

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

THIS MASTER COOPERATIVE AGREEMENT FOR THE LOS ANGELES TO PASADENA METRO BLUE LINE, dated _____ (the "Agreement") is made by and between the Los Angeles to Pasadena Metro Blue Line Construction Authority ("Authority"), a public entity of the State of California and the City of Pasadena ("City"), a charter city of the State of California.

RECITALS

WHEREAS, the Authority is a public entity created by the California State Legislature pursuant to Section 132400 of the Public Utilities Code ("PUC") for the exclusive purpose of completing the design and construction of the Pasadena Metro Blue Line Project Phase I ("Project"), of which is defined as the approximately 13.7 mile line from Union Station in the City of Los Angeles to Sierra Madre Villa Boulevard in the City of Pasadena ("Phase I"), and Phase II of which is defined as any extension further to the east to the City of Claremont, a distance of approximately 24 miles ("Phase II"). The Project, for purposes of this Agreement, shall only refer to Phase I.

WHEREAS, the City is a charter city 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;

WHEREAS, the City has responsibility for any work that is in, affects, or impacts the public right of way, the general public, and businesses within the City of Pasadena;

WHEREAS, the Authority, in designing and constructing the Project, has adopted the design/build method of project delivery as contrasted with the design/bid/build method that was used previously by the Metropolitan Transportation Authority (MTA);

WHEREAS, there will be numerous changes required in the approach to the Project by the Authority as a result of its adoption of the design/build method of project

delivery;

WHEREAS, the Authority and the City desire to cooperate to the end that the Project design and construction activities are undertaken and completed in ways that meet the objectives and goals of the Parties.

NOW THEREFORE, the Parties agree as follows:

ARTICLE 1

SCOPE AND DEFINITION

1.0 Scope of Agreement. This Agreement specifies the procedures that the Authority and the City will follow in implementing their respective roles and responsibilities in the design and construction of the Project. This Agreement also specifies the manner in which the City will be reimbursed for its costs related to the activities and work it will perform as part of this Agreement. Both the Authority and the City agree that each will cooperate and coordinate with the other in all activities covered by this Agreement and any other supplemental agreement.

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

1.1.1 Abandonment - Defined as the permanent termination of service of an existing City or private Facility.

1.1.2 Authority - A public entity created by the California State Legislature pursuant to Section 132400 of the Public Utilities Code ("PUC") for the exclusive purpose of completing the design and construction of the Pasadena Metro Blue Line Project.

1.1.3 Authority Facility - Defined as real or personal property now or in the future under the ownership or control of the Authority, 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, transit line and station fixed facilities, transit operations subsystems, trackwork installation, train control and communication, power distribution and overhead catenary system and any equipment, apparatus and/or structure appurtenant thereto or associated therewith.

1.1.4 Authority Representative - Defined as the Chief Executive Officer of the Authority, or his/her authorized representative, who has been authorized

by the Chief Executive Officer, who has the authority to conduct meetings, execute Work Authorizations, and reviews and approves the actions, as required by this Agreement.

1.1.5 Basis for Design/Build Contracting - Defined as the process of advancement of the specifications, other related documents, and the design of the required facilities, systems, and equipment to a level of definition where a initial Design Freeze can be adopted and to the point where a competitive procurement for a design/build contractor for the Project can be packaged by the Authority for release to all prospective proposers.

1.1.6 Betterment - Defined as a replacement, or an enhancement to an existing City Facility, or any component thereof, in place at the time of the initial design freeze, requested by the City and agreed to by the Authority, that increases the service capacity, capability, appearance, efficiency, or function over that provided by the initial Design Freeze in facilities and systems to be adopted by the Authority, except that the following shall not be considered as Betterments:

- (a) A replacement or enhancement which the Parties agree will be part of the initial Design Freeze or part of a subsequent Design stage, and;
- (b) Construction in accordance with City Standards as set forth in this document, and;
- (c) Measures to mitigate environmental impacts identified in the Current Scope of the Project, and DEIR/FEIRs, and;
- (d) A Replacement or enhancement that is the consequence of changes made by the Authority or its contractors after the initial Design Freeze.

1.1.7 City Facility – Defined as improvements or personal property under the ownership or the exclusive operation of the City located on City – owned land, easements or public right-of-way, including, public streets, highways, bridges, retaining walls, alleys, storm drains, sanitary sewers, and all other City owned utilities, including those passing through Authority property, parking lots, parks, public landscaping and trees, traffic control devices/systems, street light systems, and public police and fire alarm systems.

1.1.8 City Right of Way – Defined as public streets, public easements, and public access-ways (such as alleys, drive approaches, etc.).

1.1.9 City Representative - Defined as its City Manager, or his/her designated representative designated in writing who has the authority to

conduct reviews, execute Work Authorizations, and make approvals as required by this Agreement.

1.1.10 City Standards - Defined as those customary and usual City standards, including those specified herein this document. The City agrees that it shall not adopt, except by mutual agreement, any new City Standards as applied to this project, after the review and approval of the Final Design submittal,

1.1.11 Conflicting Facility - Defined as an existing City Facility that the Authority and the City reasonably determine is so situated as to require Rearrangement in order to design, construct, and operate the Project without adversely affecting the operation and maintenance of that City Facility in accordance with City Standards.

1.1.12 Construction - Defined as work for the removal, demolition, replacement, alteration, realignment, building, fabrication and landscaping of all new facilities to be built and systems and equipment to be procured and installed that are necessary to construct, operate and maintain the Project, including work on City Facilities or impacts on City rights-of-way resulting from the work.

1.1.13 Cost - Defined as all allowable direct and indirect charges as further defined in Article 4.2.

1.1.14 Current Scope of the Project - Defined as the Project as shown in Exhibits A and B attached to this Agreement, the original Environmental Impact Report (EIR) dated 1990, and the Supplemental Environmental Impact Reports (SEIRs) and Addenda completed in 1991, 1992, 1993, 1994, 1995 and 1996, and the modified Draft Initial Study dated June 1998, including MTA plans and specifications and written City design review comments as described in the Project Development Status Report dated August 19, 1999, the Project Development Status Review Report (PDSRR) dated December 22, 1999 and the Addendum to the PDSRR dated April 19, 2000 and mutually agreed City comments thereto.

1.1.15 Days - Defined as working days. A working day is any calendar day excluding Saturdays, Sundays, and those legal holidays as specified by the City. Construction in the City shall only occur on work days unless agreed with the City otherwise.

1.1.16 DEIR/FEIR - Defined as the Draft Environmental Impact Report(s), Final Environmental Impact Report(s), and Subsequent Environmental Impact

Report(s) and Supplemental Environmental Impact Report(s) and Addenda that analyze and evaluate the environmental impacts of the Project and recommend measures to mitigate the potential adverse impacts.

1.1.17 Design – Defined as that planning, engineering and architectural work resulting maps, plans, specifications, special provisions, drawings and estimates which are needed to construct the Project, Rearrangements and City Facilities for the Project.

1.1.18 Design/Build Contract - Defined as the documents that are used by the Authority to contract with a contractor to design, build, fabricate, furnish, install, and prepare for operations the facilities and systems (less the rail cars, running rail, and rail fasteners already in the ownership and possession of the MTA and/or the Authority being furnished the Project as) necessary to operate the Project as specified in the documents, and to demonstrate the operability of the Project through a period of pre-revenue operations.

1.1.19 Design/Build Contractor - Defined as the construction contractor and/or team of consultants and contractors that has been awarded the Design/Build Contract by the Authority.

1.1.20 Design/Build Procurement Documents - Defined as the entire package of documents, to be sent to potential proposers that may be interested in submitting a proposal for award of a Design/Build Contract including but not limited to the RFP instructions to proposers, the performance specifications, City plans, specifications, and City specific contract requirements, the Basis for Design/Build Contracting and other documents.

1.1.21 Design Freeze - Defined as the process of adoption of an approved design that constitutes the determination of the established or "frozen" design of the project or portion of the project, from which deviations or changes in the project design will be measured. The initial Design Freeze will occur at the adoption of the Project documents to be incorporated into the Basis for Design/Build Contracting. The final Design Freeze will occur at the Pre-Final level of design.

1.1.22 Design Review - Defined as the process of critical evaluation of plans, specifications by the Authority, the City, and others as specified by the Authority that are developed by consultants and/or the Design/Build Contractor which are necessary for the construction of the Project. Design Reviews shall be conducted at three critical time frames which are defined as the Basis for Design/Build Contracting, the Pre-final Design Submittals and

Final Design Submittals.

1.1.23 Effective Date - Shall mean that date this Master Cooperative Agreement is formally approved by the City Council of the City and the Board of Directors of the Authority, whichever comes later.

1.1.24 Final Design - Defined as the technical engineering work required of the Design/Build Contractor, or others as appropriate, to complete the engineering necessary to sign and seal drawings, develop project specifications and to become the engineer of record for the Project.

1.1.25 Governmental Authority - 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, the MTA, and the Authority.

1.1.26 Industry Review - Defined as the period of forty-five (45) Days for review by the engineering firms and construction and system supplier companies of the Preliminary Basis for Design/Build Contracting documents providing them the opportunity to comment on the final draft documents before they are released as part of the Design/Build Design Documents.

1.1.27 Joint Development - Defined as a partnership for many different forms of public/private sector cooperation in the development or redevelopment of structures and facilities to be built in, around, over, and adjacent to Rail Transit Stations.

1.1.28 Joint Review Group (JRG) - Defined as the technical organization that is chaired by the Authority's Director of Engineering and Construction and is comprised of one member from each of the disciplines and entities within the participating cities, the San Gabriel Valley Council of Governments (SGVCOG), private utilities, and the MTA that are signatories to master cooperative agreements with the Authority and are a part of the Design Reviews. The JRG review process is described in Exhibit J.

1.1.29 Laws - Defined as any law, rule, regulation, ordinance, statute, code or other requirement of any Governmental Authority.

1.1.30 MTA - The public entity created by the California Legislature pursuant to PUC Section 130050.2 et. seq. for many purposes including, but not limited to, the design, construction, and operation of rail and bus transit systems and facilities in Los Angeles County.

1.1.31 Non-Significant Change - Defined as any change in the design and construction of the Project that is not a Significant Change as expressed in the enabling legislation.

1.1.32 Partial Design Submittal - Defined as a submittal by the Authority to the City of plans, design calculations and specifications for portions or all of a particular Rearrangement or other component of the Project (as the Authority may determine appropriate in its sole and exclusive discretion) for the purpose of securing the City's conditional approval of such Design. Such submittals may be part of the Prefinal and Detailed Design submittals.

1.1.33 Pre-final Design Submittal - Defined as the Design/Builder's submittal of the completed design drawings, specifications, and pertinent documentation for review, comment, and approval by the Authority and the City. Submittals may be in the form of segments, or portions of the Project

1.1.34 Preliminary Basis for Design/Build Contracting - Defined as the basis for detailed design including all design standards and criteria, standard and directive drawings, and all reference drawings packaged by the Authority in the design/build documents that are used for Industry Review by prospective design/build contractors.

1.1.35 Preliminary Basis for Design/Build Design - Defined as the products of the Authority's review of the Project design documents, plans, schedules, budgets, performance specifications and other technical information that will be consolidated by the Authority into a set of working papers and documents that will form the basis for Authority to develop the first draft of its Preliminary Basis for Design/Build Contracting documents.

1.1.36 Rail Station - Defined as the location(s) where the light rail trains will stop at the locations cited in Exhibits A & B along the 13.7 mile line of the Project to allow for passenger boarding and exiting, including the facilities specifically required for passengers, buses, autos, bicycles, and pedestrians to access the site, all consistent with American Disabilities Act (ADA).

1.1.37 Rearrangement - Defined as the alteration, removal, replacement, reconstruction, support or relocation of a Conflicting Facility or portion thereof, whether permanent or temporary, which the Authority determines must be performed in order to design, build, and/or operate the Project. Rearrangements require the review and approval of the City.

1.1.38 Replacement Facility - Defined as a City Facility which is constructed

or provided under the terms of this Agreement as a consequence of a Rearrangement

1.1.39 Right-of-Way (ROW)- Defined as the real property required to operate, and maintain the transit facilities and systems that comprise the Project.

1.1.40 Significant Change - Defined as any proposed change by the Authority, which as provided by PUC Section 132435 must be reviewed and concurred in by the MTA, in the mode or technology from the Current Scope of the Project or any other substantive change that affects the connectivity and operation of the Project as described in the Current Scope of the Project as part of the overall transit system operated by the MTA, or any combination of those things. Design and construction of a light rail project that is consistent with the Current Scope of the Project shall not be deemed to be a Significant Change and shall not require concurrence from the MTA.

