METRO GOLD LINE FOOTHILL EXTENSION CONSTRUCTION AUTHORITY

Request for Bids (RFB)

UTILITY RELOCATION PROJECT
RFB C2001

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VOLUME 6- AGREEMENTS

DOCUMENT 2- COOPERATIVE AGREEMENT BETWEEN THE CITY OF CLAREMONT AND THE AUTHORITY

COOPERATIVE AGREEMENT

FOR THE

METRO GOLD LINE – PHASE II

(Phase 2B)

BY AND BETWEEN

METRO GOLD LINE FOOTHILL EXTENSION CONSTRUCTION AUTHORITY

AND

CITY OF CLAREMONT

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COOPERATIVE AGREEMENT
FOR THE
METRO GOLD LINE – PHASE II (Phase 2B)
BY AND BETWEEN
THE METRO GOLD LINE FOOTHILL EXTENSION CONSTRUCTION AUTHORITY
AND
THE CITY OF CLAREMONT

THIS COOPERATIVE AGREEMENT FOR THE METRO GOLD LINE – PHASE II, dated [_____] ("Agreement") is made by and between the Metro Gold Line Foothill Extension Construction Authority ("Authority"), a public entity of the State of California, and the City of Claremont, a municipal corporation of the State of California. The Authority and the City are referred to collectively as the "Parties" and each individually as a "Party."

RECITALS

WHEREAS, the Authority, formally known as the Pasadena Metro Blue Line Construction Authority, is a public entity created by the California State Legislature pursuant to Section 132400 of the Public Utilities Code ("PUC") for the exclusive purpose of completing the design and construction of the Metro Gold Line light rail system from Union Station in the City of Los Angeles to the City of Montclair. Phase I of the extension ("Phase I") is defined as the approximately 13.7 mile line from Union Station in the City of Los Angeles to Sierra Madre Villa Station in the City of Pasadena. Phase II of the extension ("Phase II") is defined as the extension further east to the City of Montclair, an additional distance of approximately 24 miles;

WHEREAS, Phase I has been in operation since July, 2003;

WHEREAS, Phase II will be constructed in two phases or segments: Phase 2A from Pasadena to Azusa and Phase 2B from Azusa to Montclair;

WHEREAS, the Authority is currently constructing Phase 2A, which is planned for completion in 2015;

WHEREAS, the "Project", for purposes of this Agreement, shall only refer to Phase 2B of Phase II;

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

WHEREAS, the City has authority to be involved with activities that affect or impact a public right-of-way, private property, the general public, land use/planning, other property the City may have legal interests in, and businesses within the City of Claremont;

WHEREAS, the Authority, in designing and constructing the Project, has adopted or plans to adopt the design-build method of project delivery, similar to Phase I and Phase 2A;

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

WHEREAS, the Authority has the responsibility to construct and deliver an operational light rail facility, complete and acceptable to the City and to METRO.

NOW THEREFORE, the Parties agree as follows:

ARTICLE 1 - SCOPE AND DEFINITIONS

1.0 Scope of this Agreement

This Agreement specifies the procedures that the Authority and the City will follow in implementing their respective roles and responsibilities in the planning, design, and construction of the Project. Both the Authority and the City agree that each will cooperate and coordinate with the other in all activities covered by this Agreement and any other supplemental agreements.

1.1 Duration of the Agreement

Unless extended in writing by the mutual agreement of the Parties, this Agreement shall automatically terminate on the earlier of:

(a) Revenue Operations Date; or

(b) 90 Days following the Authority's written notice to the City that (i) all Project Construction within the City or its jurisdiction has been completed or (ii) the Authority has otherwise determined to cease Project Construction within the City or its jurisdiction and terminate this Agreement; or

(c) If the activity identified in Section 2.3.1 of this Agreement has not commenced by January 1, 2026, this Agreement will automatically terminate.

