

# **Attachment 2**

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**MEMORANDUM OF AGREEMENT**  
**~~FOR THE ADVANCE UTILITY~~**  
**FOR THE ADVANCE UTILITIES RELOCATION PHASE**  
**OF THE PURPLE LINE EXTENSION PROJECT – SEGMENT 1**  
**BETWEEN**  
**THE CITY OF BEVERLY HILLS**  
**AND**  
**THE LOS ANGELES COUNTY METROPOLITAN**  
**TRANSPORTATION AUTHORITY**

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## Exhibits

A -- Form 60

B -- City of Beverly Hills Conditions for Approval of Utility Relocation Permits

C -- 5-Step Noise Control Plan

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**MEMORANDUM OF AGREEMENT**  
**FOR THE ADVANCE UTILITIES RELOCATION PHASE**  
**OF THE PURPLE LINE EXTENSION PROJECT – SEGMENT 1**  
**BETWEEN**  
**THE CITY OF BEVERLY HILLS**  
**AND**  
**THE LOS ANGELES COUNTY METROPOLITAN**  
**TRANSPORTATION AUTHORITY**

THIS MEMORANDUM OF AGREEMENT (“Agreement”), dated, \_\_\_\_\_, 2014 (“Effective Date”) is made by and between the Los Angeles County Metropolitan Transportation Authority (the “LACMTA”), and the City of Beverly Hills (the “City”); collectively referred to herein as “the Parties.”

**ARTICLE I**  
**Recitals**

The City and the LACMTA desire to develop this ~~Memorandum of~~ Agreement to accommodate the Advanced ~~Utility~~ Utilities Relocation Phase (“AUR”) of Segment 1 of the Purple Line Extension Project ~~–Segment 1–~~ (the “Project”). ~~It is anticipated that this Agreement will form the basis for two or more subsequent agreements to address a similar scope through the completion of Segment 1.~~ This Agreement covers the AUR work required for the Project. The City and the LACMTA anticipate that they will enter into additional separate agreements to cover the additional work required for the completion of the Project.

The ~~Purple Line Extension~~ Project ~~–Segment 1–~~, is defined as a Heavy Rail Project extending from the existing Wilshire/Western ~~station~~ Station and traversing through the City of Los Angeles and the City of Beverly Hills and ending at the La Cienega Station. The LACMTA has informed the City that the ~~Advanced Utility Relocation Phase~~ AUR work is necessary to relocate and rearrange existing utilities that interfere with the construction of the permanent transit facilities anticipated to be constructed during the construction of ~~Segment 1–~~ the Project.

The scope of the AUR work covered by this Agreement is defined as all work associated with the design, construction and cut over of utility relocations in the City required by and for the construction of the Project. This includes (but is not limited to) pre-construction investigation work (survey, potholing and other investigation work) and encompasses the following utilities: water, sewer, storm drain, and power ductbanks to be constructed under LACMTA Contract C1056. The AUR work also includes (but is not limited to) gas line relocations to be constructed by the Southern California Gas Company (or its contractor), communications line relocations to be constructed by AT&T (or its contractor), power line relocations to be constructed by Southern California Edison (or its contractor), telecoms and fiber optic ductbank and cabling relocations and any other utility relocations performed by third parties that are required for the Project.

The LACMTA proposes to utilize various methods of project delivery to design and construct the relocation and rearrangement of existing City utilities and various existing public/private

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utilities. Portions of these utilities will pass in, on, under, over or along public ~~streets,~~ ~~(ROW)rights-of-way~~ of the City ~~of Beverly Hills~~.

The Parties desire to cooperate ~~to the end that such relocations and rearrangements are consistent with City requirements and that~~so that, among other things: (1) when relocations and rearrangements are required, both Parties mutually agree on the scope of relocations and rearrangements; (2) the City has assurances that it will receive reimbursements for costs; (3) the LACMTA has assurances that the City will issue permit(s) and review submittals in a timely fashion and perform all appropriate inspections; and (4) the LACMTA has assurances that the standards, conditions and mitigation measures required for the AUR work is compatible with completing the work as scheduled. Specifically, the AUR work is the first phase of the Project and it is critical that the AUR work happen according to schedule to ensure the timely completion of the Project. It is essential that the AUR work under LACMTA Contract C1056 begin on its scheduled start date of August 21, 2014. It is also essential that the additional AUR work happen according to schedule specifically, gas line relocations to begin in November 2014, communications line relocations to begin in January 2015 and power line relocations to begin in October 2015.

~~This Memorandum of Agreement for the Advanced Utility Relocation Phase of the Purple Line Extension Project—Segment 1, addresses the following:~~

- ~~(a) — designation of the City Representative and LACMTA Representative and the development of an emergency contact list;~~
- ~~(b) — procedures which LACMTA and City will follow in identifying, planning, designing and effecting relocations and rearrangements of City utilities and various public and private utilities, including plan review, permitting process and permit fees;~~
- ~~(c) — manner in which City will be reimbursed for the reasonable costs for activities associated with the Project;~~
- ~~(d) — Construction staging and traffic control requirements;~~
- ~~(e) — Allowable work hours and workdays, including the process for requesting work outside of the allowable work hours/days;~~
- ~~(f) — Noise limits, noise and light spill mitigation measures;~~
- ~~(g) — Advanced notification process for all construction activities, including any planned service interruptions, and establishment of a public hotline;~~
- ~~(h) — Inspection during construction;~~
- ~~(i) — Operation and maintenance of City utilities;~~
- ~~(j) — Indemnity, Warranties and Insurance requirements;~~

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## ~~(k) — Federal and Other Requirements.~~

By this Agreement the LACMTA does not concede that it is required by law to obtain permits for the AUR work. Nonetheless, in an effort to work cooperatively with the City on the completion of the Project, the LACMTA, through this Agreement, is endeavoring to obtain permits as desired by the City and as outlined in this Agreement.

## ARTICLE II Term ~~of~~Of Agreement ~~and~~And Definitions

The ~~initial~~ term of this Agreement (~~the “Initial Term”~~) shall commence on the Effective Date and shall terminate ~~on December 31, 2015. This Agreement shall automatically be renewed for one year terms commencing on the day following the last day of the Initial Term and on each subsequent anniversary of such day, unless either Party provides written notice of termination to the other no later than ninety (90) days prior to the end of any term (including the Initial Term)~~when the AUR work is completed, accepted and a notice of completion is finalized.

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

- (a) “Advanced ~~Utility~~Utilities Relocation Phase” or “AUR” means ~~that phase of the Project during which LACMTA will relocate and rearrange existing utilities that interfere with the construction of the permanent transit facilities anticipated to be constructed during the construction of the Project~~the Advanced Utilities Relocation Phase of the Purple Line Extension Project – Segment 1, as described in Article I of this Agreement and which is the subject of this Agreement.
- (b) “Approval” except as otherwise provided, means written approval by the City Representative or the LACMTA Representative, as applicable.
- (c) “AUR Schedule” means compliance to the schedule dates in Article I.
- (d) “Betterment” is defined as an upgrade (i.e. increasing capacity, capability, durability, efficiency or function) to an existing Facility, Replacement Facility or component thereof, which is requested by the City to be incorporated into the Project, and agreed to by the LACMTA (whether constructed by the LACMTA or by the City or by their respective contractors), which will increase or upgrade the service capacity, capability, appearance, efficiency or function of such Replacement Facility over that which was provided by the corresponding Conflicting Facility. Betterments shall be entirely financed at the expense of the City. The term “Betterment” shall include any design or construction changes requested by the City in order to conform to revisions or additions to City Standards after the release for the Request for Proposal (“RFP”) which encompasses the work at issue. The term “Betterment” shall also include any upgrade to a Conflicting Facility included in a Rearrangement, which upgrade is requested by the City and agreed to by the LACMTA, that is not otherwise excluded from the definition of Betterment as set forth below. Notwithstanding the foregoing, the following shall not be considered Betterments:

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(i) An upgrade, which the Parties mutually agree, will be of direct and principal benefit to the construction or operation of the Project;

(ii) An upgrade resulting from design or construction in accordance with the applicable City Standards and ordinances in effect prior to the release of the RFP encompassing the work at issue;

(iii) Measures to mitigate environmental impacts identified in the Project's Final Environmental Impact Report or Statement and any supplemental environmental reports;

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

(v) A replacement or rearrangement that is the consequence of changes made by the LACMTA or its designers/contractors after the release of the RFP for the work at issue.