1.1.41 Temporary Facility - Defined as (i) a City Facility constructed for the purpose of ensuring continued service while a Conflicting Facility is taken out of service, fully or partially, to undergo Rearrangement; or (ii) a facility constructed or used to facilitate or otherwise assist with the Project, including but not limited to Construction staging and/or material storage areas in accordance with Article 2.3

1.1.42 Traffic Management Plan (TMP) - Defined as a plan that addresses traffic control requirements in Construction areas through a Worksite Traffic Control Plan ("WTCP"), and along detour routes through a Traffic Circulation Plan ("TCP"). A WTCP is a site-specific Design for temporary traffic control and diversion of vehicular and pedestrian traffic through or adjacent to a work area, businesses and residences, incorporating base conditions, temporary conditions, construction staging and impact areas, and all temporary/permanent traffic controls and advisory signage. On a larger scale, a TCP addresses traffic detours, construction staging, lane and street closures and worksite traffic control operation including the display of alternate routes which bypass a work area, or multiple intersections affected by concurrent Construction, by means of striping, signing, signals, delineators, barricades, warning lights or other traffic control devices. The operation of a Traffic Management Plan is affected by Construction phasing plans and Construction schedules and is subject to provisions of Article 2.3

1.1.43 Work Authorization - Defined as the document(s) which the Authority will issue upon agreement by the parties as to scope of work, direct and indirect costs to authorize the City to perform any work, and to be reimbursed

therefore, on the preparation and/or review of design plans, operations plans, or other agreed to work plans or Project support, and to provide materials, labor inspection, and/or Rearrangements under the terms and conditions of this Agreement.

- 1.2 **Duration of the Agreement.** Unless extended in writing by the mutual agreement of the Parties; the Agreement shall automatically terminate on the earlier of (1) July 1, 2005, or (2) the Authority's 90 calendar day prior written notice to the City that all Project Construction within the City or its jurisdiction has been completed or (3) either party's 15 calendar day's prior written notice that the party has determined in its sole discretion to terminate this Agreement. In the event this Agreement is terminated prior to the completion of all Project Construction within the City, 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 there from by written agreement or by law.
- 1.3 **City Representative.** The City Representative will have the responsibility (i) to manage and coordinate City interaction with the Authority, (ii) to produce the necessary work documents and reports on the production, Cost and Work Authorization status, and (iii) to make or secure approvals, as required by this Agreement. The City Representative also will be responsible for assisting the Authority and coordinating among City departments, or other constituent entities whenever City action is called for under the Agreement. The City may change its designated City Representative by providing written notification to the Authority.
- 1.4 **Authority Representative.** The Authority Representative will have the responsibility to manage and coordinate Authority interaction with City and to produce the necessary Construction work documents, issue Work Authorizations, and make approvals as required by this Agreement. The Authority may change its designated Authority Representative by providing written notification to City.

ARTICLE 2

DESIGN REVIEW AND CONSTRUCTION OF THE PROJECT

2.0 **Engineering and Construction Coordination.** The Authority and the City Representatives shall establish, working relationships, administrative policies and procedures with respect to review of the design documents, the Design Review

process and the construction activities to be implemented by the Design/Build Contractor in order to permit the timely completion of the Project. The major activities and the Project working schedule are shown in Exhibits B and F of this Agreement.

The times noted in Articles 2.2 and 2.4 for City review and comment are based on the premise that the reviews are typically for previously submitted material, except for the initial submittal and the underpinning designs as defined in Article 2.4.2 and 2.4.4. Pursuant to State law, the Authority is not subject to zoning or building or construction permitting ordinances of the City when constructing the Project. However, the permitting process described in Exhibit H of this agreement will be adopted by the Authority for Construction which impacts City Facilities or is within the City Right-of-Way, or on private property. Pursuant to State law, the City does not have the authority to control the Design and Construction of Authority Facilities, such as grade crossings, under the jurisdiction of the Public Utilities Commission or any other superior agency, and nothing in this agreement shall require City approval of the design or construction of any such Authority Facility. The City understands the Authority's concerns over undue delay or interference in the Project and will cooperate with the Authority on timely implementing permitting process.

2.1 Design/Build Work to be Performed by the Authority. The Authority is responsible for completing a comprehensive review of the engineering program activities completed by the MTA at the time of suspension of the Project as of June 30, 1998 as described in the Project Development Status Report dated August 19, 1999, the Project Development Status Review Report (PDSRR), dated December 22, 1999 and JRG member written comments to the PDSRR and Addendum I dated April 19, 2000 and mutually agreed City comments thereto. The work will be presented in the form of the Preliminary Basis for Design/Build Design. It is agreed by both parties, that the review process described below in Articles 2.2 through 2.5 will constitute the Design Review process for the City and the Authority. The Authority as part of its design/build responsibilities, together with its consultants, shall perform the following:

2.1.1 Train Traffic Coordination – As part of the Project Scope all improvements necessary to meet the requirements of the November 13, 2000 Public Utilities Application and the Application Supplement of May 14, 2001 for Light Rail Grade Crossings in the City of Pasadena shall be implemented.

Project funding will be agreed upon to the mutual satisfaction of the Los Angeles to Pasadena Metro Blue Line Construction Authority and the City of Pasadena during final design.

2.1.2 Review of Current Design Program - The Authority and its

consultants will undertake a comprehensive review of the status of the design program as of June 30, 1998, the date of suspension of the design of the Project by the MTA. The review, at minimum, will consist of a technical analysis, a review of all documentation relating to each of the design packages, the MTA design standards and criteria used, including any waivers proposed and/or approved, and all review comments, issues, and pending matters associated with the completion of each of the design packages.

The product of this review will be the documents defining the Preliminary Basis for Design/Build Design. The document will be furnished to the City for review to help ensure accuracy, timely responses in subsequent stages, and to minimize changes.

2.1.3 Development of Performance Specifications and Technical Provisions - The Authority and its consultants will undertake the preparation of a set of technical performance specifications. The performance specifications will be incorporated as part of the technical provisions of the design/build design documents along with other technical requirements, as appropriate.

2.1.4 Development of Contract Documents - The Authority and its consultants will undertake the preparation the Design/Build Contract package, including, among other things, the contract terms and conditions, scope of work, design and construction documents, Traffic Management Plans and the review and approval process.

2.1.5 Development of Request for Proposal Documents - The Authority and its consultants will undertake the preparation of the request for proposal (RFP) documents for the Design/Build Contract. The RFP documents will define the procurement process to be utilized by the Authority including, but not limited to, the proposals requirements, the submission of proposals, the evaluation of proposals, the issuance of addenda, contract award, execution, delivery, and debriefing, among others.

2.2 Design/Build Document Production, Reviews, and Schedule. Upon initiation by the Authority, it will take the Authority approximately five (5) months to complete the production of the Preliminary Basis for Design/Build Contracting documents. The production of the design/build documents that constitute the Basis for Design/Build Contracting will take approximately three (3) additional months, for a total of eight (8) months to complete.

2.2.1 JRG Process - Approximately two (2) months after initiation of the production of documents described in Article 2.2 above, the Joint Review Group (JRG) will be activated by the Authority. The JRG will be involved in

the detailed definition of the schedule for the member's review of the design/build documents to be produced by the Authority. A detailed description of the JRG process is provided in Exhibit F of this agreement.

2.2.2 City Review of Design/Build Documents for Non-Significant Changes -As part of the Industry Review, the Authority will request the City to review all Preliminary Basis for Design/Build Design documents from the perspective of design, operations, maintenance and construction impacts and coordination with City Facilities and City Right-of-Way. The specifics of the design review will be established by the Authority's Representative and the City's Representative. The City shall have a period of thirty (30) Days 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 thirty (30) Day period allocated for design review.

2.2.3 MTA Review and Approval of Significant Changes. By the provisions of PUC Section 132435, the Authority shall not make any Significant Changes to the Project, without the prior written approval of the MTA. The Authority is therefore required to highlight and provide justification for any proposed Significant Change in the transmit design or construction documents with each submittal to the MTA Representative.

If the MTA's Representative disapproves a proposed Significant Change, the Authority shall propose alternatives, which may in themselves include a Significant Change, until agreement is reached. All City proposed changes to the transit system, are subject to MTA review. If the proposed change is determined to constitute a Significant Change, irrespective to the funding source, such change is subject to MTA approval.

2.2.4 City Review and Approval of Significant Changes. Any Significant Change to the Project as it pertains to City Rights of Way and City Facilities shall be submitted to the City for review and approval. The procedures and review and approval periods will be in accordance with Article 2.2.2 contained herein.

2.3 Design Standards Regulation and Criteria. To insure that the work performed within the City Right-of-Way or on City Facilities meets the expectation of both the Authority and the City, and that the Project meets the requirements of the Current Scope of the Project, as it pertains to, impacts on, and effects the City Rights of Way, City Facilities, businesses, and City responsibilities and obligations, the Authority and its consultants will: utilize City standards, codes, ordinances and policies including the Standard Specifications for Public Works Construction and the

associated Standard Plans in effect at the time of the initial Design Freeze. For said work, the Authority and its consultants and contractors will be responsible for the Final Design and Construction of the Project. All portions of the Final Design not under the jurisdiction of the Public Utilities Commission or any other superior agency, that affect City Facilities, City Right-of-Way, businesses, residences and traffic shall be submitted to the City for review and approval.

2.4 Review of Design/Build Contractor's Design Documents - Upon completion of the review and comment process on the Preliminary Basis for Design/Build Contracting package by the MTA, the Cities, the SGVCOG, Caltrans and others, the Authority will release the package for Industry Review. The Industry Review will last for a period of forty-five (45) Days. At the end of that period, all comments received will be reviewed, and incorporated by the Authority as appropriate, and the Basis for Design/Build Contracting package then will be released as an RFP to all prospective proposers through the established procurement process.

Industry review comments pertaining to City Rights of Way and City Facilities that impacts City Rights of Way, City Facilities, businesses, or the general public shall be submitted to the City for review and comment. The resolutions and approvals of these comments, will be incorporated by the Authority, as appropriate, in the Basis for Design/Build Contracting package and then will be released as an RFP to all prospective proposers through the established procurement process.

2.4.1 Design/Build Contractor's Responsibilities - Upon award of the Design/Build Contract, the Design/Build Contractor will have the responsibility for all final design and engineering activities including, but not limited to: (1) The development of an organizational structure to successfully complete the Project within the schedule and budget while producing a quality product; (2) Effective management of the activities of the multidisciplinary design team to provide a coordinated, well-planned project; and (3) The appointment of a project manager, subject to approval of the Authority, to lead each of the design teams, who shall be a professional engineer licensed to practice engineering in the State of California.

In addition, the Design/Build Contractor, among other things, will be required to submit to the Authority, a plan and schedule for taking the design documents to the pre-final stage, and to 100 percent design completion along with a listing and description of the submittal schedule for all design documents.

Further, the Project shall be designed and constructed in accordance with provisions contained in this agreement.

2.4.2 Pre-final Design Review by the Authority and the JRG - Upon receipt of the Pre-final design documents, the Authority will review the

submittal(s), transmit them to the City's Representative and convene the JRG review meeting as required. The City will participate fully in the JRG process.

The City shall have twenty (20) Days to review the Pre-final design documents and to transmit comments to the City's Representative, except that the City shall have forty (40) days to review structural underpinning submittals. Upon receipt of the City's comments, the Authority shall conduct design comment review meetings with the City to address JRG and City comments affecting City Facilities or City Right-of-Way which are not planned to be incorporated, until differences are resolved. The Authority will then return approved comments to the Design/Build Contractor who shall make the required changes, subject to the MTA's right to approve all Significant Changes pursuant to Article 2.2.3.

2.4.3 Design/Build Contractor's Analysis and Response to Comments -

The Design/Build Contractor shall notify the Authority after receipt of any such comments, pursuant to Article 2.4.2, if the Design/Build Contractor believes incorporation of the comments would render the design documents, construction documents, or any other contract documents erroneous, defective, or deficient in any respect or which would otherwise adversely affect in any manner the design or construction of the Project or the costs and completion schedule of the Project. The Authority shall promptly forward a copy of the Design/Build Contractor's comments to the City for review and concurrence. Based on any Design/Build Contractor's response the Authority shall have the right to modify the comments, unless the modification shall result in a Significant Change. If the revision affects City Rights of Way or City Facilities, it will require City concurrence.

The Design/Build Contractor will then revise and modify all such documents or materials so as to fully reflect all such comments and shall advance the pre-final documents to Final Design completion. Prior to acceptance of the Final Design documents, the Authority and the City will review the Final Design documents and the Authority will communicate to the City and JRG the status of the Authority's incorporation of the previous Design Review comments and verify to the City and the MTA that there have been no Significant Changes.

2.4.4 Final Design, Permits, and Construction Documents - The Design/Build Contractor shall deliver all Final Design and construction documents to the Authority and the Authority shall forward copies of the documents to the City for review.

