Days from receipt of the cost proposal and independent assessment consultation to approve a final cost estimate for the Betterment in writing, as may be extended by mutual agreement. Each Party agrees and understands that the final determination and approval of any Betterment may be subject to approval by the City's City Council, by Authority's Board of Directors and, in the event of a material change to the Project, by Metro's Board of Directors.

In the event City is unable or otherwise fails to agree to the cost of a Betterment in writing within the 20 Day period (as may be extended), then City shall be deemed to have disapproved the performance of the Betterment and Authority shall not be required to cause the Betterment to be performed. Authority shall not be deemed to have acted in

bad faith for failing to extend the 20 Day City approval period of a Betterment or any additional extension thereof.

If City is unable to agree on a lump sum price for the performance of a Betterment, then during the 20 Day City approval period, City may request that the Betterment be performed on a time and materials basis. Authority, in its sole discretion, may approve or disapprove City's request to pay for a Betterment on a time and materials basis.

Authority shall not instruct the D/B Contractor (or otherwise issue a Work Order) to perform any Betterment until such time as City has specifically approved in writing the cost and payment obligations for such Betterment. City shall reimburse the Authority for all Costs associated with the independent assessment and negotiations with respect to determining the price for a Betterment. City shall be responsible for paying Authority for all Costs pertaining to any Betterment performed under this Agreement pursuant to the provisions of the Work Order issued for the performance of the Betterment.

9.4 Credits to Authority Where City Performs Work

Authority shall receive a credit against work performed by City for salvage and Betterments, and Expired Service Life of City Facilities, if contracted by Authority to perform the work under this Agreement. The amount of such credits shall be determined as provided in this Article. All credits pertaining to a particular Rearrangement or other item of work hereunder shall be reflected on the applicable invoice(s) submitted by City.

9.5 Payments to Authority Where Authority Performs Work

Authority shall receive payment from City for salvage, costs of Betterments, and Expired Service Life of City Facilities where Authority performs work. The amount of payment due shall be determined as provided in this Article. Authority shall invoice City for such payment in accordance with Section 12.7, and City shall make payments to Authority in accordance with Section 12.8 of this Agreement.

9.6 Intentionally Reserved

9.7 Reimbursement to Authority

The term "Cost" shall mean the direct and indirect costs actually incurred by the Authority and attributable to activity or work performed or materials acquired in performing a task pursuant to this Agreement. Direct costs shall include allowable direct labor, equipment and materials costs spent specifically for work performed under this Agreement. Indirect costs shall include administrative and overhead costs at the rate therefore established by Authority from time to time. Authority shall maintain its standard forms and records showing actual time expended and costs incurred under each Work Order and/or Work Plan or reasonable formula from which to determine Authority administrative and overhead cost. The term "Cost" shall also include additional costs due from the Authority to its contractors and/or consultants as a direct result of changes in design for which City is responsible under Article 2 of this Agreement, including delays that may result, provided that Authority, its consultants and contractors, have pursued the

requested design change in a diligent and timely manner, have met their obligations under this Agreement, Authority has demonstrated to the City that the change or delay was unavoidable and was not otherwise caused from the actions of Authority or its D/B Contractor and has resulted in an adverse impact to the cost of the Project and Authority has presented the necessary data to document the costs incurred.

ARTICLE 10
INDEMNITY, WARRANTIES AND INSURANCE

10.1 Indemnity

10.1.1 Authority agrees to indemnify, defend and hold harmless City, its officers, City Council members, officials, board and commission members, agents and employees 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 Authority's performance hereunder.

10.1.2 City agrees to indemnify, defend and hold harmless Authority, its members, agents, officers and employees from and against any and all liability, expenses (including engineering and defense costs and legal fees), claims, losses, suits and actions of whatever kind, for damages of any nature whatsoever, including but not limited to, bodily injury, death, personal injury or property damage arising from or connected with City's actual design or construction performance.