- (e) ~~(e)~~ “City Facility” means a ~~Facility~~facility under the ownership or the exclusive operation of the City. City ~~facilities~~Facilities may include, but are not limited to, public streets, curbs and gutters, sidewalks, traffic signals, signing, roadways, bridges, retaining walls, alleys, water lines, storm drains, sanitary sewers, parking lots, parks, public landscaping and trees, traffic control devices/systems, street lighting systems, and public, police and fire alarm systems.
- (f) ~~(d)~~ “City Representative” means the person designated by the City Manager pursuant to Article III of this Agreement, to represent the City who shall manage and coordinate interactions between the City and the LACMTA concerning the Project and each component thereof in a timely manner, in accordance with Article III.
- (g) ~~(e)~~ “City Rights-of-Way” means real property owned by the City, whether title is held in fee, easement, right-of-way, or otherwise.
- (h) ~~(f) “City Standards” means~~ “City Standard” means the latest editions of the City’s design standards and ordinances in effect at the time of the RFP release and includes the rules, regulations, ordinances and codes of the City, including, but not limited to ~~the City’s standard, standards~~ plans, specifications, general provisions, and approved materials for public works projects. Any design or construction changes requested by the City in order to conform to revisions or additions to City Standards after the release of the RFP which encompasses the work at issue shall be considered Betterments.
- (i) “Conflicting Facility” means an existing City Facility, which the City and the LACMTA determine is so situated as to require Rearrangement in order to efficiently design and construct or operate the Project without adversely impacting the operation and maintenance of that City Facility, and runs parallel or perpendicular to the Station and will be at or rearranged to a location away to

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allow for placement of shoring, decking or other Project related scope unless otherwise demonstrated that no adverse impacts to the existing facilities will occur due to the shoring, decking placement or other Project related scope and both Parties agree

- (j) ~~(g)~~—“Construction” means the work of removal, demolition, replacement, alteration, realignment, building, fabricating, landscaping and all new fixed facilities to be built and systems and equipment to be procured and installed that are necessary to complete the Project in accordance with approved plans and specifications.
- (k) ~~(h)~~—“Construction Staging Plans” means construction phasing/sequencing and traffic management plans developed ~~pursuant to Article VI~~for the AUR work.
- (l) ~~(i)~~—“Costs” shall mean ~~Indirect Costs and Direct Costs~~all eligible direct and indirect costs incurred by the City and the LACMTA.
- (m) ~~(j)~~—“Days” means calendar days including Saturdays, Sundays, and legal holidays. See also definition of Working Days.
- (n) ~~(k)~~—“Design” means ~~that~~ engineering, architectural and other design work and the resulting maps, plans, specifications, special provisions, drawings, calculations, computer software, and estimates which are needed to construct the Project.
- (o) “Design Development” means the part of the Design process, which validates schematic design concepts and system criteria and develops a clear indication of design solutions for requirements outlined in the preliminary engineering design phase. At the completion of Design Development, major features of the architectural, structural Design and third party interfaces have advanced in conjunction with performance specifications, thereby providing the basis for Final Design.
- (p) “Design Review” means the process of critical evaluation of plans and specifications by the LACMTA, the City, and others as specified by the LACMTA, and that are developed by LACMTA’s consultants and/or Design contractor which are necessary for the Construction of the AUR work of the Project.
- (q) ~~(l)~~—“Direct Costs” means labor ~~costs~~Costs and ~~costs~~Costs of purchasing equipment and/or materials, without markup or overhead of any kind.
- (r) ~~(m)~~—“Effective Date” ~~shall mean~~means the date set forth in the Preamble.
- (s) ~~(n)~~—“Facility” means real or personal property now or in the future to be located within the City ~~Right~~Rights-of-Way, including but not limited to, roadways, pipes, mains, services, meters, regulators and any equipment, apparatus and/or structure appurtenant thereto or associated therewith.

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- (t) ~~(o)~~ “Fiscal Year” means July 1 through June 30.
- (u) ~~(p)~~ “~~Governmental Authority~~” means ~~any government or political subdivision, whether federal, state, or local, or any agency or instrumentality of any such government or political subdivision, or any federal, state, or local court or arbitrator, other than the City and LACMTA.~~ “Final Design” is defined as the final phase of the Design process, which includes the detailed Design and technical specifications for all temporary and permanent project facilities within the City’s jurisdiction. This phase addresses and resolves all Design review comments, Construction issues, and third party comments, and finalizes all engineering, architectural, and systems necessary for completion of the Construction documents. The detailed Final Design may be furnished either by a contractor or by the LACMTA’s Design consultant. The LACMTA shall review all submittals prior to submitting to the City to ensure they are complete and have addressed any prior comments by the City.
- (v) ~~(q)~~ “Indirect Costs” means ~~all costs that are not Direct Costs, including but not limited to administration (such as overhead, salaries and benefits), legal, and program management.~~ administrative and overhead costs.
- (w) ~~(r)~~ “LACMTA Representative” means the person designated by the Chief Executive Officer of the LACMTA pursuant to Article III of this Agreement to represent the LACMTA in all dealings with the City for purposes of this Agreement, in accordance with Article III.
- ~~(s)~~ —“Laws” means ~~any law, rule, regulation, ordinance, statute, code or other requirement of any Governmental Authority.~~
- (x) ~~(t)~~ “Project” means ~~the Advanced Utility Relocation Phase~~ Segment 1 of the Purple Line Extension Project —~~Segment 1,~~ which extends from the existing Wilshire/Western Station and ends at the La Cienega Station, as described in Article I of this Agreement.
- (y) ~~(u)~~ “Project Right-of-Way (ROW)” means the real property required to relocate and rearrange utilities to complete the Project.
- (z) ~~(v)~~ “Rearrangement” means the alteration, removal, replacement, reconstruction, support or relocation of a City Facility or portion thereof, whether permanent or temporary, which facility the LACMTA determines must be rearranged in order to complete the Project.
- (aa) “Replacement Facility” means a facility, which may be constructed or provided under the terms of this Agreement as a consequence of the Rearrangement of a Conflicting Facility or portion thereof, and which meets applicable City Standards as set forth herein.
- (bb) “Substitute Facility” means a facility, which is equal, in terms of service and/or capacity, to the corresponding Conflicting Facility that requires Rearrangement

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and which meets applicable City Standards as set forth herein and has similar design.

- (cc) ~~(w)~~ “Traffic Management Plan” means 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, incorporating base conditions, temporary conditions, ~~construction~~Construction impact areas, and all temporary/permanent traffic controls and advisory signage. On a larger scale, a TCP addresses operation along alternate routes which bypass(es) 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.
- (dd) ~~(x)~~ “Work Order” means the document(s) which the LACMTA will issue to each appropriate City department, bureau, division or other constituent entity authorizing funding upon agreement by the Parties as to ~~Scope~~a defined scope of Workwork and as to applicable Direct ~~and Indirect Costs, which~~Costs. A Work Order document authorizes the City to perform ~~any~~ work, and to be reimbursed therefor, on the preparation and/or review of ~~design~~Design plans, operation plans, or other agreed to work plans, and to provide materials, labor inspection, and/or Rearrangements under the terms and conditions of this Agreement. Work orders shall be issued to reimburse only actual allowable, allocable and reasonable costs with no profits. Indirect Costs shall only be reimbursable if the City has an audited and federally approved CAP.
- (ee) ~~(y)~~ “Working Days” means those days that Beverly Hills City Hall is open for business.
- (ff) “1056 Contract” means the LACMTA Contract C1056 for the Construction of water, sewer, storm, drain, and power ductbanks for AUR work of the Project.

## ARTICLE III

### **Designation ~~of~~Of The City Representative ~~and~~And The LACMTA Representative; Emergency Contact List**

The City Manager shall designate as the City Representative a person, or the holder of a specified office or position, to act as the City Representative for the Project. The City Representative(s) will have the responsibility to manage and coordinate the City interaction with the LACMTA concerning the Project and each component thereof in a timely manner. The City Representative(s) will also have the responsibility to manage the City review and approval process for Design and Construction documents submitted by the LACMTA for the City’s review and approval. The City may change its designated representative by providing seven (7) days written notice to the LACMTA.

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The Chief Executive Officer of the LACMTA shall designate a person, or the holder of a specified office or position, to act as the LACMTA Representative for the Project. The LACMTA Representative will have the responsibility to manage and coordinate the LACMTA's interaction with the City, and to cause production of the necessary Design and Construction documents for City review and/or approvals as called for under this Agreement, to issue Work Orders, and to make Approvals as required by this Agreement. The LACMTA may change its designated representative by providing seven (7) days written notice to the City.

As authorized by this Agreement, the LACMTA Representative and the City Representative shall establish general guidelines, working relationships, administrative policies, standards of ~~design~~Design and ~~construction~~Construction, approval procedures with respect to Design review, coordination of Construction, and Rearrangement of City Facilities pursuant to this Agreement in order to permit the timely ~~design~~Design, Construction and implementation of the ~~Project~~AUR work.

The LACMTA Representative and the City Representative shall establish an emergency contact list. Contact information for all organizations involved in the Project or organizations that have ~~facilities~~Facilities in the Project area including agencies, utility companies, contractors, sub-contractors, consultants and any other entity shall be included. The ~~parties~~Parties shall request that each organization shall designate an emergency contact process that provides for the availability of resources twenty-four (24) hours per day/seven (7) days per week in the event of an emergency.

## ARTICLE IV

### ~~ARTICLE IV~~

#### **~~Procedures for Identifying, Planning, Designing and Effecting Relocations and Rearrangements including Plan Review, Permitting And Submittal Process and Permit Fees~~**

~~Coordination of Design and the development of the Design plans and specifications shall be accomplished by the LACMTA Representative (who shall confer from time to time with the City Representative). LACMTA (or its consultants and/or contractors) shall Design all Rearrangements.~~

~~LACMTA's plans and specifications~~The plans, specifications and permit applications of the LACMTA, its consultants, its contractors or the respective utility owners working under a LACMTA issued Work Order for Construction and Rearrangement located within, on, under or over City Rights-of-Way for the AUR work shall be submitted for the City's review and comment and approval as provided in~~under this Section. Notwithstanding, the City Standards shall not be superseded by any LACMTA contract document or this MOA.~~Article.