The City will be provided the Final Design documents for all Construction in City Right-of-Way, City Facilities and Authority Facilities

crossing over City Right-of-Way or supporting City Facilities for review and approval at least thirty (30) Days prior to the scheduled start of construction of the respective City Facility. The City will have twenty (20) Days to review the Final Design documents. The City's approval of the Final Design Documents as they relate to work in City Right-of-Way, City Facilities, will not be withheld if the documents are consistent with City comments received on the Basis for Design/Build Contracting, through the JRG process, and subsequent changes agreed to by the City and Authority.

The Design/Build Contractor shall be responsible for obtaining all permits required to build the facilities, in accordance with the City's permitting process, described in Exhibit H of this Agreement, install the contractor and/or MTA furnished equipment and systems, and conduct the other services required by the Design/Build Contract.

Caltrans permits obtained by the Authority for Construction which affects City streets shall be submitted to the City.

2.5 Work to be Performed by the City. The City will work cooperatively with the Authority in advancing the design/build method of project delivery for the Project in a manner complying with the terms of this agreement. The Parties agree that the City shall have no obligation or duty to begin or complete any work activity described in this Agreement unless and until a fully executed and funded Work Authorization has been issued by the Authority to the City and the City has accepted same. Subject to the foregoing, the City will have five (5) major responsibilities in relation to the design/build program. These responsibilities are:

2.5.1 Participation in the Organizations and Process - The City's Representative will be the focal point of coordination and communication with the Authority's Representative. The City will formally designate at least two (2) key technical persons to serve on the JRG. In addition, when requested by the Authority, the City will designate individuals to participate in the working groups and technical subcommittees formed by the Authority to address the issues and subjects which arise as part of the design review process described above in Articles 2.2 through 2.5.

2.5.2 Cooperatively Implement the Design Review Process - Consistent with the provisions contained herein and any future processes to be developed by the Authority, the City will take an active role in the review of studies and the review of design plans prepared by the Authority, its consultants, and the Design/Build Contractor related to the Project. The City will provide comments in a timely manner, as defined herein, and will work with the Authority to suggest ways to resolve various issues that arise.

2.5.3 Provide Technical Support - The City will provide technical support to the Authority throughout the design and construction period of the Project. The support may take many forms. For example, the City will work with the Authority to review and, where appropriate or required, will assist the Authority with obtaining permits.

In addition, the Authority and the City may mutually agree that the City will perform the design of one or more specific Rearrangement(s). Under such circumstances, the Authority shall develop the specific scope of work and authorize, through the Work Authorization process described in Article 4 below, the City to perform the activities. The City's schedule for completion, coordination requirements, review procedures, and related provisions all shall be included as attachments to the Work Authorization which shall also include the estimated cost of completing the design of the specific Rearrangement.

2.5.4 Review Design Documents - In consideration of cost and schedule impacts, as part of its participation in the JRG, other technical committees, and working groups, the City will review, and comment upon, in the Preliminary Basis for Design/Build Contracting documents in a timely fashion prior to the release of those documents for Industry Review. The City will, within the times provided in this agreement, review and comment on the Pre-final and Final Design documents packages developed by the Design/Build Contractor and formally transmitted by the Authority to the City within the times provided in this agreement. Any new issues or comments raised during the Final Design review which could have reasonably been raised during the Pre-Final Design review will be considered a Betterment. City comments to the Final Design submittal arising out of the design/build contractor's failure to address City's Pre-Final Design comments shall not be considered as Betterments.

2.5.5 Authority Inspection, Testing and Quality Audits - The Authority shall provide the City the opportunity to observe the construction performance and perform quality checks of all component facilities and system elements. The reports of quality audits and test results shall be provided to the City upon request.

The City shall also have the right to inspect construction and to observe and review the results of contractual testing performed by the Authority's Contractor(s) of work that involves City Facilities or impacts on City Right of Way. The City may, without restricting the performance of the Design/Build Contractor, independently test materials which part of the City's Facilities or City Right of Way and are built, or being built, by the Authority's Contractor(s). Testing results shall be provided to the City of all City Facilities.

2.5.6 City Construction Services, Inspection, and Quality Assurance –

A. City Construction Support and Services

The City will provide construction support and services for that portion of the Project within the City Rights of Way or that affect City Facilities. At the Authority's request, the City will provide additional construction support and services on the Project within the City. Such services and support shall be procured through the Work Authorization process described in Article 4. Construction support services shall include:

- (1) City inspection services and acceptance of construction.
- (2) Independent assurance sampling and testing of materials used for construction within City Rights of Way and for City Facilities when deemed necessary by the City.
- (3) Change Order review and approval for work within City Rights of Way and for City Facilities.
- (4) Review and approval of required material and shop drawing submittals for work within City Rights of Way and for City Facilities.
- (5) Responses to requests for Project related information by the Authority
- (6) Issuance of construction related permits
- (7) Review and approval the Traffic Management Plans.
- (8) Provide community outreach services
- (9) Review and approval of haul routes
- (10) Provide various support and other services, as requested or necessitated.
- (11) Review of all fire/life safety plans and field inspection of systems installed, as well as system acceptance sign off.

B. City Inspection and Testing.

The City shall have the right to inspect all work within the City Right-of-Way, on City Facilities and for structures supporting City Right-of-Way or City Facilities.

Upon request of the Authority, the City shall provide inspectors to inspect work within City Rights-of-Way, Rearrangements and structures supporting City Right-of-Way or City Facilities to insure that the work meets the requirements of the approved plans and specifications. City inspection services will be reimbursed by the Authority per the Work Authorization process in Article 4.

C. Deficiencies

The City or the Authority shall inform the other, in writing, of any deficiencies or discrepancies in any Construction discovered in the

course of such inspection. For all portions of the Project constructed by the Authority, the Authority will be responsible for achieving compliance of that Construction. The City will be responsible for achieving compliance of any City constructed work. All non-compliant work must be corrected or resolved so that Construction conforms to the approved plans, specifications, and applicable Authority and City Standards.

D. Final Inspection.

The final inspection of all work within the City Rights of Way and for City Facilities shall be attended by both Parties. Each Party shall inform the other in writing of any deficiencies or discrepancies in any Construction within five (5) days of the final inspection. The Authority shall be responsible for the corrective actions necessary to meet compliance. City concurrence is required for the acceptance of all completed work within the City Rights of Way and for City Facilities. Upon completion and acceptance of the work in the Project, the Authority shall certify that the Construction being accepted complies with the approved plans and specifications, and other applicable documentation associated with the approval.

2.5.7 Community Outreach. The City of Pasadena shall perform community outreach in the City of Pasadena during the planning, Design, Construction and transition period of the project. The City will be a primary provider of this service and shall work in cooperation with any community outreach services provided by the Authority and its consultants and contractors. Support staff for community outreach and basic technical support coordination shall be housed in the community information office established by the Authority. A task will be included in the annual Work Authorizations from the Authority. The rental of and expenses of a facility will be shared by the Construction Authority and the City as agreed during development of the Work Authorization.

2.5.8 City Construction of Rearrangements. If the Parties mutually agree that the City shall perform Construction of specific Rearrangements, the Authority shall issue a Work Authorization to City for such Construction and the following provisions shall govern the Construction of such Rearrangements by the City:

- (a) City shall commence and thereafter diligently prosecute the Construction of such Rearrangement work to completion as authorized by the Work Authorization and in conformance with the time schedule set forth in the Work Authorization and the Final

Design plans and specifications prepared pursuant to Article 2 of this Agreement. Such Construction shall coincide, and be coordinated, with the Authority's Construction schedule for the Project, including the schedule for Construction of all utility, cable, pipeline and other Facilities in the same segment or portion of the Project. City and the Authority shall coordinate its work with other property or Facility owners and contractors performing work that may connect, complement or interfere with City's work hereunder or with City Facilities.

- (b) City shall notify the Authority at least five (5) Days prior to commencing each Rearrangement so that the Authority may make arrangements for such inspection and record keeping as it may desire.

2.5.9. "As-Built" Drawings. The Authority and City shall each maintain a set of "As-Built" plans of Rearrangements and work on City Facilities or within City Right-of-Way, performed by the Authority and City, as the case may be, during the progress of Construction. After completion of the Rearrangement work, the Party that performed the work shall furnish "as built" drawings on transparent film reproductions, together with electronic files, showing all Rearrangements installed by the performing Party within sixty (60) calendar days of acceptance of work for each set of plans. If the drawings submitted by either Party are incomplete or nonconforming to agreed upon standards, the drawings will be returned to that Party for correction at that Party's expense. Additionally, within ten (10) Working Days after completion of a temporary traffic signal or temporary Street Lighting System, or temporary modifications to the Systems, the Party that performed the work shall furnish the City "red-line as-builts" — hand drawings showing the approximate locations of the material component elements — of those temporary facilities. Red-line as-builts shall be signed and dated by the Contractor.

2.5.10 Relocation of Private Utility and other Facilities. Within 10 days of receipt of a written request from the Authority's Chief Executive Officer, the City will send the written notice to all utilities (other than the Pasadena Water and Power) whose facilities conflict with the Project instructing them to relocate or remove the conflicting facilities in accordance with provision of the Utility's franchise agreements. The City will assign to Authority City's rights to cause such removal or relocation to be performed in the event that the utility does not accomplish such removal or relocation within the time provided. The City shall not by issuing such a written request or assigning its rights pursuant to this Section be construed as having made a determination as to the responsibility of the utility or the Authority to pay the cost of such removal

or relocation. The determination of whether the Authority or the utility shall be responsible for the cost of such removal or relocation shall be a matter solely for the Authority and the affected utility to resolve. Authority shall defend and indemnify City from and against any and all claims or causes of action arising out of City's provision of notice to a utility, the assignment to the Authority of City's right to effectuate a removal or relocation pursuant to this Section or the removal or relocation of any such facility by Authority or otherwise related to Authority's actions pursuant to this clause.

ARTICLE 3

AUTHORIZATIONS AND PROPERTY RIGHTS

3.0 Permits. All work in the Los Angeles to Pasadena Metro Blue Line (Project) that is within or affects the City Rights of Way, on or affects City Facilities and over which the City has jurisdiction is subject to the City's permitting process as described in Exhibit H. As such, the issuance of City permits are required for any type of work, installation of traffic control or temporary street closures within or that affect City Rights of Way, work on City Facilities, and work on private property. The City will waive the payment of permit fees. The City will be reimbursed by the Authority by the issuance of a Work Authorization to cover only permit processing costs to the City.

The City shall work with the Authority and its Contractors/Consultants to cooperate and expedite permit processing as is reasonable. Based upon the permit request and submission to the City of a complete and previously City-approved set of required documents and in accordance with the Permitting Process, the City will provide a permit for the work within three (3) Days in accordance and as allowed within the City's Codes and Ordinances. Any request not allowed within the City's existing Codes and Ordinances will require City Council approval and could take over thirty (30) Days to process.

3.1 Work in City Streets or Within City Right-of-Way. The Authority recognizes that the City has the duties of supervising, maintaining, and controlling streets, highways, and other City Rights of Way including access to business and residential areas. The City shall be provided advance written notice by the Authority where and when the Project requires work within City Rights-of-Way or affects City Rights-of-Way or is on City Facilities. The City shall be provided reasonable time to review and approve such notices and supporting documents before the work proceeds and to issue appropriate permits in accordance with the Permitting Process referenced herein. The Authority shall secure City approval of notifications and supporting documents such as plans for the work. The Authority's contractor(s) performing the work shall begin the work only after City approvals have been

received and appropriate City permits issued. The Contractor shall take appropriate precautions to ensure safe operations of the work and uninterrupted service of City Rights of Way and City Facilities. There shall be City inspection in addition to Authority inspection of all work within and that affects City Rights of Way and on City Facilities. If the Authority's contractor(s) fails to perform the work in accordance with approved plans, specifications, City permits, and authorizations, the City will inform the Authority. Upon receipt of notice from the City, the Authority shall cause the contractor to cure its failure within the requested time, or issue a Work Authorization to the City allowing the City to cure the contractor's failure. In cases of emergency where public health and safety is at risk, the City may take immediate corrective action, following which, the Authority shall issue a Work Authorization to cover the City's reasonable costs of said work.

All work in City Rights-of-Way or that affects City Rights-of-Way that will impact on pedestrian and vehicular access will be in accordance with the Permitting Process attachment, City/Authority approved Traffic Management Plans and Documents, and the City adopted sections of the latest Work Area Traffic Control Handbook.

3.2 Private Encroachments Upon a determination by the City and the Authority that a private encroachment in, on, over or under any City Facility, must be removed or relocated to accommodate the Project, the City shall act to eliminate, move, remove or otherwise terminate such encroachment at the Authority's reasonable expense unless the encroachment is a City authorized encroachment which the City has no right or ability to eliminate, move, remove or otherwise terminate. If City is unable to eliminate, move, remove or otherwise terminate such encroachments, the Authority shall make its own arrangements to eliminate, move, remove or otherwise terminate such encroachments, whether through its exercise of its powers of eminent domain, through negotiation with the owner, or otherwise. City shall cooperate with the Authority to minimize the cost to eliminate, move, remove or otherwise terminate encroachments where determined necessary and, where City agrees to allow an existing encroachment that would not otherwise comply with City Standards, the encroachment shall be allowed to remain as approved by the City

3.3 Temporary Street Closures. The construction of the Project will require temporary closures of streets, highways, bridges, sidewalks or other City Rights of Way. All temporary street closures require the review, approval, and in some instances permit issuance by the City prior to being implemented.