10.1.3 In contemplation of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities solely by reason of such entities being Parties to an agreement as defined by Section 895 of said Code, the Parties hereto, as between themselves pursuant to the authorization contained in Sections 895.4 and 895.6 of said Code, will each assume the full liability imposed upon it, or any of its officers, agents or employees, by law for injury caused by negligent or wrongful act or omission occurring in the performance of this Agreement to the same extent that such party would be responsible under Sections 10.1.1 and 10.1.2 hereof. The provisions of Section 2778 of the California Civil Code are part hereof as if fully set forth herein.

10.2 Warranty

Authority will require its contractors to provide warranties for excavations and rearrangements as follows:

10.2.1 In lieu of providing a bond normally associated with the permit authority of City relating to excavations in, or adjacent to, City Rights-of-Way, Authority warrants that any work affecting the structural stability of City Rights-of-Way shall be free from defect. Said warranty shall be for the period specified in the DB Agreement. Said warranty shall commence on substantial completion of the Project in accordance with the terms of the D/B Contract. Pursuant to this warranty and for the warranty period only, Authority, at its sole expense, shall remedy any damage to City Rights-of-Way to the extent caused by a failure of such structural support installed by Authority during the warranty period.

10.2.2 In connection with Rearrangements performed by Authority or its contractors and any work performed by City or its contractors hereunder, warranties supplied by contractors shall be made for the benefit of both City and Authority. City and Authority each warrant to the other for a period of one (1) year from and after substantial completion of the Project in accordance with the terms of the D/B contract, unless otherwise specified, that any work performed by or for them shall be free from defect; this limited warranty is the sole warranty given by City and/or Authority, and, pursuant to this warranty, and for the warranty period only, City or Authority, as the case may be, shall remedy any such discovered defect at its sole expense.

10.3 Contractor Insurance

The D/B Contract or any other contract entered into by City in connection with a Rearrangement or with work on Project Facilities performed by City pursuant to Article 6, shall contain a provision which requires the general contractor, as part of the liability insurance requirements, to provide an endorsement to each policy of general liability insurance which names City and Authority as additional insured. Unless otherwise mutually agreed by the Parties or as otherwise set forth in the terms of other contracts entered into by Authority with the D/B Contractor for design and construction of the Project, Construction general contractors shall provide evidence of insurance in the following amounts: $5,000,000 in General Liability, $1,000,000 in Workers' Compensation/Employer's Liability, and $1,000,000 Combined Single Limit (CSL) in Auto Liability. Unless otherwise mutually agreed by the Parties, Design contractors shall provide evidence of insurance in the following amounts: $5,000,000 in General Liability, $1,000,000 in Workers' Compensation/Employer's Liability, $1,000,000 CSL in Auto Liability, and $1,000,000 in Professional Liability. No insurance shall be reduced in scope or cancelled without thirty (30) Days prior written notice to Authority and City.

10.4 Contractor Bonds

In connection with Rearrangements and City projects and any work performed by the City or its contractors, the City and the Authority may require their respective contractors to secure payment and performance bonds, or other equivalent sureties, naming both the City and the Authority as an additional obligee or co-beneficiary, as appropriate. Such bonds shall be issued by a California licensed surety.

ARTICLE 11
FUNDING AND FINANCIAL ARRANGEMENTS WITH METRO

Metro is the funding agency to the Authority and will provide annual funding to the Authority for specific work and/or services in connection with the Project. The Authority's budget is based on design and construction costs according to the Contractor's schedule. The Authority is responsible to secure funding for the costs of City support activities from Metro. Once Metro approves the Authority's annual budget, all expenditures including the funding for the City's annual work program will have to be within the approved budget.

The specific provisions and arrangements comprising the funding and financial arrangements with Metro shall be memorialized in a separate financial contribution

agreement between the parties, to be executed separately and concurrently with this Master Cooperative Agreement.

ARTICLE 12
WORK PLANS, WORK ORDERS, BILLINGS, DEADLINES AND DELAYS

12.1 Work Performed by City

All work to be performed by City under this Agreement, as approved by Authority in the applicable Work Order or Work Plan, shall coincide closely with Authority's design and construction schedule for the Project. Consistent with its own staffing and workload requirements, City shall allocate sufficient staff and other resources necessary to provide the level of service required to meet the scope of work and schedules identified in Work Orders and Work Plans submitted by Authority.