The LACMTA, its consultants, its contractors or the respective utility owners working under a LACMTA issued Work Order will develop and gain technical approval of the scope of work for the AUR work from City technical staff. The AUR work for the 1056 Contract will be grouped into a consolidated application for one permit to cover water, sanitary, sewer, storm drain and power utility relocations. Separate permit applications will be submitted for gas relocation,

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communications relocation and power relocation work. The City Council will vote on approval for each of the consolidated utility relocation permits.

The Parties ~~shall develop~~have developed a mutually agreeable process, ~~including a schedule and format, for submittal of plans to the City for review and comment for all Construction and each Rearrangement of Facilities, and for final inspection and acceptance of all Rearrangements for~~ submittal of plans and applications to City technical staff and for permit approval by the City Council for AUR work in accordance with the following:

- (a) All items for the 1056 Contract shall be processed under one permit.
- (b) To the extent possible, all additional AUR work will also be grouped into consolidated applications for one permit to cover all the work for the same type of utility relocation.
- ~~(a)-(c)~~ (c) Within ~~ten~~five (10) Working Days after receipt of an application ~~for Construction or a Rearrangement, (i) or a Design submittal for the AUR work (i) the~~ City shall inform the LACMTA whether the ~~application documents,~~ including the plans and specifications, ~~is~~are sufficiently complete for the City's technical review purposes, and (ii) if not sufficiently complete, the City shall so notify the LACMTA, or shall return the ~~application documents~~ to the LACMTA together with an identification of those portions that are not sufficiently complete and a description of the missing information listing the deficiencies.
- ~~(b)-(d)~~ (d) Within ~~thirty (30)~~twenty-one (21) Days after receipt of each complete application or Design submittal, City staff shall complete its review, and (i) inform the LACMTA that ~~Staff~~staff is recommending approval to the City Council ~~approval of the application~~ or (ii) transmit its comments in the form of a comment matrix and annotated plans (as appropriate) to the LACMTA.
- ~~(e)-(e)~~ (e) Before the ~~thirty (30)~~twenty-one (21) Day review period ends, the City and the LACMTA may mutually agree to an extension of the review period.
- ~~(d)-(f)~~ (f) Within ~~thirty (30)~~twenty-one (21) Days after City staff has completed its review and informed LACMTA that Staff is recommending approval of the of a completed permit application or Design submittal, an agenda ~~report item~~ will be presented to included on the City Council ~~for consideration of the application and issuance of required permits's agenda and the Council shall vote on whether to approve the item.~~
- ~~(e)-(g)~~ (g) Within seventy-two (72) hours after approval by the City Council, the City will issue a permit(s) or transmit a letter to the LACMTA approving the application, including any conditions of approval.

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

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of comment resolution. The LACMTA will use its best efforts to ensure that the City's comments are resolved prior to re-submittal. The LACMTA may conduct comment resolution meetings to address concerns with the City's comments for the purpose of reaching a satisfactory resolution.

The City agrees that should any changes be required to Design after a permit covering Design has issued, all such changes may be handled at City staff level without further approval by the City Council being required.

The LACMTA, its consultants, ~~and~~ its contractors, and respective third party utility owners will be responsible for errors and omissions in the application materials, including plans, specifications, submittals, and all other related contract documents that they prepare.

Following City approval and issuance of a permit(s), changes in Design shall require approval by both the LACMTA, respective third party utility owners and the City. All changes required to accommodate differing existing site conditions are the responsibility of the LACMTA, its consultants, and contractors. Field changes required due to differing site conditions must be reviewed and approved by the City in accordance with the provisions of this Section, with the exception of the twenty-one (21) Day review period being reduced to five (5) Days for field changes.

~~City hereby waives the payment of any Costs for permits provided that City staffing and processing Costs will be reimbursed as provided for in this Agreement.~~

## ARTICLE V Permit Fees

All Costs incurred by City staff as a result of permit issuance, i.e. plan and/or Design Review, Construction inspection, coordination, and testing, will be reimbursed by the LACMTA through reimbursement procedures as provided for in this Agreement (see Article IX).

Any fees for the following permits shall be waived:

- Excavation-Permits
- Potholing-Permits
- Utility-Permits
- Street improvement Permits
- Encroachment Permits
- Holiday Season Restrictions
- Lateral Support Bonds
- Liability Insurance
- Street Damage Restoration Fees
- Engineering Process Fees
- City Storm Drain Connection Permits
- Street Tree Permits
- Discharge of Excess Water into Street Permits

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- Major Transit and Transportation Construction Impact Area Traffic Management Fees
- Peak Hour Exemption
- Lane Closure Permits (including Sidewalk Closure Permits)
- Staging Material Permits (Street or Sidewalk Closure)
- Overload Permits
- Storm Drain Permits
- Connection Permits
- Revocable Permits
- Revocable Encroachment Permits
- Overload Permits
- Building Material Permits
- Tree Removal Permits
- Tree Prune or Root Prune Permits
- Tree Planting Permits

## ARTICLE VI Design Criteria

The Design of each Rearrangement, whether furnished by the City or by the LACMTA, its consultants, its contractors or the respective utility owners working under a LACMTA issued Work Order, shall conform to the City Standards and ordinances in effect at the time of issuance of the RFP for the AUR work at issue. Together with revisions or additions thereto, which are required to be incorporated into the Design product pursuant to this Article, any City additions or revisions after the issuance of the RFP shall be considered Betterments and become the sole financial responsibility of the City. The City agrees that it shall not adopt any new City Standards, or otherwise amend or supplement any existing City Standards, for the sole or primary purpose of affecting the AUR work covered by this Agreement. Any amendments or supplements after issuance of RFPs shall be considered a Betterment.

The City agrees to comply with this Article as long as the applicable AUR work of the Project stays within the original general timeline and/or schedule for its Design and Construction. If the AUR work is placed on hold by the LACMTA, for any reason, for a period of two (2) or more years, the City will have the option to review and modify any City Standards that have been applied to the previous Design. The City will not be liable for any Costs due to the changes in standards resulting from this type of Project delay.

## ARTICLE VII Betterments

As soon as possible, preferably during the preliminary engineering Design phase but in any event no later than the City's final comment due date for each Rearrangement, the City shall inform the LACMTA what Betterments, if any, the City desires so that the LACMTA can review the Betterments and determine whether they satisfy the requirements set forth under this Article and can be accommodated within the current AUR Schedule. Each Design furnished by the City shall specifically identify any Betterment included in such Design.

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It is understood and agreed that the LACMTA will not pay for or bear the Cost of any Betterment, and that no Betterment may be performed in connection with any Rearrangement (whether designed or constructed by the City or by the LACMTA) which is incompatible with the Project or which cannot be performed within the constraints of applicable law, any applicable governmental Approvals and/or the LACMTA's schedule for the AUR work on the Project. The City shall bear the Cost of all Betterments included in each Rearrangement, including the cost of any delays that may impact the AUR Schedule.

## ARTICLE VIII "As-Built" Drawings

The LACMTA shall maintain a set of "as-built" plans of Rearrangements performed by the LACMTA during the progress of Construction. The contractor shall update the contract plans with the City's approved changes. Once the as-built work done by the contractor is approved by the City, the LACMTA shall arrange for the transfer of as-built information on the contract plans electronic files in electronic format. Upon completion of the Rearrangement work reproducible "as-built" drawings showing all Replacement Facilities installed by the performing party, will be provided within sixty (60) Days after completion of work for each set of plans. All "as-built" plans shall be in a format that conforms to the electronic formats specified in the solicitation documents for the AUR work of the Project covered by this Agreement.

## ARTICLE IX Manner in which In Which The City will be Will Be Reimbursed for For Costs

~~Consistent with its own staffing and workload requirements and the reimbursement provided by LACMTA, City shall reasonably allocate staff and other resources to endeavor to provide the level of service required to meet the scope of work and schedules as submitted by LACMTA.~~

The LACMTA agrees to reimburse the City in the manner provided by this Agreement for its ~~Cost~~Costs (Direct and Indirect) for all staff performing work associated with the ~~Project~~AUR work consistent with this Agreement. Direct Costs shall include allowable direct labor ~~costs~~Costs spent specifically by mutual agreement. Indirect Costs shall be ~~calculated [discussion required between the parties]~~computed based upon the Indirect Cost rates approved annually for the City by its cognizant agency (currently the United States Department of Labor pursuant to Circular A-87 of the Office of Management and Budget and Publication OASC-10), for allocation to federally funded or state funded contracts. Unless the Internal Revenue Service ~~or~~and the California Public Utilities Commission issue regulations or rulings to the contrary, reimbursable Costs will not include taxes purportedly arising or resulting from the LACMTA's payments to the City under this Agreement.

The City agrees to provide, and the LACMTA agrees to reimburse the City for, two ~~full-time~~ positions for the purpose of meeting the City's obligations under this Agreement. The two positions include: 1) Principal Civil Engineer to coordinate and facilitate plan review/approval and ~~construction~~Construction management/observation; and 2) Senior Public Works Inspector to observe and approve the installation of City Facilities. These two positions shall prioritize the LACMTA work over other work. The LACMTA shall only reimburse these two positions for actual work done on LACMTA projects. The LACMTA shall not provide reimbursement for

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these two positions for work done on non-LACMTA projects or for any down time or lag time between work on LACMTA projects. Additionally, the City agrees to provide and the LACMTA agrees to reimburse the City for Direct and Indirect Costs of other as-needed City staff performing work or providing services associated with the **ProjectAUR work** consistent with this Agreement. The LACMTA agrees that reimbursement may be for time and Costs incurred prior to the execution of this Agreement so long as such was incurred to meet the obligations set forth in this Agreement.