Requests for temporary street closures shall be made by the Authority or their representative to the City for review and approval. Requests shall be in writing or properly prepared plans such as Traffic Management or Construction Staging Plans. The City will expedite processing of these requests and the Authority will cooperate to minimize requests for temporary closure of City Rights of Way. Notwithstanding

the foregoing, this Article does not preclude the City from requesting that certain streets not be closed to accommodate "Special Events" utilizing those streets and the Authority cooperating with such requests. Colorado Blvd. shall be completely open to pedestrian and vehicular traffic by the close of business on December 15th and remain open until January 5th each year.

3.4 Traffic Management and Construction Staging Plans - The Authority through its representatives and contractors shall develop the Traffic Management Plan in accordance with the requirements of this Agreement. The TMP shall be reviewed and approved by the City prior to their implementation. The City will assist by providing the Authority with the following information which shall be incorporated on the TMP.

3.4.1 All relevant traffic information, including:

- (a) The minimum number of lanes and minimum lane width, the time and duration of the interruption during peak traffic hours and non-peak traffic hours for each involved street.
- (b) Streets which may be closed during construction and the duration of the closure.
- (c) Parking restrictions which will be imposed during the construction period including specific time, days, and duration.
- (d) Restrictions on work, excavation, or closure due to special events such as the Tournament of Roses Parade or other seasonally related concerns.

3.4.2 Facilities Information (other than street):

- (a) Facilities in which service must be maintained
- (b) Facilities in which service may be abandoned only during construction but must be restored when construction is complete.
- (c) Proposed phasing or sequencing of construction of Facility Rearrangements.

3.5 Federal, State and Other Agency Permit and License Requirements

Nothing in this Agreement shall be deemed to abridge any applicable federal or state law regarding permits, orders, licenses and like authorizations that may be required or available in connection with the Project. As required by the State, the City shall review plans for and shall perform inspections as needed throughout the term of the Construction. To the extent the California Public Utilities Commission ("CPUC") has jurisdiction over establishment of street and pedestrian crossings with rail tracks and their subsequent maintenance or alteration and formal application for establishment or alteration of said crossings is required by the CPUC, the Authority shall prepare and submit to the CPUC formal applications and various documents

as required. The City will support the Authority in this process by cooperating and timely processing the various plans and documents subject to the City's review and approval.

3.6 Grant of Rights. If, prior to the Authority's schedule date of the commencement of construction in a section or portion of the Project, any Rearrangement necessary to rearrange a Conflicting Facility has not been completed, the City will grant the Authority sufficient property rights or licenses it possesses, if necessary, to allow the Authority to proceed with the construction of that section or portion of the Project in accordance with the Authority's schedule; provided, however, that such grant does not unreasonably and adversely interfere with the provisions of City's services to the public. If a Rearrangement to replace a conflicting City Facility is located within Authority property, the Authority shall provide the City with an appropriate permanent easement or (if agreed to by the City) license if such is necessary to access, maintain, repair and/or operate the Rearrangement. The Authority will dedicate or otherwise transfer jurisdiction to the City all necessary street, sewer, storm drain, water, light and power and all other public utility easements to the City.

The Authority may request the City's assistance to secure any grant of rights or licenses it does not possess during the construction of the Project. If the City accepts the request, the Authority shall issue a Work Authorization to the City for all City costs in securing and perfecting said grant and in transferring it to the Authority.

3.7 City Property Required For Project Rights-Of-Way. The City owns a total of 7 parcels required for the Project which are shown in Exhibit G. The parcels to be acquired, consist of street crossings, surface easements, and temporary construction easements required to construct the Project.

At the request of the Authority, the City will evaluate the Project's property needs regarding City property and then the City will determine the type of property conveyance to the Authority for the Project. Conveyances of City Property may be in the form of a "permission" for a specified use, permanent or temporary easement, a property exchange, or a release of interests and rights as determined by the City. The property conveyance will be at no cost to the Authority or in the event of an exchange no cost to either party and either party will not be required to go through appraisal, negotiations, offer, or an agreement process. The City will be reimbursed its processing costs from the Authority associated with the conveyance by the issuance of a Work Authorization.

The Authority will prepare (unless the City decides to prepare) all required documents for conveyance. Authority prepared conveyance documents will be transmitted to the City, and the City agrees to process these documents before the start of actual construction of that portion of the Project. All conveyances of City property require compliance with City Codes and Ordinances and approval by the City Council.

3.8 Replacement Rights of Way. Replacement rights-of-way for the rearrangement of Conflicting Facilities shall be determined during Design and, if needed, may be acquired by Authority following approval by the parties of the location and type of such replacement rights-of-way. It is mutually understood and agreed, however, that when reasonably possible, Rearrangements shall be located in existing City Rights of Way where the Facilities being replaced were in City Rights of Way. The required Rights-of-Way shall be acquired so as not to unreasonably impair the Authority's schedule. The City will make every effort to assist the Authority in the acquisition of any necessary private right of way and to convey, if permitted by applicable law, City real property interests being taken out of service, or for which replacement property interests are provided.

The Authority recognizes the City's interests in maintaining control over property and facilities providing City services and that access to City facilities for maintenance shall not be unreasonably impaired during construction.

3.9 City License/Easement Within Project Rights of Way. If a Rearrangement is made so that the Rearrangement will be located within the Project right of way, the Authority shall provide the City with a replacement license/easement, as determined by the City, to accommodate the Replacement Facility, in a manner and form satisfactory to the City. It is hereby understood that by the City accepting such a replacement license/easement and by the Authority releasing its existing rights, the City shall acquire reasonable rights to install, operate, maintain, and remove Facilities within the replacement license/easement.

3.10 Night and Weekend Work. The City recognizes the importance of constructing the Project in an efficient manner. The Authority expects the City to be responsive to the Project's construction needs, but also recognizes the City has responsibilities and obligations to its citizens, businesses, and visitors to the City. As such, the City, in conformance with its Codes and Ordinances, will aggressively work to support the Project needs. Exceptions as requested by the Authority to the City's Codes and Ordinances will be handled on a case by case basis and it is expected the Authority will keep exceptions to a minimum.

In instances where exceptions are needed, the Authority shall advise the City a minimum of thirty (30) calendar days in advance of the need, particularly where City Council approval is required.

ARTICLE 4

WORK AUTHORIZATION AND BILLINGS

4.0 Work Authorizations. The Authority will provide annual funding in advance to compensate the City for specific work and/or services in connection with the Project through one or more annual Work Authorizations. The Parties agree that the City has no obligation to perform any of the activities described in this Agreement prior to the issuance of a properly conforming and fully executed Work Authorization. The Authority also acknowledges that it may not refuse to issue a Work Authorization to the City for purposes of preventing the City from receiving copies of documents and providing comments to documents as described in this Agreement.

4.1 Work Performed by the City. Work to be performed by the City under this Agreement will coincide, as closely as possible, with the Authority's Project schedule appearing as Exhibit B to this Agreement and the terms established herein. Consistent with its own staffing and workload requirements, the City agrees to commit sufficient resources necessary to provide the level of service required in order to meet the scope of work and said schedules.

To assist the City in estimating the level of service to be provided for the Project, the Authority will submit to the City annually beginning December 1, 1999, and on March 31 in succeeding years, an annual work plan setting forth each item of work and the documentation associated therewith, including corresponding start and finish dates for all milestone activities that the Authority anticipates it will request the City to perform. The schedules established by the Authority shall comply with the timeframes established by this agreement.

In return, the City will provide, no later than twenty (20) Days after receipt of the work plan, a Cost and price analysis of its estimated costs to perform the work. As required, the Authority and the City will negotiate the final pricing of the work to be performed by the City. All work performed by the City under the terms of this Agreement shall be initiated by an annual Work Authorization, as provided herein.

4.2 Issuance of Work Authorizations and Cost Management. The Authority shall issue annual Work Authorizations to the City on the form appearing as Exhibit C. Each Work Authorization to the City will authorize the direct and indirect costs involved in the performance of one or more tasks and/or the purchase of materials and equipment required under the terms and conditions of this Agreement.

Direct Costs are defined as those labor costs and costs of purchasing equipment and/or materials. Indirect Costs are defined under with Federal procedures described in Article 4.5, as applied to similar types of projects. No profit or administrative fees on direct labor and overhead shall be allowed on work

performed by City employees. City consultants and contractors may perform any work so authorized. Consultants and contractors engaged by the City to perform work covered by this Agreement shall comply with all applicable labor and other laws, grants, and agreements. Consultant fees and profits shall be charged in accordance with the City's practice. The City shall cooperate with the Authority and take such action as the Authority may reasonably request to ensure such compliance.

Each Work Authorization issued under the terms of this Agreement shall specify the work to be performed and any materials and equipment to be acquired, the estimated cost for the work authorized, the estimated starting and finishing dates for the work so authorized.

The City agrees to manage the agreed-upon scope of work within the agreed not-to-exceed annual lump sum payment and shall adjust and/or control its labor and materials expenditures accordingly. The City also agrees to prepare and submit to the Authority, not later than one hundred twenty (120) calendar days after the close of the fiscal year, a reconciliation of labor, expenses, and administrative charges for the respective fiscal year. Advance funding which is in excess of costs in a fiscal year will be carried forward to the next fiscal year budget, or upon completion of the project, returned to the Authority.

4.3 Work Authorization Changes. Any proposed changes in an annual Work Authorization issued under this Agreement shall be submitted in writing to the Authority for its prior approval, provided, however, that any proposed change occasioned by an emergency may be submitted to the Authority orally or by telephone and later confirmed in writing by the City. In such event, the Authority agrees to act on such oral request immediately.

4.4 Termination of Work Authorizations. The Authority and the City may terminate any Work Authorization at any time. However, upon termination by the Authority, the Authority will reimburse the City for any outstanding incurred costs in accordance with the Work Authorization.

4.5 Procedures for Payments to the City by the Authority. No later than July 1 of each calendar year or within ten (10) Days of the date on which the Authority's board approves the Authority's annual budget, whichever occurs later, the Authority shall issue to the City the advance lump sum payment to cover the approved annual Work Authorization. The City acknowledges that, due to the dynamics of the Project and related Construction, such Work Authorizations, as provided in Section 4.2, may be subject to amendment (additions and deletions); accordingly, the City agrees to refund all unspent monies upon receipt of amended or supplemental Work Authorizations and at the completion of the final Work Authorization.

City, its contractors and subcontractors agree to comply with Federal procedures in accordance with the following: (a) Office of Management and Budget

Circular A-87, Cost Principles for State and Local Governments; (b) 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; and (c) Title 21, California Code of Regulations, Section 2500 et seq, when applicable, and other matters connected with the performance of City's contracts with third parties pursuant to Government Code Section 8546.7. Any costs for which City has received payment that are determined by subsequent audit to be unallowable under the Office of Management and Budget Circular A-87 or 49 CFR, Part 18 shall be repaid by City to the Authority or to the State of California.

4.6 Audit and Inspection. After receipt of notice each party shall have reasonable rights to inspect and audit during business hours the other party's records relating to its performance hereunder. All accounting records and other supporting papers of City, its contractors and subcontractors connected with the performance under this Agreement shall be maintained for a minimum of four years from the date of Project completion and shall be held open for inspection and audit by representatives of the Authority, the California State Auditor, representatives of the State and auditors of the Federal Government

ARTICLE 5

DISPUTES RESOLUTION

5.0 Disputes. In the event of any dispute, controversy or claim arising between the City and the Authority in connection with or relating to this Agreement ("Dispute"), the parties shall make good faith efforts to resolve the Dispute through negotiation and, if the parties so elect, non-binding mediation. Any Dispute that cannot be settled through direct negotiation, shall be resolved by non-binding arbitration as set forth in Article 5.3.

5.1 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 Los Angeles to Pasadena Metro Blue Line 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 calendar days after the conclusion of the Construction within the City.

5.2 Negotiation; Reference Proceeding. The Parties shall attempt to settle all Disputes. 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. Compliance with the Dispute Notice and Dispute resolution process in this Article shall be a condition precedent to the filing of an action involving a Dispute in any court of competent jurisdiction, and either party may file such an action after the Award of the Arbitrator is served.