12.2 Work Plans

Authority and City will cooperate to develop a mutually agreeable annual work plan for the Project for each Fiscal Year in accordance with the following provisions:

12.2.1 Not later than February 28 of each calendar year during the term of this Agreement, Authority shall provide City with information with respect to anticipated Project requirements and proposed Work Plan. Authority's provided information shall include a list of each item of work that Authority anticipates to request from City with respect to the Project during the upcoming Fiscal Year and the estimated start and finish dates for the work item that Authority anticipates to request from the City. Within thirty (30) Days after receiving the required information from Authority, City shall submit a preliminary annual Work Plan to Authority for the Project that requires work by City during the upcoming Metro Fiscal Year, which will include an estimated amount of money that City will require reimbursement for work performed, a detailed description of individual staffing for such work, including anticipated tasks and hours for each individual, and purchase of requested items.

12.2.2 For each Fiscal Year, following Authority's receipt of the preliminary annual work plans pursuant to Subsection 12.2.1, City and Authority shall negotiate in good faith to finalize such annual Work Plans, not later than March 30 prior to the commencement of such Fiscal Year.

12.2.3 For each Fiscal Year, within 60 Days after City's submittal to Authority of the final annual work plans and agreed upon by the Parties, Authority shall issue a Work Plan to City identifying each item of work Authority anticipates City will perform through the end of the Fiscal Year, the amount of money City and Authority agreed that City will be reimbursed therefor, and the anticipated schedule City will be required to meet in performance of such work. City acknowledges that such Work Plan may be subject to amendments (including additions, deletions and modifications), and Work Orders may be issued throughout the Fiscal Year as deemed appropriate by Authority for the Project, as approved by the City by signing off the amendment to the Work Plan or the issuance of a Work Order.

The listed positions and/or individuals (including contractors and consultants) in a Work Plan may perform the stated work so authorized. City shall only be entitled to reimbursement for work performed by those positions and/or individuals listed in the Work Plan and only for such work that is clearly approved in such Work Plan. City shall not be entitled to compensation by Authority for any work performed outside the scope of the subject Work Plan or by positions and/or individuals not listed in the subject Work Plan. City shall provide certified statements to Authority in its monthly billing statements with the detailed hours / time sheets and annotated work descriptions with respect to work performed by each individual under a Work Plan. Contractors engaged by City to perform work covered by this Agreement shall comply with all applicable labor and other laws and agreements.

Authority shall have the right to petition the City Manager to replace any individuals holding a position specified in a Work Plan by giving City thirty (30) Days written notice to do so. Within twenty (20) Days of receiving such notice from Authority, City shall provide written notice to Authority of its response, and if it elects to replace such individual, then the City will notify the Authority of the replacement individual for the applicable work under said Work Plan. City shall cooperate with Authority and take such actions as may be reasonably appropriate to respond to such request. Each Work Plan shall specify the work to be performed, the positions and/or individuals approved to perform such work, the amount of money City will be reimbursed therefore, and a schedule, including the estimated starting and finishing dates for work so authorized. Work Plans shall include schedules which are consistent with and supportive of the Authority Design and Construction schedule and will require City acceptance through sign off of the Work Plan. City 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, specifically authorized, or otherwise performed by the designated positions and/or individuals by a Work Plan, unless otherwise mutually agreed to in writing. City shall be reimbursed for its reasonable costs associated for administering this Agreement, including work related to preparing and implementing the annual work programs in accordance with the terms of the Work Plans.

12.3 Work Orders

Authority may issue Work Orders to City, following City's submittal of an estimate of the applicable work and Costs, to authorize the performance of all design and construction work under such Work Order, including the purchase of all materials and equipment required for City to perform such design and/or construction of a Rearrangement or Project Facility under the terms and conditions of this Agreement.

The listed positions (including contractors and consultants) in the Work Order may perform the stated work so authorized. City shall only be entitled to reimbursement for work performed by those individuals holding the positions listed in the Work Order and only for such work that is clearly approved in such Work Order. City shall not be entitled to compensation by Authority for any work performed outside the scope of the subject Work Order or by positions not listed in the subject Work Order. City shall provide certified statements to Authority in its monthly billing statements with the detailed hours /

time sheets and annotated work descriptions with respect to work performed by each individual under a Work Order. Contractors engaged by City to perform work covered by this Agreement shall comply with all applicable labor and other laws and agreements.