To assist the LACMTA and the City in estimating the level of service to be provided for the **ProjectAUR work** which will require work by the City pursuant to this Agreement, the LACMTA and the City will cooperate to develop a mutually agreeable annual work plan for each LACMTA Fiscal Year for which such work by the City will be required, in accordance with the following provisions:

- ~~(a)~~ (a) Not later than sixty (60) Days after execution of this Agreement, and again on February 28 of each calendar year during the term of this Agreement, the LACMTA shall provide City with information regarding anticipated **ProjectAUR work** requirements. The LACMTA's provided information shall include a list of each item of work that the LACMTA anticipates to request from the City for the **ProjectAUR work** during the upcoming Fiscal Year and the estimated start and finish dates for the work item that the LACMTA anticipates to request from the City. Within thirty (30) Working Days after receiving the required information from the LACMTA, the City shall submit a preliminary annual work plan, to the LACMTA for required work by the City during the upcoming LACMTA Fiscal ~~year~~ Year, which would include an estimated amount of money ~~that, via a Form 60 (a copy of which is attached as Exhibit A to this Agreement), that the~~ City will require for reimbursement of work performed and purchase of requested items.
- ~~(b)~~ (b) For each LACMTA Fiscal Year, following the LACMTA's receipt of the preliminary annual work plans, the City and the LACMTA shall each negotiate in good faith such issues as are necessary in order to attempt to finalize such annual work plans, not later than April 30 prior to the commencement of such LACMTA Fiscal Year.
- ~~(e)~~ (c) For each LACMTA Fiscal Year, within sixty (60) Days after the City's submittal to the LACMTA of the final annual work plans agreed upon by the Parties, the LACMTA shall issue to the City a Work Order identifying each item of work the LACMTA anticipates the City will perform through the end of the LACMTA Fiscal Year, the amount of money the City and the LACMTA estimate that the City will be reimbursed therefore, and the anticipated schedule for performance of such work. For funding purposes, such Work Orders may be made effective as of the estimated work start date for the described activities upon the City's sign off. The City and the LACMTA acknowledge that, due to the dynamics of the Project and related Construction, such Work Orders will be subject to amendments (including additions, deletions and modifications), and additional Work Orders may be issued throughout the LACMTA Fiscal Year as deemed appropriate by

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the LACMTA and as approved by the City by signing off the amendment to the Work Order or additional Work Order.

The LACMTA shall issue Work Orders to the City, following the City's submittal of an estimate in the form of a Form 60. Completion of the Form 60 is required by the LACMTA, to authorize the performance of all work and the purchase of all materials and equipment required under the terms and conditions of this Agreement. The City may perform any work so authorized. Each Work Order shall specify the work to be performed and any materials or equipment to be acquired, the amount of money that the City will be reimbursed therefore, and a schedule, including the estimated starting and finishing dates for work so authorized. Work Orders shall include estimated schedules, which are consistent with and supportive of the LACMTA Design and Construction schedule and will require the City's acceptance through sign-off of the Work Order. Except for the two full time positions set forth above in this Article ~~V~~, the City shall not be authorized to do any work, and shall not be paid, credited or reimbursed for Costs or expenses associated with any work, not requested by a Work Order, unless otherwise mutually agreed in writing. The City shall not be required to perform any work not requested by a Work Order or otherwise to be reimbursed pursuant to written agreement. The City shall be reimbursed for all Costs for work requested by a Work Order, regardless of whether such Costs exceed the agreed upon estimate.

~~City shall be reimbursed for all Costs incurred in developing and executing this Memorandum of Agreement within thirty (30) days of the date of this Agreement. City shall be reimbursed for all Costs incurred for work related to preparing and implementing the annual work plans, within thirty (30) days of the approval of the annual work plan by both LACMTA and City.~~

## ~~ARTICLE X~~ ARTICLE VI

### ~~Construction Staging and~~ Construction Staging and ~~Traffic Control~~ Traffic Control ~~And~~ And ~~Parking~~ Parking Requirements

~~LACMTA, through its consultants, contractors, subcontractors or agents, shall develop Construction staging plans and Traffic Control Plans and submit such plans in conjunction with each application pursuant to Article IV that involves Construction. The Construction Staging Plans shall be considered an element of the application. Construction Staging Plans and Traffic Control Plans shall provide, among other things, for the handling of vehicular and pedestrian traffic on streets adjacent to Construction with the Traffic Control Plans showing street closures, detours, warning devices, employee parking and other pertinent information (including Worksite Traffic Control Plans). Such plans shall incorporate actions to maintain access to businesses adjacent to the Construction areas, and actions to ensure safe access and circulation for pedestrians and vehicular traffic as described in the worksite traffic control plans. LACMTA will ensure that the plans accommodate elements of public awareness as well as mechanisms to assist affected Parties in complaint resolutions. Construction staging and traffic control requirements (including lane closures, street closures and hauling restrictions) shall be in accordance with the standards set forth in: this Article; Exhibit B attached hereto (entitled "City of Beverly Hills Conditions for Approval of Utility Relocation Permits); and the LACMTA's completed permit application and submittals for the AUR work at issue.~~

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The LACMTA shall comply, unless the Parties agree that it is unsafe, impracticable or inefficient to perform the scope of work in question, with the following requirements in the development of its Construction Staging Plans and Worksite Traffic Control Plans:

- (a) The minimum traffic lane requirements for streets impacted by Construction activities shall be:

**Wilshire Boulevard (San Vicente Blvd. ~~Boulevard~~ to Robertson Boulevard)**

Monday - Friday:

8:00 PM to 6:00 AM - One Lane each direction  
6:00 AM to 10:00 AM - Three Lanes each direction  
10:00 AM to 3:00 PM - Two Lanes each direction  
3:00 PM to 7:00 PM - Three Lanes each direction  
7:00 PM to 9:00 PM - Two Lanes each direction

Saturday - Sunday:

8:00 AM to 6:00 PM – One Lane each direction

**La Cienega Boulevard (Clifton Way to Olympic Boulevard)**

Monday - Friday:

8:00 PM to 6:00 AM - One Lane each direction  
6:00 AM to 10:00 AM - Three Lanes each direction  
10:00 AM to 3:00 PM - Two Lanes each direction  
3:00 PM to 7:00 PM - Three Lanes each direction  
7:00 PM to 9:00 PM - Two Lanes each direction

Saturday - Sunday:

8:00 AM to 6:00 PM – One Lane each direction

**San Vicente Boulevard (Clifton Way to Wilshire Boulevard)**

Monday - Friday:

8:00 PM to 6:00 AM - One Lane each direction  
6:00 AM to 10:00 AM - Three Lanes each direction  
10:00 AM to 3:00 PM - Two Lanes each direction  
3:00 PM to 7:00 PM - Three Lanes each direction  
7:00 PM to 9:00 PM - Two Lanes each direction

Saturday - Sunday:

8:00 AM to 6:00 PM – One Lane each direction

Work hours for the Monday through Friday nighttime work extends form 8 PM on Sunday nights through 6 AM on Friday mornings.

- (b) ~~No streets~~ Streets may be proposed for complete closure during Construction when the Parties agree that it is unsafe, impracticable or inefficient to perform the scope of work in question without a complete closure. Access to all commercial properties adjacent to Wilshire Boulevard from Wilshire Boulevard and nearby side streets must be maintained except as provided in subsection (d) below.

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- (c) The Construction Staging Plan or Worksite Traffic Control Plan shall include a parking control plan that observes the conditions set forth in Exhibit B, attached to this Agreement as well as the following requirements:

On-street metered parking regulations in the commercial area and permit parking restrictions in the residential area shall be observed. ~~No changes or restrictions shall be made to parking in~~ unless the Parties agree that it is unsafe, impracticable or inefficient to perform the scope of work in question, under the existing parking regulations. If nighttime permitted residential ~~areas.~~ used in a residential area in order to accommodate ~~construction~~ Construction, then a parking control plan shall provide for equivalent overnight replacement parking within a reasonable distance from the location where parking has been removed.

- (d) Detours:

The City may consider limited, temporary street closures if necessary to accommodate Construction. ~~If approved, street closures may occur from 11:00 p.m. to 5:00 a.m.~~ Proposed detour routes must be submitted and approved in accordance with this Agreement as part of the street closure request. Detour routes must not use residential streets. Advanced notification of street closures in accordance with a City reviewed and approved notification process is required.

- (e) Preliminary Haul routes and ~~overloads~~ Overload routes:

Haul routes and overload/oversized vehicle routes must be reviewed and approved by the City. The following streets are designated for use by vehicles exceeding a maximum gross weight, including the vehicle and its load, of three (3) tons:

La Cienega Boulevard;  
Olympic Boulevard;  
Robertson Boulevard;  
San Vicente Boulevard;  
Santa Monica Boulevard (~~north~~ North and ~~south~~ South roadways);  
Wilshire Boulevard.