In the event this Agreement is terminated prior to the completion of all Project Construction within the City, such Construction shall thereafter be subject to the City's usual and customary permitting procedures and processes applicable to other contractors; except that, such permitting procedures and processes shall not apply if the Authority otherwise is exempted there from.

1.2 Conditions Precedent

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

1.2.1 The Authority shall have received necessary appropriations, subsidies, grants, payments and contractual commitments from other parties, excluding the City, necessary for it to perform under this Agreement and otherwise to fulfill its obligations hereunder; and

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

1.3 Definitions

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

1.3.1 **Abandonment** means the permanent termination of service of an existing City Facility or private facility.

1.3.2 **Advanced Conceptual Engineering** means conceptual engineering to support the Design/Build Procurement Documents, in which the design of the general track configurations and geometry, station and parking facility locations, traction power substation locations, property requirements, existing utility locations, and other associated construction is defined to approximately 30% of Final Design. The design of the at-grade crossings and any traffic mitigation measures within the City Rights-of-Way will include limits of work, equipment locations, curb grades, and other associated construction and will be approximately 50% of Final Design.

1.3.3 **Approval** means written approval by the City Representative or Authority Representative, as applicable

1.3.4 **Arbitrator** has the meaning set forth in Section 5.4.

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

1.3.6 **Authority Facility** means real or personal property now, or in the future, under the ownership or control of the Authority, to be located within the Right-of-Way of the Project for the purpose of providing service to the public, including but not limited to transit line and station fixed facilities, transit operations subsystems including but not limited to the trackwork, train control and communication, power distribution and overhead catenary system, and any equipment, retaining walls, drainage facilities, lighting, and street crossing improvements, all facilities to be constructed by the Authority, and all other apparatus and/or structure appurtenant thereto or associated therewith.

1.3.7 **Authority Representative** means the Chief Executive Officer of the Authority, or his/her representative who has been authorized in writing by the Chief Executive Officer, who will have the responsibility to manage and coordinate Authority interaction with the City and to produce the necessary Project planning documents, Design/Build procurement documents, issue Work Authorizations, and make Approvals, as required by this Agreement. The Authority may change its designated Authority Representative by providing written notification to the City.

1.3.8 **Award** has the meaning set forth in Section 5.4.3.

1.3.9 **Betterment** means a Replacement Facility, or a component thereof, or an enhancement to an existing City Rights-of-Way or Facility in place at the time of the Design Freeze, requested by the City and agreed to by the Authority, that increases the service capacity, capability, appearance, efficiency, or function over that provided by the Design Freeze in facilities and systems to be adopted by the Authority, except that the following shall not be considered as Betterments:

a. An upgrade which the Parties agree will be part of the Design Freeze; or

b. Construction in accordance with City Standards, State and Federal Regulations, CPUC, and METRO requirements as set forth in this document to the extent that each has jurisdiction; or

c. Measures to mitigate environmental impacts identified in the Current Scope of the Project and Final Environmental Impact Statement/Report;

d. A Replacement Facility or enhancement that is the consequence of changes made by the Authority or its contractors after the Design Freeze; or

e. Any Federal, State, or County mandate required to be completed before substantial completion of the Design/Build Contract.

1.3.10 **Cities** means cities located on the proposed Metro Gold Line, Phase 2B route: Glendora, San Dimas, La Verne, Pomona, Claremont, and Montclair.

1.3.11 **City** has the meaning set forth in the Preamble to this Agreement.

1.3.12 **City Facility** means a facility under the ownership or the exclusive operation of the City. City Facility shall mean facilities located on City–owned land, easements, or public rights-of-way, including but 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.

1.3.13 **City Representative** means the City's City Manager, or his/her representative, designated in writing, who shall assist the Authority in the delivery of the Project and each component thereof in a timely manner. The City Representative will have the responsibility (i) to manage, coordinate, and be the primary point of contact for City interaction with the Authority, (ii) to produce the necessary work documents, reports, Betterments, and (iii) to make or secure Reviews, inspections and Approvals, as required by this Agreement. The City

Representative also will be responsible for assisting the Authority and coordinating among City departments, or other constituent entities whenever City action is called for under the Agreement. The City may change its designated representative by providing written pre-notification to the Authority.