5.3 Non-Binding Arbitration

5.3.1 Qualification and List of Potential Arbitrators - The Dispute shall be resolved before a neutral arbitrator (the "Arbitrator") selected from the list of retired judges of the Los Angeles County Superior Court or any California appellate court attached as Exhibit E to this Agreement in accordance with this Article. The list of retired judges, as set forth on Exhibit E, as may be amended from time to time in accordance with this Article 5, is hereinafter referred to as the "List of Potential Arbitrators." The List of Potential Arbitrators shall be comprised of five (5) retired judges selected by the Authority and five (5) retired judges selected by the City. If, at any time or from time to time, any retired judge listed on Exhibit E dies, retires from acting as an arbitrator in disputes or is otherwise unwilling to serve as an Arbitrator to decide Disputes under this Agreement, the party who selected the retired judge may select another retired judge of the Los Angeles County Superior Court or any California appellate court for inclusion on Exhibit E by written notice to the other party. The Arbitrator selected from the List of Potential Arbitrators to decide any Dispute shall have no material financial or personal interest in the results of the arbitration and shall make the disclosures required by Section 1281.9 of the California Code of Civil Procedure. The Arbitrator shall sign an oath of impartiality upon appointment to hear the Dispute.

5.3.2 Selection of Arbitrator - The Arbitrator for each Dispute shall be chosen from the List of Potential Arbitrators as follows. Upon the written request of either the City or the Authority for arbitration of any Dispute, the Authority and the City shall, within seven (7) Days thereafter, or within such extended period as they shall agree to in writing, attempt to agree upon a mutually satisfactory Arbitrator from the List of Potential Arbitrators. If they are unable to agree, the Authority and the City, prior to the expiration of the seven (7) Days or agreed extended period, shall prepare and forward to the other a list of three (3) names from the List of Potential Arbitrators to act as Arbitrator of the Dispute. The Authority and the City shall promptly review the

other's list and shall strike up to two names from the list provided by the other party. If the parties cannot agree to using one of the two names remaining on the respective lists, the two named individuals shall select a neutral Arbitrator, other than themselves, from the List of Potential Arbitrators, who shall be the Arbitrator of the Dispute. If the Authority or the City fail to designate its Arbitrator of the Dispute from the List of Potential Arbitrators within ten (10) Days after the date of delivery of the demand for arbitration or the agreed extended period, or if the two designated Arbitrators are unable to select a neutral Arbitrator from the List of Potential Arbitrators within five (5) Days after their appointment, a neutral Arbitrator shall be designated by the Los Angeles County Superior Court from the List of Potential Arbitrators pursuant to Section 1281.6 of the California Code of Civil Procedure, as modified herein, and the court appointed Arbitrator shall hear the Dispute as the sole Arbitrator. A hearing date on the Dispute shall be set within thirty (30) Days of the selection of the Arbitrator.

5.3.3 Hearing - No Arbitrator shall be selected who is unable to (a) hear the Dispute within twenty (20) Days after being selected, and (b) render or make and serve on the parties an award or decision (the "Award") within ten (10) calendar days of the conclusion of the hearing. Notwithstanding Sections 1282.2(b) and 1286.2(e) of the California Code of Civil Procedure (regarding postponement of the hearing), the Arbitrator may not postpone nor adjourn the hearing except for good cause or upon the stipulation of all parties to the arbitration. The Arbitrator may proceed in absence of a party who, after due notice, fails to appear.

The arbitration shall be held in Los Angeles, California. Section 1283.05 of the California Code of Civil Procedure is specifically made applicable; provided, however, that the time for responding to any discovery permitted by the California Code of Civil Procedure, including but not limited to, inspection demands and written discovery, shall be due within fifteen (15) Days of any notice or demand, or as otherwise directed by the Arbitrator. Any Award rendered by the Arbitrator shall be final and non-binding on each of the parties hereto and their respective successors. Such Award shall be in writing stating a factually detailed, reasoned opinion of the Arbitrator's findings of fact and conclusions of law, and shall be signed by the Arbitrator. The Arbitrator, in deciding any Dispute, shall base his or her Award on the record, shall have no power or authority to award special, consequential, punitive, or exemplary damages, and shall look to the substantive laws, and not the laws of conflicts, of the State of California for the resolution of the Dispute. In deciding a Dispute, the Arbitrator shall follow the express intent of the parties as set forth in this Agreement. The making of an Award failing to comply with the requirements of this paragraph shall be deemed to be in excess of the Arbitrators' powers. In the event the arbitration procedure

provided by in this Article is deemed for any reason to infringe upon the jurisdiction of the Los Angeles County Superior Court, the arbitration procedure will be deemed to be a reference agreement and any arbitration Award deemed to be a decision of a referee pursuant to Chapter 6 of the California Code of Civil Procedure subject to the procedures specified in this Section.

5.4 Governing Law. The Arbitrator shall hear and decide the Dispute according to all of the substantive, procedural and evidentiary laws of the State of California.

5.5 Scope of Authority. The Arbitrator shall have the authority to recommend any remedy or relief that a court of this State could order or grant. The Arbitrator shall be empowered to make recommendations and to take such other actions with regard to the Parties as the Arbitrator deems necessary to the same extent such actions could be taken by a judge of this State pursuant to the California Rules of Civil Procedure or other applicable law.

5.6 Continuing Performance. No Construction or other work or activity relating to the Project shall be stopped, or interfered with in any manner, by reason of a Dispute or otherwise, except at the direction of the Authority in the Authority's sole discretion for reasons of imminent danger to public health or safety. Without limiting the generality of the foregoing, the Parties agree that they will continue their respective performance required hereunder notwithstanding any Dispute, and that such continued performance shall not be construed as a waiver of any rights or defenses, including any defenses as to which party is responsible to pay the cost during the continued performance.

5.7 Compensation of Arbitrator. The expenses and fees of the Arbitrator shall be equally divided by the Parties. The Referee shall have no power or authority to allocate fees and costs, including attorneys' fees, among the parties regardless of the outcome of the reference proceeding.

5.8 Implementation. Each Party promptly will take any action required of it in order to implement an agreed upon Dispute resolution, or a final judgment entered pursuant to the provision of this Agreement.

5.9 Cooperation. The Parties shall diligently cooperate with each other and the Referee, and shall perform such acts as may be necessary, to ensure an efficient and expeditious resolution to each Dispute. If either Party fail to cooperate diligently, the other Party shall give notice of that fact to the non-cooperating Party, setting forth the Party's basis for its contention of non-cooperation and requesting specific action. Upon a determination that the noticed Party thereafter failed to act with substantial justification, the Arbitrator may sanction the noticed Party for its non-

1.0 ESTABLISHMENT OF THE ORGANIZATION

The Joint Review Group (JRG) has been created by the provisions of the Master Cooperative Agreement (MCAs) between the Los Angeles to Pasadena Metro Blue Line Construction Authority (Authority) and the governments and agencies involved in the design and construction of the 13.7 mile Phase I Blue Line. The MCA between the Authority and the Los Angeles County Metropolitan Transportation Authority (MTA) is fully executed.

The MCAs between the Authority and the cities of Los Angeles, Pasadena, and South Pasadena are in the final stages of negotiations and approvals. As the Authority enters into additional MCAs with Caltrans, the San Gabriel Valley Council of Governments (SGVCOG), the utility companies, and the railroads, the Authority and all parties identified above, the affected governments, agencies, and companies will be asked to participate voluntarily in the activities of the JRG.

2.0 PURPOSE AND COMPOSITION

The purpose of the JRG is to be the forum that enables the member agencies and individuals to participate actively in the design review process of the 13.7 – mile Phase I Blue Line of the Authority. As the Authority transitions the Project from a conventional design/bid/build project to the design/build method of project delivery the JRG will be especially valuable to all agencies and governments involved in the design review process. The scope of responsibility of the JRG is the standard design review process for design/build projects. As required by SB-1847 that created the Authority effective January 1, 1999, a separate process is described in the MCA between the MTA and the Authority to address any "significant" changes in the design of the Project.

The JRG is composed of no less than two (2) and no more than six (6) persons from each of the governments, agencies, and utilities representing the various engineering disciplines required to review and comment on the design documents. The JRG is to be chaired by the Authority's Director of Engineering and Construction. Approximately two months after the initiation of the design development process the Authority's Director of Engineering and Construction will initiate the first meeting of the JRG.

3.0 DESIGN REVIEW PROCEDURES

The design review procedures are intended to involve the JRG in the 11-step process that begins with the transition of the design program previously managed by the MTA to a design/build framework and ends with the Authority's verification of the 100% Design Documents. The steps are shown on the flow chart appearing as Figure 1 on the following page. The roles and responsibilities of the JRG vary from step to step as described below, and some steps will have multiple dates due to multiple contracts.

3.1 Initial Meeting (October 15, 1999)

At the initial meeting of the JRG two objectives should be accomplished. These include a general agreement about the design review process as described herein and a discussion of the initial documents prepared by the Authority and its Value Engineering Consultant (VEC).

The specific documents include the Project Development Status Report and the Preliminary Phase I Value Engineering Report. The roles and relationships of the VE and Program Management Consultant (PMC) will be discussed as well as their individual work plans throughout the 11 Step Design Review Process. The JRG will be asked to submit formal comments on the two documents within 15 calendar days after the first meeting.

3.2 Preliminary Basis for Design/Build Design (November 11, 1999)

A second meeting should be set for approximately 20 calendar days after the initial meeting at which time the design review process is should begin in earnest (Step 1). The Authority and its consultants will commit to have in the hand of the JRG members no later than 5 working days prior to the meeting the Final Draft Phase I Value Engineering Report and draft documentation constituting the initial cut at the Preliminary Basis for Design/Build Design documents.

At the second meeting the JRG should be prepared to comment verbally on the two documents and to agree to provide the written comments of the members within 15 calendar days after the conclusion of the second meeting of the JRG (Step 2).

3.3 Final Basis for Design/Build Design (December 7, 1999)

The third meeting of the JRG should be set approximately 30 calendar days hence. The objective of the third meeting will be to complete the review/comment phase of the Preliminary Basis for Design/Build Design.

The VE Contractor will report on the responses to the comments and the proposed actions to be taken to resolve each of the comments in the Final Phase I Value Engineering Report. The steps required to get the documentation assembled for the Preliminary Basis for Design/Build Contracting will be discussed. The Chair will introduce the PMC team.

3.4 Preliminary Basis for Design/Build Contracting (January 18, 2000)

The fourth meeting of JRG should be set approximately 20 calendar days hence. The consultant teams and the Authority will commit to have the draft package consisting of the Preliminary Basis for Design/Build Contracting

transmitted to the JRG members 10 calendar days prior to the JRG meeting.

At the meeting, the JRG will be expected to make preliminary comments on the draft package and commit to having their final comments to the Authority 10 calendar days after the JRG meeting. Upon receipt of the comments the consultant teams and the Authority will respond to the comments, finalize the Preliminary Basis for Design/Build Contracting, and initiate the Industry Review phase (Step 4).

3.5 Industry Review and Design Refinement by the JRG (STEP 4 – Feb. 1, 2000)

Upon release of the Industry Review Package (IRP) the documents will be transmitted to the JRG as well. The fifth meeting of the JRG will be called approximately 30 calendar days after the release of the Industry Review Package.

At that meeting the JRG will provide oral comments and discuss each of the components of the IRP. Also, the Authority and its consultant teams will provide a report on the status of the work leading to the 30% + Design Package that constitutes the Basis for Design/Build Contracting (Step 5).

3.6 Draft 30% + Design Package Basis for Design/Build Contracting

Upon receipt of the comments from the industry (60 calendar days after release of the IRP) and those oral comments from the JRG members (30 days after release of the IRP), the Authority and its consultant teams will begin responding to each. In addition, the process of completing any necessary drawings, resolving comments, and consolidating all the required information and data into the Basis for Design/Build Contracting will be well underway.

The sixth meeting of the JRG will be called approximately 15 calendar days after the close of the IRP comment period. At least 10 calendar days prior to the meeting the draft Basis for Design/Build Contracting RFP documents will be transmitted to the JRG (Step 6). At the meeting all industry review comments will be discussed and the schedule will be fixed for submission of all comments by JRG members to the Authority (Approximately 30 calendar days after receipt of the Step 6 documents).

3.7 Final 30% Design Package Basis for Design/Build Contracting and Design Freeze

The seventh meeting of the JRG will be for purposes of reviewing all comments received and the responses to the comments, freezing the design, and finalizing the 30% Design Package for inclusion in the RFP to be issued

to all interested designers and contractors. The session will require give and take by all parties.

The objective of the session is to finalize the initial design freeze (Step 7), which becomes the design that is to be incorporated in the design/build RFP. It may take more than one day to conclude the seventh meeting of the JRG. Under any circumstances the Authority will be seeking the agreement of the members of the JRG as to the specific design drawings, facilities, systems, equipment, etc. that constitute the initial design freeze.

3.8 Issue the RFP

Once documented, the initial design freeze will be incorporated by the Authority into the RFP to be issued to procure the services of a design/build contractor (Step 8). The Authority will issue the RFP, conduct pre-proposal conference(s), and issue addenda, as required. The Authority will receive proposals approximately 90 days after the RFP is issued (Approximately July 8, 2000).