## ARTICLE XI ~~ARTICLE VII~~ **Allowable Work Hours and And Workdays**

Allowable work hours and workdays, including after hour construction, holiday moratorium exceptions and peak hour exemptions shall be in accordance with the standards set forth in: this Article; Exhibit B attached hereto; and the LACMTA's completed permit application and submittals for the AUR work at issue.

In order for the LACMTA to meet the Construction schedule for the Project, the LACMTA, its contractors or others may need to perform a significant amount of work after business hours, on weekends, and/or by multiple shifts spanning up to twenty-four (24) hours per day and up to seven (7) days per week. The LACMTA shall secure from the City authorization for night and

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weekend work and will cooperate with the City to minimize such work where reasonably requested and to provide mitigation for the impact of such work.

~~The major nuisances associated with nighttime construction are noise, vibration, and illumination. Noise problems are normally caused by the operation of heavy equipment, including vehicle and machine backup alarms. Vibration problems are primarily a result of pile driving, blasting operations, or the use of vibratory rollers. While good illumination is necessary for the work to proceed at night and for the safety of the traveling public, proper work zone illumination can be very intrusive to Project neighbors.~~City and the LACMTA agree that the following shall apply, unless the Parties agree that it is unsafe, impracticable or inefficient to perform the scope of work in question under the requirements below:

~~LACMTA shall comply with the following requirements:~~

- (a) No person shall engage in construction, maintenance or repair work ~~which~~ between the hours of six o'clock (6:00) ~~p.m.~~PM and eight o'clock (8:00) ~~a.m.~~AM of any day, or at any time on a Sunday or public holiday unless such person has been issued an after-hours construction permit. In addition, no person shall engage in such work within a residential zone, or within five hundred (500) feet of a residential zone, at any time on a Saturday unless such person has been issued an after-hours construction permit. For the purpose of this section, "public holiday" shall mean:

New Year's Day  
Martin Luther King Jr. Day  
President's Day  
Memorial Day  
The ~~first two days~~First Two Days of Passover  
Independence Day  
Labor Day  
Rosh Hashanah  
Yom Kippur  
Thanksgiving Day  
The Friday after Thanksgiving Day  
Christmas Day

- ~~(b) No person employed for the purposes of the Construction shall enter the Project site prior to eight o'clock (8:00) AM.~~

- (b) ~~(e)~~ The City Representative, after consultation with appropriate City officials, ~~and approval by the City Council, may~~will issue an after-hours construction permit authorizing work and/or entrance to a work site otherwise prohibited by this ~~section~~Section if the City Representative determines that the public interest will be served by such a permit. Situations in which the public interest may be served by the issuance of such an after-hours ~~construction~~Construction permit include, but are not limited to, Construction near school grounds, and Construction that may interfere with vehicular or pedestrian traffic in heavily traveled public rights

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~~of way; of-way. The City agrees that it will not unduly withhold the issuance of an after-hours Construction permit to the LACMTA.~~

- ~~(d) Applications for an after hours construction permit issued pursuant to subsection (c) of this section shall be in writing and shall set forth how the public interest will be served by issuing the permit. Applications for an after hours construction permit will be processed in accordance with the following:~~
- ~~(i) Within five (5) Working Days after receipt of an after hours construction permit application, (i) City shall inform LACMTA whether the application is sufficiently complete for City review purposes, or (ii) if not sufficiently complete, City shall so notify LACMTA, or shall return the application to LACMTA together with an identification of those portions that are not sufficiently complete and a description of the missing information listing the deficiencies.~~
  - ~~(ii) Within ten (10) Working Days after receipt of a complete application, City staff shall complete its review of the application and (i) inform LACMTA that City staff is recommending approval of the application to the City Council or (2) transmit its comments to LACMTA with a written explanation of why the City staff is not recommending approval to the City Council.~~
  - ~~(iii) Within thirty (30) Days after City staff has completed review and informed LACMTA that staff is recommending approval of an after hours construction permit, an agenda report will be presented to the City Council recommending approval and issuance of the permit.~~
  - ~~(iv) Within seventy two (72) hours after approval by the City Council, the City will issue a permit(s) or transmit a letter to LACMTA authorizing the after hours work, including any conditions of approval.~~
- ~~(c) An after hours construction~~The LACMTA will file an application for an after-hours Construction permit and provide all back-up required to justify an after-hours Construction permit as part of the development/review and staff level approval of the plans and specifications for the AUR work in question. The after-hours permit for the AUR work in question will be approved by the City Council as part of the original permit approval for the AUR work in question. An after-hours Construction permit may be revoked or suspended by the City Representative if the City Representative determines that activity conducted pursuant to the permit violates any condition of the permit or otherwise detrimentally affects the public's health, safety or welfare.

~~Notwithstanding the provisions set forth above in subsection (c) and this subsection (d), LACMTA may file an application for an afterhours construction permit concurrently with an application for Construction or Rearrangement pursuant to Article IV and the application for an~~

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~~afterhours construction permit shall be processed concurrently with such application and pursuant to the schedule set forth in Article IV.~~

## ARTICLE XII~~ARTICLE VIII~~ ~~Noise and Light~~ Control Plans ~~and~~And Mitigation Measures

Noise plans and mitigation measures shall be in accordance with the standards set forth in: this Article; Exhibit B attached hereto; Exhibit C attached hereto (entitled “5-Step Noise Control Plan”); and the LACMTA’s completed permit application and submittals for the AUR work at issue.

### Noise Control Plans

The LACMTA, through its consultants, contractors, subcontractors or agents, shall follow the 5-Step Noise Control Plan. Additionally the LACMTA, through its consultants, contractors, subcontractors or agents, shall develop ~~noise and light control plans~~specific Noise Control and Noise Monitoring Plans and submit such plans in conjunction with each application pursuant to Article IV that involves Construction or Rearrangement.

In evaluating the effectiveness of a ~~noise control plan~~specific Noise Control Plan, the factors which may be considered include, but are not limited to, the following:

- A. The volume of the noise;
- B. The intensity of the noise;
- C. Whether the nature of the noise is usual or unusual;
- D. Whether the origin of the noise is natural or unnatural;
- E. The volume and intensity of the background noise, if any;
- F. The proximity of the noise to residential sleeping facilities;
- G. The nature and zoning of the area within which the noise emanates;
- H. The density of the inhabitation of the area within which the noise emanates;
- I. The time of the day or night the noise occurs;
- J. The duration of the noise;
- K. Whether the noise is recurrent, intermittent, or constant; and
- L. Whether the noise is produced by a commercial or noncommercial activity.

### Noise ~~Mitigation~~Control Measures

~~The following source~~As part of the 5-Step Noise Control Plan and specific Noise Control Plan, the LACMTA shall employ the following noise control ~~mitigation~~measures ~~shall be employed to reduce the impact of construction noise:~~

<u>Source</u>	<u>Mitigation Measure</u> <u>Noise Control Measures</u>
Backup alarms	<u>Use of low impact alarms, which include</u> manually-adjustable alarms- <del>Use</del> <u> self-adjusting alarms-</u> <del>Use an observer instead of backup alarms between the hours of 6:00 p.m. and 8:00 a.m. and</del> <u>broadband alarms.</u>

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	Configure traffic pattern to minimize backing movement.
Slamming tailgates	Establish truck cleanout staging areas. Use rubber gaskets. Decrease speed of closure. Use bottom dump trucks.
Pavement breakers (jackhammers)	Fit with manufacturer approved exhaust muffler. <del>Prohibit within 500 feet of a noise sensitive location during nighttime hours.</del> Enclose <u>pavement breaker activities</u> with a noise <del>tent</del> <u>barrier fence</u> .
Vibratory rollers and packers	Avoid use near vibration sensitive areas
<del>Impact Pile Driving</del> <u>Drilling for Piles</u>	No impact pile driving will be used. Drill piles <del>or use</del> sonic or vibratory drivers <u>will be used</u> where geological conditions permit their use.
Prolonged idling of Equipment	Reduce idling. Locate equipment away from noise sensitive areas <u>to the extent practicable</u> .
Construction Operations Planning	Route truck traffic away from residential streets. Movement of Construction equipment into and through the Construction site is prohibited between 6:00 PM and 8:00 AM except <del>pursuant to a permit issued</del> <u>as allowed</u> pursuant to Article IV or Article <del>VII</del> <u>XII</u> or <u>noise variance</u> . Use modern equipment equipped with state of the art engine insulation and mufflers. No generators larger than 25 KVA shall be used and, where a generator is necessary, it shall be equipped with <del>maximum noise muffling capability</del> <u>the best available technology to minimize noise</u> . Operate equipment at the lowest possible power levels. Provide noise muffling enclosures for fixed equipment. <u>Provide noise awareness training to contractors/workers.</u> <u>Use solar, battery powered, or hybrid equipment whenever and wherever practical.</u>

Due to the nature of construction, source noise controls are frequently inadequate to sufficiently minimize noise impacts because of the close proximity of the construction to residences and businesses. The following path mitigation techniques shall be employed to reduce the impact of construction noise:

- Use of temporary noise barriers and sound control curtains or an equivalent form of solid object to either destroy part of the sound energy by absorption, or to redirect

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part of the energy by wave deflection, provided that they do not cause an unsafe condition.

- All jackhammers and pavement breakers used at the ~~construction~~Construction site shall be enclosed with shields, acoustical barrier enclosures, or noise barriers.
- Enclose activities likely to create a noise disturbance and enclose stationary equipment.