Authority shall have the right to petition the City Manager to replace any individuals holding a position specified in a Work Order by giving City thirty (30) Days written notice to do so. Within twenty (20) Days of receiving such notice from Authority, City shall provide written notice to Authority of its response, and if it elects to replace such individual, then the City will notify the Authority of the replacement individual for the applicable work under said Work Order. City shall cooperate with Authority and take such actions as may be reasonably appropriate to respond to such request. Each Work Order shall specify the work to be performed, the position approved to perform such work, and any materials or equipment to be acquired, the amount of money City will be reimbursed therefore, and a schedule, including the estimated starting and finishing dates for work so authorized. Work Orders shall include schedules which are consistent with and supportive of the Authority Design and Construction schedule and will require City acceptance through sign off of the Work Order. City 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, specifically authorized, or otherwise performed by the designated positions by a Work Order, unless otherwise mutually agreed to in writing.

12.4 Work Plan and Work Order Changes

12.4.1 Any proposed changes to a Work Plan or Work Order issued under this Agreement shall be submitted in writing to Authority for its prior approval. If Authority fails to respond in writing to a requested change within 20 Days, the change shall be deemed accepted. However, any proposed change occasioned by emergency field construction difficulties may be submitted to Authority orally or by telephone, and shall subsequently be confirmed in writing by City. In such event, Authority agrees to act on such request as promptly as possible, and Authority's lead field engineer may convey Authority's decision orally, to be confirmed subsequently in writing.

12.4.2 Authority, at its sole discretion, may terminate a Work Plan or Work Order for City performed work at any time, but will reimburse City in accordance with this Agreement for Costs, if any, already reasonably incurred by City. If Authority terminates any such Work Plan or Work Order, which allowed work under the Project SPP, the City may terminate the SPP.

12.4.3 City agrees to notify Authority if at any time City has reason to believe that the Costs which it expects to incur in the next 60 Days under any Work Plan or Work Order, when added to all Costs previously incurred, will exceed 75% of the total Costs specified in the Work Plan or Work Order, or if at any time City has reason to believe that the total Costs under said Work Plan or Work Order will be in excess of ten percent (10%) than previously estimated Costs or that the estimated finishing date will be later than the date stated in the Work Plan or Work Order. City will request written revisions of Work Plans or Work Orders in the event of anticipated cost overruns or completion delays; provided, however, that any such revision is subject to Authority's approval, and Authority may withhold its approval of

any modification of scheduling requirements in its sole discretion. Without Authority's prior approval, City will not be reimbursed for Costs expended in excess of maximum amounts stated in a Work Plan or Work Order. In addition to monthly billing statements, City agrees to submit a report to Authority each month, setting forth the hours City has billed for the prior month under a specified Work Plan or Work Order, with a cost break down describing the nature of the work performed and the individuals (identified by position) performing such work. Each such report shall identify any cost overruns by the City for the budgeted month with respect to outstanding Work Order and Work Plans.

12.5 Deadlines and Delays

12.5.1 City shall perform its work under this Agreement in accordance with the deadlines and schedules established in this Agreement and as set forth in issued Work Plans and Work Orders. Subject to Section 15.14 of this Agreement, if Authority has been requested and has responded to City in a timely manner, and City fails to meet a deadline or schedule established in this Agreement or in the applicable Work Plan or Work Order for Design, Construction or any other activity, Authority shall demonstrate to the City that this failure constitutes an adverse impact to the cost of the Project and is a direct result of the delays to Authority's D/B Contract's critical path work. If such demonstration is sufficiently established, City shall be responsible for all actual documented costs and expenses incurred by Authority arising out of such delay. In the event Authority notifies City of a compensable delay under this section, Authority shall also demonstrate that it has responded to the applicable Design Review comments received by City and any written request for information by City. If Authority and City agree, Authority may deduct the amount due from City to Authority pursuant to this Agreement from payment or payments next due to City under this Agreement.