Upon receipt of proposals members of the JRG will be asked to sit on various committees responsible for parts of the procurement process including the technical evaluation of proposals, the evaluation of costs, the verification of contractor requirements, the development of BAFOs and other procedures to be used by the Authority.

3.9 Award of the Design/Build Contract (August – Sept., 2000)

After the Authority has completed its technical review and evaluation process, the CEO will make a recommendation and the Board of Directors will be requested to award a contract to one of the design/build teams that successfully completes the procurement process (Step.9).

Upon award of the design/build contract, the contractor will establish a series of time lines to complete the design to approximately 85%. The contractor's approach to completing the 85% design will most likely not be in the same package form that agencies are used to reviewing. Rather the contractor's designs will most likely come from the bottom up with the foundations, excavations, and other subsurface work first followed by surface work and so on. The JRG will have to adjust its review process to respond to the design/build contractor's approach and schedule.

3.10 The 85% Design Review and Final Design Freeze

After award of the contract it will take the Authority a minimum of 30 days to complete the contract negotiations and execute the contract documents. If substantial progress is made, the Authority may issue a limited notice to

proceed (NTP) to the design/build contractor so that the design activities may move forward while the contract negotiations are being completed.

A major part of the contract negotiations will be the development of a detailed schedule and process for the advancement of the design development process by the contractor and the review and approval of the 85% designs by the JRG and the Authority. The Authority will make every effort to assure a clear and straightforward design development and review process is delineated in the contract with the design/build contractor. The Authority will be especially sensitive to the needs and requests of the JRG as they relate to the 85% design review process.

As soon as the design review process is fixed and prior to the time the design/build contractor begins submitting 85% packages, the Authority will call a meeting of the JRG. At that meeting the design/build contractor's project manager and design manager will be requested for production of the 85% design packages. The JRG will be asked to comment verbally and in writing to the presentation.

As soon as the process, products, and schedule are agreed to, the design/build contractor will begin the production of packages. As discussed above, it is quite likely that the 85% packages will be different in contents than earlier packages because the design/build contractor will reconfigure the packages to conform to the construction plan. Thus, it is quite likely that the designer will be preparing initially the clearing and grubbing, foundations, and other subsurface packages, followed by surface and aerial work. The JRG will have to be flexible in order to review the packages as prepared and submitted by the design/build contractor.

Upon submission of the 85% design packages the Authority will have about 15 calendar days to review and comment. An expedited design review process will have to be worked out between the Authority and the JRG. This is due to the fact that the JRG must be prepared to receive that packages the next day after the Authority receives them, review concurrently with the Authority the packages, and transmit comments to the Authority within 5-10 calendar days after receipt of each design package. The Authority will then consolidate the comments and return them to the design/build contractor for review and incorporation.

As the design/build contractor accepts the comments and incorporates them, they will become part of the 85% design freeze. The design/build contractor will begin producing the 100% design documents. However, if the design/build contractor believes incorporation of the comments would render the design documents, construction documents, or any other contract

ATTACHMENT "B"

— CITY OF PASADENA —
PUBLIC WORKS AND TRANSPORTATION DEPARTMENT
LOS ANGELES TO PASADENA METRO BLUE LINE

PERMIT CONDITIONS AND RESTRICTIONS

DATE: _____ PERMIT NO. _____ EXPIRATION DATE: _____

PERMITTEE _____

TYPE OF WORK _____

The checked boxes below indicate the City of Pasadena (City) permit conditions and restrictions attached to this permit. Additional restrictions, if required, can be found on page 3, of this document.

- 1. The Permittee shall perform the work in accordance with the approved CITY/LOS ANGELES TO PASADENA METRO BLUE LINE CONSTRUCTION AUTHORITY (Authority) plans and specifications and permit requirements noted herein.
- 2. The City's Public Works and Transportation Department has adopted as a "Standard Specification" the STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, (latest edition), (popularly known as the "GREEN BOOK") and has developed the CITY "SUPPLEMENTS AND MODIFICATIONS", (latest edition), to be used in conjunction with the "GREEN BOOK". The requirements of these documents are applicable to all facilities under City jurisdiction.
- 3. The Permittee shall notify Underground Service Alert (U.S.A.), 1-800-422-4133, and the City, not less than two (2) working days but not more than ten (10) working days prior to start of each excavation. The Authority's Resident Engineer shall give notice to the City of the U.S.A. reference number.
- 4. The Permittee shall provide written notification to local businesses and residences of private property owners, three (3) working days prior to any construction, that may interfere with vehicular or pedestrian access to the businesses/residences both within and adjacent to the construction area. All written notifications shall be provided by the Authority's Resident Engineer to the City for review and approval prior to their issuance.

document erroneous, defective, or deficient, which would adversely affect the design or construction of the Project or the costs and completion of the schedule, the contractor must so notify the Authority within 10 working days after receipt of the comments. If the Authority is so notified by the design/build contractor, the Authority will immediately convene the JRG to discuss the issues involved. Based on the JRG analyses and those of the Authority and its consultants, the Authority shall have the right to modify the comments, unless the modification results in a "significant change" at which point the MTA must concur in the change per the provisions of SB-1847.

3.11 Authority Verification of 100% Design

Upon resolution of any issues as discussed above, the Authority will transmit to the design/build contractor its final comments on each 85% package. Within 20 working days of receipt of comments or such longer period as may be allowed by the Authority, the design/build contractor will revise and modify all such documents or materials so as to fully reflect all such comments and advance the 85% pre-final documents to 100 percent of design completion.

Prior to acceptance of the 100 percent design documents, the Authority will review the 100 percent design documents and communicate to the JRG the status of the design/build contractor's incorporation of the 85% comments and verify that there have been no significant changes. Copies of all 100 percent design documents shall be forwarded to each of the governments and agencies participating on the JRG within ten (10) working days after receipt of the documents by the Authority.

Exhibit G

List of City Properties

Parcel	Location	Acquisition	Area (ft ²)
PA110-1	Columbia at Fair Oaks	Permanent Easement	1857
PA110-2	Columbia at Fair Oaks	Permanent Easements	3685
PA131	State St.	Street Closure	TBD
PA332	Fillmore St.	Street Closure	2790
PA333	Pico St.	Street Closure	1793
PA334	Bellevue St. between Arroyo and Raymond	Street Closure	2400
PA361	Memorial Park	Right of Entry	TBD

Exhibit H
Permitting Process

EXHIBIT H

— CITY OF PASADENA — PUBLIC WORKS AND TRANSPORTATION DEPARTMENT LOS ANGELES TO PASADENA METRO BLUE LINE

PERMITTING PROCESS

In accordance with the MASTER COOPERATIVE AGREEMENT, between the CITY OF PASADENA (City) and the LOS ANGELES TO PASADENA METRO BLUE LINE CONSTRUCTION AUTHORITY (Authority), the following shall provide the permitting process for the construction of the Los Angeles to Pasadena Blue Metro Line (Project) in the City. Specifically, the terms and permitting process together with the Master Cooperative Agreement shall govern all work on the Project within the City Rights of Way, any work that affects the City Rights of Way, work on City Facilities, and work on private property within the City.

General Requirements

All work on the Project within the City that is either within or that affects the City Rights of Way or that affects or is on City Facilities requires the issuance of a permit from the Public Works and Transportation Department. This permit shall be in accordance and have complied with the terms and processes of the Master Cooperative Agreement and this Permitting Process and shall be obtained by the Authority/Authority's contractors (i.e. Permittee) a minimum of 48 hours (two full working days) prior to the start of any work within or that affects the City Rights of Way or affects or is on City Facilities. The terms of permit issuance shall include the submission of all required documents and the achieving of required City approvals a reasonable time in advance of requesting said permit. Work shall include all types of construction, excavation and exploration, testing, installation of traffic control devices and detours, and/or, in general, the setup of any barricading or other types of traffic control within the Rights of Way that affects the flow of vehicular and pedestrian traffic. Construction that affects the City Rights of Way shall include any type of construction and removals either to or that affect existing public improvements, the installation of traffic control devices and detours, and anything that affects the flow of vehicular and pedestrian traffic to reduce the City Rights of Way or capacity available from that which is existing.

All permits for work either within or that affects the City Rights of Way is on or affects City Facilities shall be obtained by the Permittee in person at the Public Works and Transportation Department, Room 212, Permit Counter, City Hall, 100 North Garfield Avenue, Pasadena, California 91109. The hours of permit issuance are from 8:00 a.m. to 5:00 p.m., Monday through Thursday and 8:00 a.m. to 12:30 p.m. on Fridays. The telephone number is (626) 744-4195.

The City shall be reimbursed its cost for the permitting process by the Authority through the issuance of Work Authorization except where deposits are required. Where deposits are required, then the specific entity doing the work shall be required to post the specified or to be determined deposit with the City.

In order to expedite and streamline the permitting process and provide notification to the City of future permit requests, the Authority and/or its authorized consultants/contractors shall provide the City a copy of the bid documents whenever bids are requested for any type of work on the Project that is either within or that affects the City Rights of Way or is on or affects City Facilities. This notification shall include a minimum of three (3) sets of bid documents including plans, specifications, and special provisions, bidders proposals, and any other document included in the bid package that would inform the City of work requirements, responsibilities, and restorations.

All work on private property within the City requires the issuance of a permit from the Planning and Permitting Department (Permitting Division), 175 North Garfield Avenue, Pasadena, California 91101. All permits shall be obtained in person. The hours of permit issuance are from 8:00 a.m. to 5:00 p.m., Monday through Thursday and 8:00 a.m. to 12:30 p.m. on Fridays. The telephone number is (626) 744-4200 (contact Mr. William Wang or Mr. Chris Wu).

A permit shall only be issued to the Permittee after the Permittee has complied with the requirements indicated herein this document. In addition, by acceptance of a permit for work in the City, the Permittee agrees to comply with all conditions and requirements specified by the permit and this document to be included in said permit by reference.

Specific Permit Requirements (Work Within or Affecting City Rights of Way or on City Facilities)

The following are the specific terms, process, and requirements for the issuance of a permit to the Permittee by the City. These are:

1. The Permittee shall complete and submit a City permit application to the City's Public Works and Transportation Department Permit Counter.
2. The Permittee (Authority's Contractors) shall have on file in the City's Public Works and Transportation Department office, an approved City Certificate of Insurance form providing all required insurance coverages. Forms can be obtained from the Public Works and Transportation Department Permit Counter, Room 212, City Hall. After completion, the Certificate of Insurance must be submitted and approved by the City's Management Systems Division - Claims and Liability Section. The details for types of insurance and coverages required can be obtained in the Public Works and Transportation Department. A copy of said certificate and instructions is attached to this permitting process as Attachment "A".
3. The Permittee shall have submitted three (3) sets of City/Authority previously approved plans, specifications, and other pertinent attachments and Contract Drawings for said permit to the City's Public Works and Transportation Department.
4. The Permittee (Authority's Contractors) shall submit and maintain a cash deposit (\$1,000 minimum or amount to be determined by the City), if required, to the City to insure the public right-of-way is kept clean, safe and with proper traffic control devices at all times. The deposit will be subject to refund or additional billing. Should the City determine and be required to provide any of these services or traffic control devices, then the City shall charge its cost against said deposit. Upon

completion of the work by the Permittee and acceptance of said work by the City, the City will process a refund for the balance of the deposit.

5. Whenever work is done within or that affects the City Rights of Way or City Facilities, the City requires the submission of security by the Permittee (Authority's Contractors) to insure all affected public improvements shall be restored in a timely manner acceptable to the City. The amount and type of security will be determined by the City. If the amount is small, cash is usually required, and in larger amounts, a Letter of Credit may be acceptable. Upon completion of the work and/or restoration of the affected public improvements and acceptance by the City of said work/restoration, the City will process a refund of the security to the Permittee. In instances where the Permittee's performance is not within contractual obligations and/or not acceptable to the City, the security can be used to restore affected public improvements.
6. All traffic requirements in the City of Pasadena shall be approved by the City including traffic control plans, detour plans, and plans of any barricading affecting the public right-of-way. Any revisions to approved traffic requirements and/or changes shall also be approved by the City. All submissions to the City shall be made by the Authority's Resident Engineer. All traffic requirements/ traffic control detour plans or plans of barricading shall be attached to each permit as an Exhibit Reference.
7. Any required public notifications in the City of Pasadena shall be approved by the City prior to issuance. Notifications shall be submitted to the City by the Authority's Resident Engineer. All approved notification letters shall be attached to any specific permits as an Exhibit Reference.
8. All work within or that affects the City Rights of Way or on City Facilities shall be governed by the following and in the order of precedence as indicated:
 - a) Permits issued by the City together with all attachments.
 - b) City/Authority approved plans, specifications, special provisions and contract drawings.
 - c) City/Authority and other Supplements and Modifications to the Standard Specifications for Public Works Construction (i.e. Green Book).
 - d) Standard Specifications for Public Works Construction, latest edition including Supplements and Standard Drawings (i.e. Green Book and Green Book Standard Drawings)

e) Reference specifications.