## Noise Control Monitoring

The LACMTA, through its consultants, contractors, subcontractors or agents, shall develop a specific Noise Monitoring Plan.

Noise levels during Construction will be monitored on a regular basis in accordance with the Noise Monitoring Plan.

Construction noise levels during nighttime hours will be limited to no more than 5dBA above pre-existing ambient noise levels at sensitive noise receptors. Noise monitoring will be evaluated on a 15-minute average noise level (Leq 15 min). Pre-existing ambient noise levels will be gathered at sensitive noise receptors as identified in the EIR.

Nighttime hours shall be defined as those hours between 9 PM and 7 AM. However, special dispensation shall be given to those noisy activities – such as saw cutting, jackhammering, pile drilling and decking – that occur during nighttime hours and cannot be avoided because of daytime and peak hour traffic restrictions.

The LACMTA shall also employ an Acoustical Noise Engineer to oversee and review the noise control monitoring. The Acoustical Noise Engineer shall also issue a monthly Noise Compliance Report.

## **ARTICLE XIII** **Light Plans And Mitigation Measures**

Light plans and mitigation measures shall be in accordance with the standards set forth in: this Article; and the LACMTA's completed permit application and submittals for the AUR work at issue.

### Lighting Spill Mitigation Measures

Construction activities during evening and nighttime hours may require the use of temporary lighting. To minimize the impact of temporary lighting on adjacent properties, the following mitigation measures shall be implemented:

- Lighting will be directed downwards and shielded. Care shall be taken in the placement and orientation of portable lighting fixtures to avoid directing lights toward sensitive receptors.

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- Temporary lighting will be limited to the amount necessary to safely perform the required work.

## ARTICLE XIV Tree Removal And Replacement

Tree removal shall be in accordance with the standards set forth in: this Article; and the LACMTA’s completed permit application and submittals for the AUR work at issue. Neither the LACMTA nor the City desire trees to be replaced during the AUR work of the Project as the trees would need to be removed again to conduct the work needed to complete the Project. Tree replacement will take place when no further removal of the trees is required for completion of the Project and will be in accordance with the requirements covered in separate agreements for other phases of the Project.

## ARTICLE XV~~ARTICLE IX~~ ~~Advanced Notification Process for all Construction Activities, including any Planned Service Interruptions, and~~ And Establishment of a ~~Of A~~ Public Hotline

The ~~project~~ advanced notification process and establishment of a public hotline shall be in accordance with the standards set forth in: this Article; Exhibit B; and the LACMTA’s completed permit application and submittals for the AUR work at issue.

The Project area is a sensitive area for residents, businesses, commuters, and visitors. The LACMTA and its contractors and consultants will be required to minimize any inconvenience to the public and provide advance notification to the public of ~~construction~~ Construction activities and planned service interruptions. Within ~~sixty~~ thirty (~~60~~ 30) Days after execution of this Agreement, the LACMTA shall develop a community outreach plan, satisfactory to the City. The plan shall include ~~regular~~ quarterly public meetings to provide ~~project construction~~ Project Construction information to residents and businesses nearby the Project.

The LACMTA shall be responsible for all advance notifications to the public for work associated with the Project. The method of notification and the notification distribution area (notification plan) shall be reviewed and approved by the City. Project information and Construction notifications may be provided in multiple formats including, mail, electronic mail, Project website, social media and on-street portable changeable message boards. Notifications shall conform to any applicable local ordinance and, whether delivered orally or in writing, shall include appropriate information concerning the Project and/or service interruptions and instructions on how to limit inconvenience caused.

The following minimum advanced notifications to the appropriate distribution area shall be provided when Construction activity is scheduled to occur and shall be supplemented as provided in the notification plan:

<u>Activity</u>	<u>Advance notification</u>	<u>Method</u>
Start of Construction	<del>21</del> <u>14</u> calendar days	On-street changeable message boards

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(for each major activity)	14 calendar days (1st notice) 2 calendar days (2nd notice)	Mail or hand deliver Mail or hand deliver
Lane Closures	7 calendar days	On-street changeable message boards
Driveway Closure	7 calendar days (1st notice) 2 calendar days (2nd notice)	Mail or hand deliver Mail or hand deliver
Sidewalk Closure	7 calendar days 7 calendar days (1st notice) 2 calendar days (2nd notice)	On-street signs Mail or hand deliver Hand deliver
No Parking (public)	7 calendar days	On-street sign
No Parking (private)	7 calendar days (1st notice) 2 calendar days (2nd notice)	Mail or hand deliver Hand deliver
Utility Service Interruptions (Water, Sewer, Electric, Gas, Telephone, Data)	<del>30</del> <u>14</u> calendar days (1st notice) 7 calendar days (2nd notice) 2 calendar days (3rd notice)	Mail or hand deliver Mail or hand deliver Hand deliver

The LACMTA shall maintain and update a Project website for the duration of the Project. ~~Additionally, LACMTA shall prepare and mail a quarterly update/newsletter to adjacent properties within a distribution area established in the notification plan. The update/newsletter shall include information on the Project schedule and future Construction related activities.~~

## Establishment of a Public Hotline

The LACMTA ~~shall identify a public liaison and~~ has an existing toll-free hotline that is available twenty-four (24) hours a day, to respond to concerns related to construction disturbances. ~~The hotline shall be answered by a person, not a recorded message; during all times that Construction is taking place~~ This existing hotline shall incorporate a Construction Relations hotline prompt for immediate live response. Contact information for the public liaison person and hotline shall be included in all Construction notices. The LACMTA shall respond to complaints in a timely manner. The LACMTA will log the complaint, notify the City Representative of the complaint, and provide documentation to the City Representative that the complaint was effectively resolved.

## ARTICLE XVI~~ARTICLE X~~ **Inspection ~~during~~During Construction**

The City and the LACMTA agree that all work on City Facilities will conform to standard policies and practices of the City inspector as it relates to inspection, sampling, and testing. The LACMTA agrees to require adherence to such policies and practices by its contractors.

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

All Rearrangement and Construction of City Facilities by the LACMTA shall be ~~inspected by~~offered to the City for inspection by LACMTA. If the City does not attend the inspection then that inspection right is forfeited for that stage/element of work and the work shall be deemed accepted by the City. Reimbursed inspection services shall be authorized by the LACMTA under an appropriate Work Order. Upon issuance of an appropriate Work Order, the City shall provide inspectors dedicated to the Project, who will be available throughout Project Construction, at the LACMTA's expense and as needed to observe and inspect the Rearrangement of City Facilities so that upon completion of Construction, the City will have a basis for acceptance of the work. The City's inspectors shall coordinate with the LACMTA Representative and the LACMTA's contractors. The City's inspection shall also include planned field reviews for compliance with Construction Staging Plans, and Worksite Traffic Control Plans. Inspection will involve the verification of the safety and adequacy of vehicular and pedestrian access and circulation immediately adjacent to the Construction area, and maintenance of appropriate access to businesses, as provided in the Construction Staging Plans and Worksite Traffic Control Plans. All City inspectors performing services in accordance with a ~~work order~~Work Order shall submit copies of daily written inspection reports to the LACMTA, each within twenty-four (24) hours after the subject inspection.

During any inspection, each ~~Party~~party shall cooperate to quickly resolve any deviations from, or violations of, any approved plans discovered in the course of such inspection. The City will provide immediate verbal notice of any deviation, violation or nonconformance to the LACMTA's Construction manager as well as to the LACMTA staff (as designated by the LACMTA Representative), followed by a written notice not later than twenty-four (24) hours after discovery. Each notice shall include an explanation of the resolution desired by the inspector.

As soon as the work of any specific Rearrangement has been completed (and tested when called for by the approved Design), the ~~Party~~party which performed the Construction work, shall notify the other ~~Party~~party in writing that the Rearrangement is ready for final inspection. After notification is provided in writing, the inspection shall take place within twenty-four (24) hours of such notification. The final inspection of any Rearrangement shall be attended by the LACMTA Representative and the City Representative, at the LACMTA's expense. Each ~~Party~~party will provide to the other ~~Party's Representative~~party's representative immediate verbal notice of any deficiencies or discrepancies in any Construction work or any other issues discovered in the course of the final inspection, followed by a written notice within five (5) Days thereafter. Each notice shall include an explanation of the resolution desired by the notifying ~~Party~~party. Both Parties' inspectors shall be available to observe and inspect any corrective work performed, as needed to support the LACMTA's schedule for the Project. Promptly upon completion of the Rearranged City Facility (including if applicable, completion of any corrective work performed), the City shall furnish its written notice that Construction of the City Facility is accepted. ~~City's acceptance is contingent upon LACMTA submitting to City and securing City's~~

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~~approval on all required post Construction documents, such as the as built drawings and warranties.~~

## ARTICLE XVII~~ARTICLE XI~~ **Operation ~~and~~ And Maintenance ~~of~~ Of City Utilities**

The LACMTA proposes to relocate and rearrange existing City owned utilities including, water distribution pipelines and facilities, sanitary sewer collection systems, storm drain pipelines, traffic signal systems, fiber optic communications facilities and street light systems. The LACMTA and the City recognize that relocation/rearrangement of City Facilities and other Facilities is necessary to accommodate the ~~construction~~Construction of the La Cienega Station. The LACMTA and the City further acknowledge that certain relocated/rearranged City Facilities and other Facilities will remain within the limits of Station construction in a long-term, temporary condition and may rely on the Station excavation shoring system for support. Upon completion of the La Cienega Station ~~construction~~Construction, the City Facilities and other Facilities ~~in the long term, temporary condition~~ will be ~~relocated and rearranged to~~in their permanent location and constructed in accordance with City Standards, as of issuance of RFP. Existing newly relocated AUR utilities or those utilities newly relocated by the 1056 Contract design build contractor will not again be relocated when attempting to relocate water facilities back to their original depths or at a depth acceptable to the City.