12.5.2 Authority and its contractors shall timely commence, diligently prosecute and complete Authority's Construction and other activities for each Rearrangement on or before the applicable deadlines established in this Agreement or in the respective Work Plans or Work Orders. If Authority or its contractor fails to meet such deadline, than any affected time deadlines for City's Construction or other activities under this Agreement or any Work Plan or Work Order shall be revised accordingly.

12.5.3 In addition to and without limiting any rights or remedies available under this Section or otherwise, if City fails to complete its work on any Rearrangement on or before the deadline established in the applicable Work Plan or Work Order, or if Authority reasonably determines that City will be unable to timely complete such work, Authority (without incurring any additional liability other than the Costs incurred as set forth in Subsection 12.4.2) may terminate City's work on such Rearrangement by giving notice to City in accordance with Section 12.4.2, and either perform the remaining work itself or cause such work to be performed by Authority's D/B Contractor, subject to the City's approval and inspection processes where City facilities are involved. If Authority takes over work as provided in this Subsection, City shall cooperate and assist Authority as otherwise provided in this Agreement.

12.6 Procedures for City Billings to Authority

The Parties agree that the following procedures shall be observed for City's submission of progress billings to Authority for work performed by City under a specific Work Plan or Work Order:

12.6.1 City's billings shall begin within 90 Days following the commencement of a specific Rearrangement or other work under a specific Work Order or Work Plan, and shall follow the standard City billing procedures. Invoices for each billing shall be submitted on the form to be attached hereto as Exhibit D ("Invoice Form"), along with all required data and documentation required by the Invoice Form. Authority shall provide City with a copy of the Invoice Form prior to the commencement of City's billings. City shall not be entitled to receive payment for any invoice not timely or otherwise sufficiently submitted under this Section, or for any invoice otherwise billing for work or services performed more than 90 Days prior to such billing. Incomplete or inaccurate Invoicing Forms submitted by City shall not be considered by Authority and shall be returned to City for re-submittal within 20 Days of receipt. Any such non-conforming submittals shall not entitle City to an extension of the submittal deadlines set forth in this Section.

Each Invoicing Form shall be labeled as either "progress" or "final," shall be addressed to the Authority 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 by a specific Work Plan or Work Order has been performed, shall be submitted to Authority within 90 Days following the completion of the Rearrangement or other work, shall recapitulate prior progress billings, shall show inclusive dates upon which work billed therein was performed, 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.

12.6.2 The City's Finance Department shall be the City's "Billing Agency" and will process all billings and collect and disburse funds.

12.7 Procedures for Authority Billings to City

In those cases in which Authority performs Rearrangement or other work not related to or inclusive of Betterments, which is reimbursable to Authority in whole or in part under the terms of this Agreement, Authority shall submit to City progress statements indicating actual work performed during the billing period, the direct and indirect Costs thereof, and City's share of such Costs within 120 Days following the commencement of the subject Rearrangement or work. In those cases in which Authority performs Rearrangement work with respect to Betterments, Authority shall submit progress statements to the City indicating actual work performed for such Betterment within 60 Days of receiving the invoice for such work from the Contractor. Authority billing shall begin as soon as practicable following the commencement of a specific Rearrangement or other work, and shall follow Authority's standard billing procedures. Each billing shall be noted as either progress or final, shall be addressed to the City 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 City as soon as practicable following the completion of said Rearrangement or other work, shall recapitulate prior progress billings, shall show inclusive dates upon which work billed therein was performed, 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.

12.8 Payment of Billings

Payment of each bill timely and properly submitted pursuant to Subsections 12.6 or 12.7 shall be due within forty (40) 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) Authority may withhold credit amounts due Authority if City has not posted such credits within forty (40) Days after submittal of requests for same by Authority, (d) City may stop any works pursuant to Authority's work plan if Authority fails to issue payments to any parts of City's billings within forty (40) Days and without written notification to City regarding the reasons of delay for such as disputed billings.