9. The Permittee shall be required to maintain a copy of the City's Public Works and Transportation Department permit together with the approved plans and all attachments on the job site at all times.
10. The Permittee shall comply with the attached Permit Conditions and Restrictions Document (Attachment "B") attached to this permitting process and said permit

Specific Permit Requirements (Work on Private Property)

The following are the specific terms, process, and requirements for the issuance of a permit to the Permittee by the City for Project work on private property. These are:

1. The Permittee shall complete and submit a City permit application at the public counter of the Permitting Division, 175 North Garfield Avenue, Pasadena, California 91101.
2. The Permittee shall submit proof of Worker's Compensation as required by the State of California to the location above.
3. The Permittee shall submit to the location above a minimum of four (4) sets of City/Authority previously approved plans and two (2) sets of structural calculations, specifications, and soils analysis and reports signed by the properly licensed engineers, licensed in California.
4. The Permittee shall comply with other requirements, as specified by and available at the Permitting Division.
5. The Permittee shall be required to maintain a copy of the City's Permitting Division permit together with the approved plans and all attachments on the job site at all times.

This Permitting Process may be subject to changes and revisions by either party but only with the written consent of the owner.



ATTACHMENT "A" City Department Public Works & Trans.

(Page 1 of 3)

City of Pasadena

CERTIFICATE OF INSURANCE

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy(ies) listed below. This is to certify that the following endorsement is part of the policy(ies) described below:

NAMED INSURED: (Contractor/Vendor/Permittee/Licensee)

COMPANY(IES) AFFORDING COVERAGE

Name: _____

A.

Address: _____

B.

City: _____ Zip: _____

C.

Insured Contact Person/Telephone: _____

DESCRIBE PROJECT: (Location, Bid, Title, Contract/Permit/Purchase Order #) _____

D.

COMPANY A,B,C,D.	POLICY NUMBER	COVERAGE	REQUIRED	EXPIR. DATE	MIN. COMBINED SINGLE LIMITS
		1. Automobile Liability	<u> X </u>		\$ 100,000
		2. General Liability	<u> X </u>		\$1,000,000
		a. Premises/Oper.	_____		
		b. Products/Completed Oper.	_____		
		c. Blanket Contractual	_____		
		d. Contractor's Protective	_____		
		e. Personal Injury	_____		
		3. Other: _____	_____		
		4. Excess Liability	<u> X </u>		Statutory
		5. Workers' Compensation	_____		

It is hereby understood and agreed that the City of Pasadena, its Council Members, Commissioners and each member thereof and every officer and employee of the City is endorsed to the policy as an additional insured with respect to claims arising out of the above listed project.

The policies are endorsed to state that the inclusion of more than one assured shall not operate to increase the limit of the company's liability; that insurer waives any right of contribution with other insurance which may be available to City of Pasadena; and in the event of cancellation or material change in the above coverage, the company will give 30 days written notice of cancellation or material change to the certificate holder.

REMARKS: _____

Authorized Insurance Representative

ISSUED DATE: _____

By: _____

TITLE: _____

APPROVED BY _____

AGENCY: _____

RISK MANAGEMENT: _____

ADDRESS: _____

THE CERTIFICATE HOLDER IS CITY OF PASADENA

TELEPHONE: _____

Mail to City Department or to:

City of Pasadena
Finance Department
Liability-Claims
100 N. Garfield Avenue, Rm 424
Pasadena, CA 91109-7215
(626) 744-6773

ATTACHMENT "A"

(Page 2 of 3)



CONTRACT/PURCHASE ORDER INSURANCE REQUIREMENTS

Insurance policies for persons having a contract or purchase order, other than for equipment purchase without installation, with the City of Pasadena shall comply with the following City requirements:

1. The City of Pasadena shall be given 30 days written notice of cancellation or material change. The certificate submitted will not be approved if it contains "best effort" modifiers or if it relieves the insurer from responsibility for failure to give notice. (See examples on reverse side).

2. City of Pasadena, its councilmembers, commissioners, officers, employees and agents, shall be named as an additional insured on general commercial policies.

3. Minimum general liability insurance limits shall be as follows:

Combined single limit of \$1,000,000 per occurrence.

Note: The Specification or Request for Quote may provide for lesser or greater requirements depending on the potential risk involved.

4. Minimum automobile liability insurance limits shall be \$100,000 combined single limits unless vehicles are not involved.

5. Workers' compensation insurance in statutory amounts. A separate Certificate of Insurance may be submitted. City need not be endorsed as an additional insured. If insured has no employees or employees who are subject to the labor code, please sign the following affidavit:

I certify that in the performance of the work under the permit, license agreement, or contract with the City of Pasadena which is the subject matter of this certification, I shall not, in any manner, employ any person or contract with any person so that any worker on said work would become subject to the workers' compensation laws of the State of California.

Name

Date

Vendor/Permittee

6. Insurance certificate(s) shall be provided verifying required insurance.

Specific inquiries should be addressed to:

Kathleen Banuelos
City of Pasadena
Finance Department
Liability Claims
100 N. Garfield Ave., Rm. 424
Pasadena, CA 91109-7215
(626) 744-6773
FAX (626) 594-1010

ATTACHMENT "A"

(Page 3 of 3)

CANCELLATION NOTICE DEFECTS

Insurance certificates submitted to the City of Pasadena will not be approved if they contain any of the following defects in the cancellation notices:

- 1) "Best efforts" modifiers. "Best efforts" modifiers such as:
 - a) Company will endeavor to mail.
 - b) It is the intention of the company to mail.
 - c) Company intends to notify.
 - d) Company will make every effort to mail.

The City requires a positive commitment to notify rather than a best efforts non-binding promise.

- 2) Exculpatory clauses. Exculpatory clauses which relieve the insurer from liability for failure to notify such as:
 - a) but undertakes no responsibility by reason of any failure to do so.
 - b) but failure to mail such notice shall impose no obligation or liability of any kind upon the company.
 - c) company assumes no responsibility for any mistake, or for failure to give such notice.
- 3) Unmodified Acord form. The Acord form is not acceptable unless the cancellation notice is modified as follows:

Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail _____ days written notice to the certificate holder named to the left, ~~but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.~~

Permit Conditions and Restrictions (Continued)

Permit No. _____

- 5. The normal working day shall be from 7:00 a.m. to 6:00 p.m. in residential, business, and/or commercially zoned areas, Monday through Friday. Saturday work may be allowed if authorized by the City. No Sunday work will be allowed unless specifically authorized in writing by the City. Further restrictions at specific locations within the City may be required.
- 6. The Authority's Resident Engineer shall submit to the City the Permittee's haul route plans, clearly showing the proposed haul routes and truck staging areas, fifteen (15) working days prior to actual start of operation for review and approval.
- 7. The Permittee shall provide written notification to the City ten (10) working days prior to implementing any street, traffic lane or sidewalk closures which are on the approved drawings. Any additional street closures or modifications to existing street closures shall require prior City approval and notification and be consistent and compatible with the approved Worksite Traffic Control Plans. Notifications shall be submitted to the City through the Authority's Resident Engineer for review and approval prior to issuance.
- 8. The Permittee shall be responsible for installation, maintenance and removal of all traffic control devices as shown on City approved Worksite Traffic Control Plans. The City shall notify the Authority's Resident Engineer of any unsafe conditions or traffic control facilities which need to be corrected. If the Permittee fails to immediately comply with the request (within the work-shift notified or within eight (8) hours of notification), the City shall, with its own forces or with an outside Contractor, make the corrections or adjustments, and shall either deduct the expenses from the Permittee's deposit or bill the Permittee for the work.
- 9. The Permittee shall provide and maintain safe and adequate pedestrian access and circulation throughout the construction areas. Pedestrian crossings for street construction shall be provided with adequate signage to direct pedestrian traffic through the construction areas. The minimum walkway width shall be ten (10) feet, or shall match the existing sidewalk width adjacent to the site, [but not less than five (5) feet], to accommodate the physically handicapped, unless otherwise authorized in writing by the City.
- 10. The Permittee shall not allow any public street, including those authorized for temporary or permanent closure, to be used by its employees or its subcontractors for parking personal vehicles unless otherwise authorized in writing by the City. All workers' vehicles shall be parked in local off-street parking facilities or in contractor supplied off-site parking areas, so as not to restrict access to local businesses or cause restrictions to residential areas.
- 11. The Permittee shall not use the City Rights of Way to store or stockpile materials, excavation debris, spoils, or equipment unless specifically permitted by the City.
- 12. The Permittee shall take all necessary measures to continuously control dust nuisance, in accordance with applicable Air Quality Management District Standards, Standard Specifications for Public Works Construction Section 200-2.5.4, or Authority Specifications, whichever is the more controlling document.

Exhibit I

Not Used

Exhibit J

**MEMORANDUM OF UNDERSTANDING
BETWEEN
LOS ANGELES TO PASADENA BLUE LINE
CONSTRUCTION AUTHORITY
AND THE
BLUE LINE CONSTRUCTION
FIRE/LIFE SAFETY COMMITTEE**

WHEREAS, a route alignment chosen for the Pasadena Blue Line Light Rail Transit (LRT) System passes through geographic areas administered by the undersigned fire/life safety jurisdictions, each of which has separate district fire service responsibilities, and

WHEREAS, the California Public Utilities Commission (hereinafter called "CPUC") is vested with the authority and responsibility to regulate and approve rail transit system design, construction, and operation with regard to safety appliances and procedures, and the Los Angeles to Pasadena Metro Blue Line Construction Authority (hereinafter called "Authority") is governed by the rules, regulations, and orders of the CPUC in this regard, and

WHEREAS, the California State Fire Marshal, in accordance with California Code of Regulations, Title 19, Subchapter 1, is vested with the authority and responsibility to regulate and enforce minimum standards for the prevention of fire, explosion and panic for places of assemblage where fifty (50) or more gather for purposes of awaiting transportation, and the Authority is subject to these regulations, and

WHEREAS, the Chief of any City or County Fire Department or Fire Prevention District, and their authorized representatives, are vested with the authority and responsibility to enforce the rules and regulations of the State Fire Marshal in their respective jurisdictions, and

WHEREAS, the experience of other municipalities who have designed, built, and operated transit systems, has proven the need for the continuous exchange of information between the affected jurisdictions and the designer/constructors of the fixed guideway transit systems, to establish a commonality of purpose, to maintain efficient channels of communication, and to allow input of design preferences early in the design process, and

WHEREAS, representatives of the undersigned jurisdictions have heretofore participated in the establishment of a Fire/Life Safety Criteria for the LRT system, using national standards, jurisdictional laws and ordinances as guidelines.

BE IT AGREED THAT:

A Fire/Life Safety Committee (hereinafter referred to as the "FLSC") is established to facilitate the interchange of information, make evaluations and recommendations, and promulgate Fire/Life Safety Criteria, for the purpose of minimizing the fire and life safety hazards to patrons, employees and property.

Permanent members of the FLSC will include a representative of the Authority, who will act as chair-person of the FLSC, and a representative of the Los Angeles City Fire Department, the City of South Pasadena Fire Department, the City of Pasadena Fire Department, and the Consolidated Fire Protection District of Los Angeles County.

The FLSC shall provide input to comments on fire protection, emergency preparedness plans and procedures, and system safety plans.

The FLSC shall support inspection of the transit system elements for compliance with the established Fire/Life Safety Criteria.

The FLSC shall participate in the design review, performance evaluation, and acceptance tests of emergency simulations on the system.

The FLSC shall assist in gaining and understanding and cooperation of the various public service departments within Los Angeles County.

The FLSC shall serve as the prime interface and coordination point for fire/life safety information and issues between the fire service jurisdictions and the Authority.

The signatures below confirm agreements with the Fire/Life Safety Committee's duties as delineated in this Memorandum of Understanding between the signatories and the Authority.

APPROVED:

CONSOLIDATED FIRE PROTECTION
DISTRICT OF LOS ANGELES COUNTY

LOS ANGELES CITY FIRE DEPARTMENT

CITY OF SOUTH PASADENA FIRE DEPARTMENT

CITY OF PASADENA FIRE DEPARTMENT

METROPOLITAN TRANSPORTATION AUTHORITY

LOS ANGELES TO PASADENA METRO
BLUE LINE CONSTRUCTION AUTHORITY

RESOLUTION NO. 8030

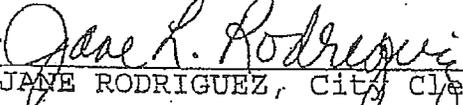
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASADENA APPROVING THE MASTER COOPERATIVE AGREEMENT WITH THE LOS ANGELES TO PASADENA METRO BLUE LINE CONSTRUCTION AUTHORITY

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Pasadena that:

The 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, attached hereto, is hereby approved, the City Manager is authorized to execute said Agreement on behalf of the City, and the City Clerk is directed to attest her signature and seal on said Agreement.