~~LACMTA agrees to be responsible, at LACMTA's expense, for operation and maintenance of City Facilities and other Facilities in a long term, temporary condition within or adjacent to the limits of the Station construction. The responsibility includes financial responsibility for any water quality or other regulatory violations that result from operation and maintenance problems while the Facilities are in a long term, temporary condition and remedying the cause of any such violations. The responsibility for operation and maintenance begins when the existing Facilities are modified in any way or if access to existing Facilities is not available due to subway related construction. The responsibility for operation and maintenance ends when the City Facilities and other Facilities are relocated/rearranged to their permanent location and accepted in accordance with this Agreement. LACMTA further agrees to coordinate with the City and conduct utility operation or maintenance, including regulatory compliance measures, when the City Facilities or other Facilities are in a long term, temporary condition.~~

~~LACMTA and its contractors and consultants will be required to operate and maintain City Facilities in accordance with City Standards and provide uninterrupted service to the maximum extent feasible by minimizing any utility service interruptions caused by or during Construction. Additionally, LACMTA agrees to provide emergency response twenty four hours per day, seven days per week, to utility operation and maintenance issues for the City Facilities and other Facilities under its control in accordance with City service standards.~~

## ARTICLE XVIII~~ARTICLE XII~~ **Indemnity, Warranties ~~and~~ And Insurance Requirements**

The LACMTA agrees to indemnify, defend and save 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, ~~finer~~, suits and actions of whatever kind, and for damages of

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any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with the ~~Construction and any Rearrangement~~. LACMTA's performance under this Agreement.

The City agrees to indemnify, defend and save harmless the LACMTA, 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 the City's actual Design or Construction performance under this Agreement.

In contemplation of the provisions of Section 895.2 of the Government Code (~~"Gov't Code"~~) of the State of California imposing certain tort liability jointly upon public entities solely by reason of such entities being Parties to an agreement as defined by Section 895 of ~~the Gov't said~~ Code, the Parties hereto, as between themselves pursuant to the authorization contained in Sections 895.4 and 895.6 of ~~the Gov't Code, assign liability arising directly or indirectly from Construction or Rearrangement or LACMTA's said~~ Code, will each assume the full liability imposed upon it, or any of its officers, agents or employees, by law for injury caused by negligent or wrongful act or omission occurring in the performance of this Agreement to the same extent that such party would be responsible under this Article. The provisions of Section 2778 of the California Civil Code are part hereof as if fully set forth herein.

The LACMTA and its contractors will provide warranties for excavations and Rearrangements ~~rearrangements~~ as follows:

- ~~(a)~~ (a) In lieu of providing a bond normally ~~required by~~ associated with the permit authority of the City ~~for relating to~~ excavations in, or adjacent to City Rights-of-Way, the LACMTA warrants that any work within City Rights-of-Way or affecting the structural stability of City Rights-of-Way shall be free from defect. The Said warranty is for a period of two (2) years following City acceptance. Pursuant to this warranty and for the warranty period only, the LACMTA, at its sole expense, shall remedy any damage to City Rights-of-Way ~~and Facilities~~ to the extent caused by a failure of such structural support ~~or failure of any Facility~~ installed by the LACMTA during the warranty period.
- ~~(b)~~ (b) In connection with Rearrangements performed by the LACMTA or its contractors and any work performed by the City or its contractors hereunder, warranties supplied by contractors shall be made for the benefit of both the City and the LACMTA. Additionally and again in connection solely with Rearrangements performed by the LACMTA or its contractors, ~~LACMTA warrants and any work performed by the City or its contractors hereunder~~, the City and the LACMTA each warrant to the other for a period of one (1) year from and after acceptance of the work, unless otherwise specified, that any work performed by or for ~~LACMTA them~~ shall be free from defect. ~~Pursuant~~; this limited warranty is the sole warranty given by the City and/or the LACMTA, and, pursuant to this

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warranty, ~~LACMTA~~ and for the warranty period only, the City or the LACMTA, as the case may be, shall remedy any such discovered defect at its sole expense.

Any Design or Construction contract ~~entered into by LACMTA in connection with a Rearrangement or other Construction~~ for AUR work shall contain a provision which requires the general contractor, as part of the liability insurance requirements, to provide an endorsement to ~~name the City as an additional insured on all~~ each policy of general liability insurance ~~polices and on each policy of insurance~~ which names the City and the LACMTA as ~~an~~ additional insured~~insureds~~. Unless otherwise mutually agreed by the Parties, Construction general contractors shall provide evidence of insurance in ~~at least~~ the following amounts: \$5,000,000 in General Liability, \$1,000,000 in Workers' Compensation/Employer's Liability, and \$1,000,000 in Combined Single Limit (CSL) in Auto Liability. Unless otherwise mutually agreed by the Parties, Design contractors shall provide evidence of insurance in the following amounts: \$5,000,000 in General Liability, \$1,000,000 in Workers' Compensation /Employer's Liability, \$1,000,000 (CSL) in Auto Liability, and ~~\$5,000,000~~ 1,000,000 in Professional Liability. No insurance shall be reduced in scope or cancelled without thirty (30) ~~days~~ Days prior written notice to the LACMTA and the City. The City recognizes and agrees that insurance can be provided by the LACMTA through an owner-controller insurance program.

## ARTICLE XIX Audit And Inspection

Upon reasonable notice, each party (and its authorized representatives) shall have reasonable rights to inspect, audit and copy, during normal business hours, the other's records relating to its performance hereunder (and all costs incurred with respect thereto) for AUR work, the date hereof through and until expiration of three (3) years after the accepted completion of all Rearrangements for such AUR work, or such later date as is required under other provisions of this Agreement. By providing any of its records to the other party for examination, the party providing such records represents and warrants that such records are accurate and complete. The Parties shall mutually agree upon any financial adjustment found necessary by any audit. If the Parties are unable to agree on such adjustment, then the matter shall be resolved pursuant to Article XXIV. The City and the LACMTA shall insert into any contracts entered into by the City or the LACMTA, respectively, for the performance of work on Rearrangements hereunder the above requirements and also a clause requiring their respective contractors to include the above requirements in any subcontracts or purchase orders. In the case of such contractors, subcontractors and suppliers, the records subject to the above requirements shall include, without limitation, any relevant records as to which a tax privilege might otherwise be asserted.

## ARTICLE XX~~ARTICLE XIII~~ Federal and ~~And~~ Other Requirements

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

The City agrees to comply with all financial record keeping, reporting and such other requirements as may be imposed as a condition to or requirement of funding obtained by the

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LACMTA from third parties, but only if the LACMTA gives reasonable notice and evidence of such requirements to the City. In that event, the City shall permit the authorized representatives of the LACMTA, the U.S. Department of Transportation, the Comptroller General of the United States, and any other government agency providing funding or oversight on the Project, to inspect, audit and copy, during normal business hours and upon reasonable notice, all ~~cost~~Costs and other relevant records relating to performance by the City, its contractors and subcontractors under any Work Order issued to the City for the Project or Rearrangements of City Facilities related thereto, from the date of this Agreement through and until expiration of three (3) years after the accepted completion of all Rearrangements for the Project, or such later date as is required by the rules and regulations of any such government agency (provided that the LACMTA gives reasonable notice of such later date to the City). Examination of a document or record on one occasion shall not preclude further examination of such document or record on subsequent occasions. By providing any of its records for examination, the City represents and warrants that such records are accurate and complete. The City shall insert into any contracts it enters into for the performance of work hereunder the above requirements and also a clause requiring the contractors (or consultants) to include the above requirements in any subcontracts or purchase orders. In the case of such contractors, consultants, subcontractors and suppliers, the records subject to the above requirements shall include, without limitation, any relevant records as to which a tax privilege might otherwise be asserted.

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

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

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

In connection with the performance of this Agreement, the City will cooperate with the LACMTA in meeting all applicable federal regulations with regard to the utilization of disadvantaged business enterprises, to the extent reasonably practicable.

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

Without limiting any other provision of this Article ~~XIII~~, the City agrees to comply, and to cause all of its contractors who work on projects subject to this Agreement to comply with, all applicable nondiscrimination laws, rules and regulations, whether imposed by Federal, State or local authority.

Both Parties agree that all material used and procured for the work outlined in this Agreement shall comply with the requirements of Title 49 USC § 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

## ARTICLE XXI Deadlines And Delays

The City shall perform its work under this Agreement in accordance with the deadlines and schedules established in this Agreement or in the Work Order. If the LACMTA has been requested to respond and has responded to the City in a timely manner, and the City fails to meet a deadline or schedule established in this Agreement or in the applicable Work Order for Design, Construction or any other activity, the LACMTA must demonstrate to the City that this failure constitutes an adverse impact to the Cost of the Project and is a direct result of the delays to the LACMTA's Construction contract's critical path work. Then the City shall be responsible for all actual documented costs and expenses incurred by the LACMTA arising out of such delay. The LACMTA's response to the City must address the City's review comments, the City's request for information, and notices on Design and/or Construction. The City shall pay the LACMTA the amount due pursuant to this Article within ninety (90) Days after receipt of demand, accompanied by necessary data to document the costs incurred. If the LACMTA and the City agree, the LACMTA may deduct the amount due from the City to the LACMTA from payment (or payments, if necessary) next due to the City under this Agreement.