12.9 Audit and Inspection

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 records relating to its performance under this Agreement , including all costs incurred with respect to the Project, from the date hereof through and until expiration of three (3) years after the accepted completion of all Rearrangements for the Project, or such later date as is required under other provisions of this Agreement. Examination of a document or record on one occasion shall not preclude further reexamination of such document or record on subsequent occasions. By providing any of its records to the other Party for examination, the Party providing such records represents and warrants that such records are accurate and complete. The Parties shall mutually agree upon any financial adjustment found necessary by any audit. If the Parties are unable to agree on such adjustment, then the matter shall be resolved pursuant to Article 13. City and Authority shall include in any contracts entered into by City or Authority, respectively, for the performance of work on Rearrangements hereunder the above requirements and require their respective contractors to include the above requirements 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.

ARTICLE 13

Resolution Of Disputes

13.1 Attempt 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. Any dispute that cannot be settled through direct negotiation may be resolved through non-binding arbitration.

13.2 Dispute Notice

In the event of any dispute, claim, or controversy arising out of or relating to this Agreement, or any Construction involving or otherwise relating to the Construction Project ("Dispute"), the complaining Party shall provide a notice of the dispute ("Dispute Notice") to the other Party. The dispute Notice shall describe the facts surrounding the dispute in sufficient detail to apprise the other Party of the nature of the complaint. The complaining party may, but will not be required to, aggregate the Dispute with other disputes into one Dispute Notice; provided, however, except with respect to design and construction defects which manifest themselves following the conclusion of the Project, the Dispute Notice must be delivered to the other Party no later than 90 Days after the conclusion of the construction and acceptance of the work within the City.

13.3 Negotiation; Reference Proceeding

The Parties shall attempt to settle all disputes in good faith. To this effect, the Parties shall conduct at least one face-to-face meeting in which they shall consult and negotiate with each other, and, recognizing their mutual interests, attempt to reach a solution satisfactory to both Parties. Such meeting shall take place within seven (7) Days following delivery of a Dispute Notice, or within such extended period as agreed by both Parties in writing. Compliance with the Dispute Notice and negotiation provisions hereof shall be a condition precedent to the filing of any action involving a dispute.

13.4 Arbitration – No Work Stoppage

13.4.1 Failing a resolution through the good faith efforts described above, in the absence of good faith efforts to resolve, 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 thereafter, or within such extended period as they shall agree to 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 extended period, shall designate one person to act as arbitrator. The two designated arbitrators shall promptly select a third arbitrator ("neutral arbitrator") to form a three-person panel. If either party fails to designate its arbitrator within ten 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 appointment, a neutral arbitrator shall be designated

pursuant to Section 1281.6 of the California Code if Civil Procedure who shall hear the matter as the sole arbitrator.

13.4.2 Section 1283.05 of the California Code of Civil is specifically made applicable, but only with respect to those issues not involving work stoppage. 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, shall be supported by law and substantial evidence and the issuance of written findings of fact and conclusions of law. The making of and award failing to comply with the requirements of the immediately preceding sentence shall be deemed to be in excess of the arbitrator(s)' power and the court shall vacate the award if after review it determines that the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.

13.5 Arbitration – Work Stoppage

13.5.1 In no event shall work be stopped in the event of a claim or dispute, except for reasons of public health or safety or where it is absolutely necessary to first resolve the dispute in order to be able to continue work. In the event that work is stopped, the provisions of this Section 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.

13.5.2 No neutral arbitrator shall be selected who is unable to hear the dispute and render a decision within five(5) Days after being selected. Notwithstanding Sections 1282.2(b) and Section 1282(e) 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. The arbitration may proceed in the absence of a party who, after due notice, fails to appear. In addition to all other issues, the neutral arbitrator shall also determine whether it was absolutely necessary to stop and await dispute resolution in order to continue the work, and if it was not so necessary the other party shall be entitled to damages arising out of such work stoppage, which damages shall also be determined by the neutral arbitrator.

13.6 Impartiality of Arbitrator

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

13.7 Scope of Authority

The Arbitrator shall have only the authority to issue a non-binding award to resolve the dispute of the Parties.

13.8 Compensation of the Arbitrator

Each party shall pay the expenses and fees of the arbitrator it selects. The expenses and fees of the neutral arbitrator shall be paid with the provisions of Section 1284.2 of the California Code of Civil Procedure.

13.9 Other Provisions

Except as is otherwise provided herein, any arbitration under this Article shall be governed by the California Arbitration Act.