Adopted by the regular meeting of the City Council on the 13th day of August 2001, by the following vote:

AYES: Councilmembers Gordo, Haderlein, Holden, Tyler,
Vice Mayor Little, Mayor Bogaard
NOES: None
ABSENT: Councilmembers Madison, Streater
ABSTAIN: None


JANE RODRIGUEZ, City Clerk

Approved as to form:



NICHOLAS G. RODRIGUEZ
Assistant City Attorney

cooperation. Sanctions may include, but are not limited to, the payment of another Party's attorneys' fees and costs incurred to secure the required cooperation.

ARTICLE 6

BETTERMENTS

6.0 Payments for Betterments. The Authority shall be paid for any Betterments requested by the City. The amount of the payments for Betterments, if any, shall be estimated by the Authority based on City's request(s) for Betterments at the Basis for Design/Built Contracting review and during the pre-final Design Reviews.

After City has reviewed the estimated cost, the City's Representative shall inform the Authority's Representative of any Betterments the City wants included in the Project. Along with the request for Betterments, the City shall commit to provide funds to implement the Betterments so that the design and construction of the Betterments can be estimated by the Design/Build Contractor and considered for inclusion in the Project. The Authority agrees to incorporate any Betterments requested and paid for by the City, subject to MTA approval if such Betterments constitute a Significant Change.

The City's request for a Betterment, if approved and accepted by the Authority, shall obligate City to reimburse Authority for direct and indirect costs as described below. Payment shall be received by the Authority for work performed by the Contractor and accepted by the Authority within 60 days of receipt of an invoice by City and no invoice shall request payment in advance of the work. Nothing herein shall prevent City from utilizing the procedures in Article V if City believes a Betterment was not constructed in accordance with the plans and specifications.

(a) Direct Costs incurred by the Authority for activities or work performed including but not limited to those associated with Design, project review, inspection, processing, and contract administration. Direct costs shall include all direct labor and other direct costs spent specifically for work performed under this Agreement

(b) Indirect administrative and overhead costs incurred by the Authority for activities or work performed including but not limited to design and construction of Betterments. The Authority's overhead rate shall be established through an independent audit in compliance with Federal procedures described in Article 4.5. No profit or administrative fees on direct labor and overhead shall be allowed on work performed by Authority employees. Authority consultants and contractors may perform any work so authorized. Consultants and contractors engaged by the Authority to perform

work covered by this Agreement shall comply with all applicable labor and other laws, grants, and agreements. Consultant fees and profits shall be charged in accordance with the Authority's practice on existing contract limits.

ARTICLE 7

INDEMNIFICATION AND WARRANTIES

7.0 Indemnification of the City. The Authority agrees to indemnify, defend and hold harmless the City, its officers, 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 (including allegations thereof) arising from or connected with Design and Construction performed by, or under the management or control of the Authority. Any rights of the Authority hereunder to inspect, review and/or approve any Design or Construction performed by City or any Other Impacted Parties shall not be deemed to render such Design or Construction under the management or control of the Authority. The Authority's obligations under this Section 7 shall survive the termination or expiration of this Agreement, unless specified otherwise.

7.1 Indemnification of the Authority. The City agrees to indemnify, defend and hold harmless the 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 Design and Construction performed by, or under the management or control of the City. Any rights of the City hereunder to inspect, review and approve any Design or Construction performed by the Authority or any Other Impacted Parties shall not be deemed to render such Design or Construction under the management or control of City.

7.2 Indemnification of Both City and Authority. Obligations under this Article 7.0, 7.1 and 7.3 shall survive the termination of this Agreement. 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 Government Code Section 895 of said Code, the Parties hereto, as between themselves and pursuant to the authorization contained in Government Code Sections 895.4 and 895.6 of said Code, will each indemnify and defend the other for 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 Article 7.0, 7.1 and 7.3 hereof. The provisions of Section 2778 of the California Civil Code are a part hereof as if fully set forth herein.

7.3 Insurance Program - The Authority shall provide an insurance program for the Design and Construction of the Project (where Project is defined as Project Facilities Improvement Program for new construction, additions and renovations Los Angeles to Pasadena Metro Blue Line Phase I, including areas adjacent to the location where incidental operations are performed, excluding permanent locations of any insured party other than owner) and will enroll the City in the Authority's OCIP and indemnify the City pursuant to the terms of the OCIP, et al per Article 11.0. to the limits provided herein:

a. Workers' Compensation and Employers' Liability, with an Employers Liability limit of \$1,000,000.

b. Commercial General Liability, provides coverage for bodily injury, property damage, personal injury and products and completed operations, with a limit of \$2 million per occurrence.

c. Railroad Protective Liability, with limits of \$2 million per occurrence and \$6 million aggregate.

d. Excess Liability, provides \$100 million coverage in excess of "a", "b", and "c." for each occurrence and in the aggregate.

e. Professional Liability, provides liability coverage negligent acts, errors and omissions, and pollution protection for all design team members, construction management consultants, environmental consultants, and all of their respective sub-consultants that are rendering Professional Services (where Professional Services is defined to mean those services that the consultant is legally qualified to perform for others for a fee including, but are not limited to, architecture, engineering, land surveying, landscape architecture, construction management, safety consulting, project management, program management, planning, environmental consulting, pollution services or as otherwise defined by endorsement to the Authority's OCIP) with limits of \$50 million per occurrence and in the aggregate.

f. Builder's Risk, \$100,000,000 Builder's Risk Policy insuring property in the course of construction of the Project for direct physical loss, including flood & earthquake. Any non-Authority owned equipment used on the Project is not covered by the Authority's OCIP and must be covered by the equipment's owner.

Sections a, b, c and d above in the Insurance Program will be in place from November 19, 1999 and remain in force for the Project's duration plus 5 years after the completion of the Project. Section e above in the Insurance Program, the Professional Liability Policy, will be in place from November 19, 1999 and will remain in force for the project's duration with a 10-year Discovery Period after completion.

7.4 Warranties. In connection with Rearrangements and City Projects and any work performed by the City or its contractors, warranties supplied by contractors shall be made for the benefit of both the City and the Authority. Additionally and again in connection solely with Rearrangements and City Projects and any work performed by the City or its contractors, the City and the Authority each warrant to the other for a period of one (1) year from and after acceptance of the work that any work performed by or for them shall be free from defect; this limited warranty is the sole warranty given by the City and/or the Authority, and, pursuant to this warranty, and for the warranty period only, the city or the Authority, as the case may be, shall remedy any such discovered defect at its sole expense. Said remedy will be commenced and completed, if reasonably feasible, within ten (10) Days of written notice to the warranting party.

7.5 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 8

MISCELLANEOUS PROVISIONS

8.0 Approvals. Except as otherwise provided herein, where this Agreement requires approval, consent, permission, satisfaction, agreement or authorization by either Party, such approval, consent, permission, satisfaction, agreement or authorization shall not be unreasonably withheld.

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

8.1 Counterparts. This Agreement may be executed in several counterparts, and all counterparts so executed shall constitute one Agreement, binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the

original or the same counterpart.

8.2 Survival of Rights. Neither party shall have the right to assign any of its rights, interests or obligations under this Agreement, without the consent of the other party. This Agreement shall be binding upon, and, as to permitted successors or permitted assigns, inure to the benefit of, the City and the Authority and their respective successors in all cases whether by merger, operation of law or otherwise.

8.3 Severability. In the event any Section, or any sentence, clause or phrase within any Section, is declared by a court of competent jurisdiction to be void or unenforceable, such sentence, clause, phrase or Section shall be deemed severed from the remainder of this Agreement and the balance of this Agreement shall remain in full force and effect.

8.4 Notification or Notices. Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if personally delivered, transmitted by facsimile (with mechanical confirmation of transmission), or deposited in the United States mail, registered or certified, postage prepaid, addressed to the parties' addresses set forth below. Notices given in the manner provided for in this Article 8.4 shall be deemed effective on the third day following deposit in the mail or on the day of transmission or delivery if given by facsimile or by hand. Notices must be addressed to the parties hereto at the following addresses, unless the same shall have been changed by notice in accordance herewith:

If to the City:

City of Pasadena
Attention: City Manager
100 N. Garfield Avenue
Pasadena, CA 91109

With a Copy to:

City of Pasadena
Attention: Director of Public Works
100 N. Garfield Avenue
Pasadena, CA 91109

If to the Authority:

Los Angeles to Pasadena Metro Blue Line Construction Authority
625 Fair Oaks, Suite 200

South Pasadena, California 91030
Attn: Mr. Richard D. Thorpe, CEO
Fax: (626) 799-8599

With a Copy to:

Richards, Watson & Gershon
333 South Hope Street, 38th Floor
Los Angeles, California 90071
Attn: Steven L. Dorsey, Esq. and
Michael Estrada, Esq.
Fax: (213) 626-0078

8.5 Statutory References. All statutory references in this Agreement shall be construed to refer to that statutory section mentioned, related successor sections, and corresponding provisions of subsequent law, including all amendments.

8.6 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.

8.7 Article Headings. The captions of the Articles or Sections in this Agreement are for convenience only and in no way define, limit, extend or describe the scope or intent of any of the provisions hereof, shall not be deemed part of this Agreement and shall not be used in construing or interpreting this Agreement.

8.8 Governing Law. This Agreement has been executed by the Authority and the City in the State of California and this Agreement shall be governed by and construed according to the laws of the State of California, without giving effect to the principles of conflicts of law thereof.

8.9 Pronouns and Plurals. Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine and neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

8.10 Time of the Essence. Except as otherwise provided herein, time is of the essence in connection with each and every provision of this Agreement.

8.11 Legal Rights. This Agreement shall be governed by and construed enforced in accordance with the laws of the State of California. The rights and remedies of the Authority and the City for default in performance under this Agreement, the

Special Permitting Process, or any Work Authorization are in addition to any other rights or remedies provided by law.

8.12 Bonds/Fees. Except as specifically agreed to in this Agreement, the City waives and relinquishes all of its rights, if any, to seek or obtain bonds, fees or other security or payments from the Authority or its contractors.

8.13 Further Actions. The City and the Authority hereby agree to execute, acknowledge and deliver such additional documents, and take such further actions, as may reasonably be required from time to time to carry out each of the provisions, and the intent, of this Agreement.

8.14 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, 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.

8.15 Third-Party Beneficiaries. There are no third-party beneficiaries of this Agreement. This Agreement is made and entered into for the sole protection and benefit of the parties hereto, and no other person or entity shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with this Agreement.

8.16 Incorporation of Exhibits. Every exhibit to which reference is made in this Agreement is hereby incorporated in this Agreement by this reference.

8.17 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. Each party further agrees and represents and warrants that the execution, delivery, and performance by it of this Agreement does not and will not:

- (a) require any consent or approval not heretofore obtained of any person or judicial or administrative body;
- (b) violate any order, writ, judgment, injunction, decree, determination

- or award having applicability to such party;
- (c) result in a breach of or constitute a default under, cause or permit the acceleration of any obligation owed under, or require any consent under, any indenture or any agreement, contract, lease, or instrument to which such party is bound or affected; or
 - (d) there are no orders, judgments, injunctions, awards, decrees, rulings, charges or writs of any Governmental Authority in effect preventing the consummation of, nor any pleadings filed in connection with any actions seeking an injunction against, any of the transactions contemplated by this Agreement.

8.18 Consistent Project Enhancements. The City has agreed to the terms and conditions herein, based upon the Current Scope of the Project and the agreement of the Authority to make every effort to apply project enhancements, if any uniformly across the system in each of the three city jurisdictions, wherein if Authority funded enhancements are increased in one area of the project, like enhancements will be applied to remaining portions of the project to the extent that such enhancements are requested by the City and funding is available for said enhancements.

8.19 Binding Obligation. This Agreement is when executed and delivered, the legal, valid and binding obligation of the parties hereto.

8.20 Funding Sources. The City shall at the request of the Authority, assist in identifying and securing funds for the Project. The City and the Authority shall work jointly to optimize funding alternatives for the Project.

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

CITY OF PASADENA

By: *Cynthia J. Kurtz*
Cynthia J. Kurtz, City Manager

ATTEST:

APPROVED AS TO FORM:
Act. City Attorney 6/31/01

Shawn McCauley
for JANE L. RODRIGUEZ, OMC
CITY CLERK

By: *[Signature]*
(Rodriguez)

LOS ANGELES TO PASADENA METRO BLUE LINE
CONSTRUCTION AUTHORITY

By: *[Signature]*
Richard D. Thorpe, Chief Executive Officer

APPROVED AS TO FORM:
General Counsel

By: *[Signature]*