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

## ARTICLE XXII Procedures For City Billings To The LACMTA

The Parties agree that the following procedures shall be observed for the City's submission to the LACMTA of monthly billings, on a progress basis, for work performed by the City under a specific Work Order.

The City's billings shall begin as soon as practicable, but not exceeding sixty (60) Days, following the commencement of a specific Rearrangement or other work under a given Work Order, and shall follow the City's standard billing procedures. Invoices, and other data to

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document costs incurred, shall be provided to the LACMTA upon request. Each billing shall be noted as either “progress” or “final,” shall be addressed to the LACMTA Representative, and shall include a certification that the charges identified in such billing were appropriate and necessary to performance of the referenced contract, and have not previously been billed or paid. The final billing, with a notation that all work covered by a given Work Order has been performed, shall be submitted to the LACMTA as soon as practicable, but not exceeding sixty (60) Days, following the completion of the Rearrangement or other work, shall recapitulate prior progress billings, shall show inclusive dates upon which work billed therein was performed, and shall include a certification that the charges identified in such billing were appropriate and necessary to performance of the referenced contract, and have not previously been billed or paid. For purposes of closing out, the final invoice shall be submitted to the LACMTA no later than sixty (60) Days after completion of the AUR work. Upon the end of sixty (60) Days and no evidence of invoice, the LACMTA shall follow up with a notice to the City indicating the LACMTA’s position on closing out the Project. Upon issuance of the notice to the City, the LACMTA shall grant the City thirty (30) Days to submit a final invoice. Upon thirty (30) Days and no invoice, the Project shall be considered closed and no funding for the work shall be warranted and granted.

## ARTICLE XXIII

### ~~ARTICLE XIV~~

### ~~Miscellaneous~~ Miscellaneous

~~The City has filed four lawsuits related to the Westside Subway Extension. These lawsuits include: *The City of Beverly Hills v. Los Angeles County Metropolitan Transportation Authority*, Case No. BS137607, (filed May 30, 2012); *The City of Beverly Hills v. Los Angeles County Metropolitan Transportation Authority*, Case No. BS144164, (filed July 26, 2013); *City of Beverly Hills v. Federal Transit Administration et al.* CV 12 9861 (amended November 21, 2013) and *City of Beverly Hills v. Federal Transit Administration*, CV 13 8621 (filed November 21, 2013). The Parties acknowledge that nothing in this Agreement is intended to waive the causes of action or defenses asserted in those lawsuits or to relinquish or otherwise modify in any way the positions of the parties in those lawsuits.~~

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

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

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Throughout the term of this Agreement, if the City plans to construct new facilities unrelated to AUR work that would cross or otherwise occupy locations that might conflict with Construction of AUR work, the City will coordinate the Design and installation of such facilities with the LACMTA such that these facilities will minimize conflict with AUR work.

## ARTICLE XXIV Resolution Of Disputes

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

Arbitration – No Work Stoppage: Failing a resolution through these “good faith efforts,” in the absence of good faith efforts to resolve, or in the event the Parties are unable to agree upon the terms of such further agreements as are herein required to be executed by the Parties, either party may serve upon the other a written demand for arbitration. The Parties shall, within ten (10) Days thereafter, or within such extended period as they shall agree to in writing, attempt to agree upon a mutually satisfactory arbitrator. If they are unable to agree, each party, prior to the expiration of the ten (10) Day or extended period, shall designate one person to act as arbitrator. The two designated arbitrators shall promptly select a third arbitrator (“neutral arbitrator”) to form a three person panel. If either party fails to designate its arbitrator within ten (10) Days after the date of delivery of the demand for arbitration or the agreed extended period, or if the two designated arbitrators are unable to select a neutral arbitrator within five (5) Days after appointment, a neutral arbitrator shall be designated pursuant to Section 1281.6 of the California Code of Civil Procedure who shall hear the matter as the sole arbitrator.

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

Arbitration - Work Stoppage: In no event shall work be stopped in the event of a claim or dispute, except for reasons of public health or safety or where it is absolutely necessary to first resolve the dispute in order to be able to continue work. In the event that work is stopped, the provisions of this Section 12.3 shall apply. Upon stoppage of work, either party may serve upon the other a written demand for arbitration. A neutral arbitrator shall be immediately designated pursuant to Section 1281.6 of the California Code of Civil Procedure.

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

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hear the dispute and render a decision within five (5) Days after being selected. Notwithstanding Sections 1282.2(b) and Section 1282(e) of the California Code of Civil Procedure (regarding postponement of the hearing), where work is stopped, the neutral arbitrator may not postpone nor adjourn the hearing except upon the stipulation of all parties to the arbitration. The arbitration may proceed in the absence of a party who, after due notice, fails to appear. In addition to all other issues, the neutral arbitrator shall also determine whether it was absolutely necessary to stop and await dispute resolution in order to continue the work, and if it was not so necessary the other party shall be entitled to damages arising out of such work stoppage, which damages shall also be determined by the neutral arbitrator. The provisions set forth in Section 12.2.2 hereof as to the making of the award shall also apply.

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

California Arbitration Act: Except as is otherwise provided herein, any arbitration under this Article 12 shall be governed by the California Arbitration Act.

Incorporation of Subcontracts: In order to ensure the timely completion of Rearrangements, the City shall include the foregoing or equivalent provision in its agreements with contractors, materials suppliers, equipment renters and others who are involved in effecting Rearrangements.

## ARTICLE XXV Applicable Law

This Agreement will be governed by and construed under the laws of the State of California without regard to conflicts of laws principles.

This Agreement supersedes any prior understanding or written or oral agreements between the Parties hereto respecting the within subject matter and contains the entire understanding between the Parties with respect thereto.

This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same document, which shall be binding and effective as to each of the ~~parties~~Parties hereto.

Each individual executing this Agreement hereby represents and warrants that he or she has the capacity set forth on the signature pages hereof with the full power and authority to bind the party on whose behalf he or she is executing this Agreement to the terms hereof.

All notices and other correspondences between the City and the LACMTA shall be in writing, addressed as follows, and delivered personally or sent by certified mail, return receipt requested, or reputable overnight messenger service:

To City: The City Manager  
City of Beverly Hills  
455 ~~North~~N. Rexford ~~Drive~~ Dr., Fourth Floor

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Beverly Hills, California 90210

With copy to:

The City Attorney  
City of Beverly Hills  
455 ~~North~~N. Rexford ~~Drive~~ Dr., Room 220  
Beverly Hills, California 90210

To LACMTA:

Notices given by certified mail shall be deemed delivered on the date of delivery or attempted delivery shown on the return receipt. Notices given by messenger or reputable overnight delivery service shall be deemed delivered one (1) business day after delivery to the messenger or overnight delivery service unless a later actual delivery date is confirmed by the records of the messenger or overnight delivery service, in which case that actual delivery date shall govern. Any signatory hereto may from time to time, by notice given to the other signatories hereto change the address to which communications to such signatory are to be sent or designate one or more additional persons or entities to which communications are to be sent.

Time is of the essence of each provision hereof in which time is a factor.

If any provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable by any court of competent jurisdiction, the validity of the other provisions of this Agreement shall in no way be affected thereby.

No alteration, amendment or modification of this Agreement shall be valid unless evidenced by a written instrument executed by the parties hereto with the same formality as this Agreement.

No waiver by any party of the rights, conditions, or the performance of any covenant or promise herein shall be effective unless contained in a writing signed by such party. No such written waiver shall reduce the rights or remedies of the ~~parties~~Parties nor shall it invalidate this Agreement, nor shall it be deemed to be a waiver by such party of any other rights, conditions, or the performance of any covenant or promise (whether preceding or succeeding and whether or not of the same or similar nature). No failure or delay by one party to exercise any right or remedy it may have by reason of the default of any other party shall operate as a waiver of default or modification of this Agreement or shall prevent the exercise of any right or remedy by such party while the other party continues to be so in default.

Except as otherwise expressly provided in this Agreement, the ~~parties~~Parties do not intend by any provision herein to confer any right, remedy or benefit upon any third party (express or implied), and no third party shall be entitled to enforce or otherwise shall acquire any right, remedy or benefit by reason of any provision of this Agreement.

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The Parties agree that specific performance and injunctive relief should be available to enforce the rights of the ~~parties~~Parties under this Agreement, including the provisions of any Construction Staging Plan or Worksite Traffic Control Plan or other measure developed pursuant to this Agreement.—.

The section headings used in this Agreement are for convenient reference only and shall not be used in construing this Agreement. The words “include,” “including” or other words of like import are intended as words of illustration and not limitation and shall be construed to mean “including, without limitation.”

**WHEREOF, the Parties have caused this Agreement to be executed as of the dates set forth below.**

City of Beverly Hills

The LACMTA

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Approved as to Form:

Approved as to Form:

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