13.10 Implementation

Each Party promptly will take any action required of it in order to implement an agreed upon Dispute resolution.

13.11 Cooperation

The Parties shall diligently cooperate with each other to ensure an efficient and expeditious resolution to each Dispute, if possible.

ARTICLE 14
FEDERAL AND OTHER REQUIREMENTS

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

14.1 Audit and Inspection

City agrees to comply with all financial record keeping, reporting and such other requirements as may be imposed as a condition to or requirement of funding obtained by Authority from third parties (provided that Authority gives reasonable notice of such requirements to City). City shall permit the authorized representatives of Authority, the U.S. Department of Transportation, the Comptroller General of the United States, State of California, and any other government agency providing funding or oversight on the Project, to inspect, audit and copy, during normal business hours and upon reasonable notice, all cost and other relevant records relating to performance by City, its contractors and subcontractors under any Work Plan or Work Order issued to City for the Project or Rearrangements of City Facilities related thereto, from the date of this Agreement through and until expiration of three years after the accepted completion of all Rearrangements for the Project, or such later date as is required by the rules and regulations of any such government agency (provided that Authority gives reasonable notice of such later date to City). Examination of a document or record on one occasion shall not preclude further examination of such document or record on subsequent occasions. By providing any of its records for examination pursuant to this Section, City represents and warrants that such records are accurate and complete. City shall include

in any contracts it enters into for the performance of work hereunder the above requirements and require its 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.

14.2 Interest of Members of Congress

No members of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising there from.

14.3 Prohibited Interests

No member, officer or employee of Authority, or of a local public body, during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. To Authority's and City's knowledge, no board member, officer or employee of Authority has any interest, whether contractual, non-contractual, financial or otherwise in this transaction, or in the business of City; and if any such interest comes to the knowledge of either Party at any time, a full and complete disclosure of all such information will be made in writing to the other party, even if such interest would not be considered a conflict under Article 4 of Division 4 (commencing with Section 1090) or Division 4.5 (commencing with Section 3690) of the Government Code of the State of California.

14.4 Equal Employment Opportunity

In connection with the performance of this Agreement, the Parties shall not discriminate against any employee or applicant for employment because of age, race, religion, color, sex, sexual orientation, national origin or disability. The Parties shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their age, race, religion, color, sex, sexual orientation, national origin, or disability. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

14.5 Small Business Enterprise

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

14.6 Prior Approval

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

14.7 Non-Discrimination

Without limiting any other provisions of this Article 14, City agrees to comply, and to cause all of its contractors who work on projects subject to this MCA to comply, with all applicable non-discrimination laws, rules and regulations, whether imposed by Federal, State or local authority.

ARTICLE 15
MISCELLANEOUS PROVISIONS

15.1 Approvals; Further Documents and Actions

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

(a) Must be in writing to be effective (except if deemed granted pursuant hereto);

(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 Plan or Work Order commencing upon actual receipt by the Party from which an Approval is requested or required of a request for Approval from the requesting Party.

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

15.2 Notices

15.2.1 Except as otherwise expressly 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 the City:
City Manager
City of Santa Monica
City Hall
1685 Main Street, Suite 310
Santa Monica, CA 90401
310 458-8336:

With copies to:
City Attorney
City of Santa Monica
City Hall
1685 Main Street, Suite 310
Santa Monica, CA 90401
310 458-8336

City of Santa Monica
Director of Public Works
City Hall
1685 Main Street, Suite 310
Santa Monica, CA 90401
310 458-8221

To the Authority:
Chief Executive Officer
EXPOSITION METRO LINE CONSTRUCTION AUTHORITY
One Gateway Plaza
Los Angeles, CA 91012
Attention: Mr. Richard D. Thorpe, CEO

Any notice or demand required shall be given (a) personally, (b) by certified, registered mail, postage prepaid, or 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, or five (5) Days after deposit in the United States mail. City or Authority may from time to time designate any other address or addressee or additional addressees for this purpose by written notice to the other Party.

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

15.3 Assignment; Binding Effect

No Party shall assign its interest in this Agreement without prior consent of each of the other Parties. Any assignment purported to be made without the written consent of all the Parties shall be void and unenforceable. Any permitted assignment shall bind and inure to the benefit of the respective successors and permitted assigns of the Parties.

15.4 Waiver

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

15.5 Amendment; Entire Agreement; Modification

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 all three parties.

15.6 Elements of Essence

In accomplishing all work and performing all other acts required under this Agreement, time, and Public health, safety, and welfare are of the essence.

15.7 Legal Rights

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

15.8 Bonds/Fees.

Except as specifically agreed to in this Agreement and only as specified in the SPP prepared for this Project and subject to applicable Law, City waives and relinquishes all of its requirements , if any, to seek or obtain bonds, fees or other security or payments from Authority or its contractors in the performance of its obligations under this Agreement.

15.9 Severability

In the event that any portion hereof is determined to be illegal or unenforceable, such determination shall not affect the validity or enforceability of the remaining provisions hereof, all of which shall remain in full force and effect.

15.10 Gender and Tense

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

15.11 Headings

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

15.12 Incorporation of Exhibits

Every exhibit to which reference is made in this Agreement is hereby incorporated in this Agreement by this reference.

15.13 Counterpart Originals

This Agreement may be executed in any number of counterparts, each of which bearing the required wet signatures shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

15.14 Force Majeure

Neither Party shall be held liable for any loss or damage due to delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence; such causes may include acts of God, acts of civil or military authority, government regulations (except those promulgated by the Party seeking the benefit of this section), embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, 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, City agrees, if requested by Authority, and if deemed possible and feasible by the City, to accelerate its efforts hereunder if reasonably feasible in order to regain lost time, so long as Authority agrees to reimburse City for the incremental actual costs of such efforts.

15.15 Construction

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

15.16 Benefit

No provisions of this Agreement shall create any third-party beneficiary hereunder, or authorize anyone not a party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the indemnity provisions) identify third parties and state that they are entitled to benefits hereunder.

15.17 Survival

The representations, warranties, indemnities and waivers set forth in this Agreement shall survive the termination, for any reason whatsoever, of this Agreement.

15.18 Maintenance of Records

City agrees to keep and maintain (and to require all contractors and subcontractors connected with 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 Plan or Work Order under this Agreement until three (3) years after the accepted completion of all Rearrangements for the Project, or until such later date as is required under other provisions of 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.

15.19 Entire Agreement

This Agreement constitutes the entire agreement of the parties with respect to, and supersedes all prior written and oral agreements, understandings and negotiations with respect to the terms of this Agreement. Any and all prior agreements, understandings or representations relating to the transactions referred to in this Agreement are hereby terminated and canceled in their entirety and are of no further force and effect.

15.20 Funding Sources

The Parties mutually agree to assist each other in identifying and securing founds for the Project. The City and the Authority shall work jointly to optimize funding alternatives for the Project.

15.21 Community Commitments

The Parties agree that commitments made to the community shall be incorporated into the Project subject to the availability of funding. The cost of any Betterment that is incorporated into the Project as a result of commitments made to the community by the Authority shall be the sole financial responsibility of the Authority.

15.22 Authority of Parties

Each of the parties hereby represents and warrants that it has full legal authority and is duly empowered to enter into this Agreement, and has taken all actions necessary to authorize the execution and delivery of this Agreement.

December 13, 2011

IN WITNESS WHEREOF, the Parties have caused this AGREEMENT to be executed as of the date first set forth above.

CITY OF SANTA MONICA

By: _____
Rod Gould, City Manager

EXPOSITION METRO LINE CONSTRUCTION AUTHORITY

By: _____
Richard D. Thorpe,
Chief Executive Officer

By: _____
General Counsel

APPROVED AS TO FORM:

Marsha Jones Moutrie, City Attorney

By: _____

ATTEST

Maria Stewart, City Clerk

By: Maria Stewart (RW)

Date: 12-19-11

MASTER COOPERATIVE AGREEMENT

FOR THE

LOS ANGELES TO PASADENA METRO BLUE LINE

BY AND BETWEEN

THE LOS ANGELES TO PASADENA METRO BLUE LINE CONSTRUCTION AUTHORITY

AND

THE CITY OF PASADENA

CONTRACT NO. 17,730

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