1.3.14 **City Rights-of-Way** means public streets, public easements, and public access-ways (including, but not limited to, alleys, drive approaches) to the extent located on City property or City easements.

1.3.15 **City Standards** means those written rules, regulations, drawings, ordinances and codes of the City in effect at the time the Design/Build Contractor submits its final proposal. Final proposal means the final proposal from the Design-Build Contract bidders prior to award of contract by the Authority.

1.3.16 **Conflicting Facility** means a City Facility or private facility existing as of the Effective Date that is so situated as to require Rearrangement in order to design, construct, and operate the Project without adversely affecting the maintenance of that facility as determined by the Parties.

1.3.17 **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 operate and maintain the Project in accordance with approved plans and specifications.

1.3.18 **Cost** means all allowable direct and indirect charges as further defined in Section 4.1.

1.3.19 **Current Scope of the Project** means the Project as described in the Final Environmental Impact Statement/Report. A brief summary of the Project is provided in Exhibit A.

1.3.20 **Days** means calendar days including Saturdays, Sundays, and legal holidays. See also definition of Working Days.

1.3.21 **Design** means that engineering, architectural and other design work and the resulting maps, plans, specifications, special provisions, drawings, calculations, studies, analyses, computer software, and estimates which are needed to construct the Project.

1.3.22 **Design/Build Contract** means the documents that are used by the Authority to contract with a contractor to design, build, fabricate, install, and prepare for operations of the facilities (or part of the facilities) and systems (less purchase of the rail cars, and other material and equipment already in the ownership and possession of METRO and/or the Authority) necessary to operate the Project as specified in the documents, and to demonstrate the operability of the Project through a period of pre-revenue operations.

1.3.23 **Design/Build Contractor** means the contractor and/or team of consultants and contractors that is awarded the Design/Build Contract(s) by the Authority, also referred to as Contractor.

1.3.24 **Design/Build Procurement Documents** means the entire package of documents, consistent with the Procurement Code, to be sent to potential proposers that may be interested in submitting a proposal for award of a Design/Build Contract, including but not limited to cooperative agreements with the Cities, utilities and METRO; DBE/WBE program; bonding requirements; change order and payment provisions; bidding and proposal requirements; environmental mitigation and requirements; scope of work; technical drawings and specifications; design and construction document reviews, procedures and approvals; quality control; safety program; and construction procedures.

1.3.25 **Design Freeze** means the process of adoption of a design, approved by the City, with respect to transit system facilities within the City's jurisdiction, City Facilities and City Rights-of-Way, and the Authority, that constitutes the determination of the established or "frozen" design of the Project or portion of the Project, from which deviations or changes in the Project Design will be measured. The Design Freeze will occur at completion of the Advanced Conceptual Engineering process where a reasonable determination of the costs associated with the Design and the Project can be identified. If the activity identified in Section 2.3.1 of this Agreement has not commenced by July 1, 2020, Authority will reevaluate the Advanced Conceptual Engineering process and provide the City with a new draft set of Advanced Conceptual Engineering documents for the City's Review. This process will recur every five years until the activity in Section 2.3.1 has commenced.

1.3.26 **Design Review** means the process of critical evaluation of plans, specifications and reference documents by the Authority, the City, and other agencies, as specified by the Authority, that are developed by consultants and/or the Design/Build Contractor which are necessary for the definition of, and the construction of the Project.

1.3.27 [NOT USED].

1.3.28 **Dispute** has the meaning set forth in Section 5.0.

1.3.29 [NOT USED].

1.3.30 **Effective Date** means the date set forth in the Preamble.

1.3.31 **Facility** means real or personal property now or in the future to be located within the Right-of-Way as part of the Project, including but not limited to roadways, pipes, mains, services, meters, regulators and any equipment, apparatus and/or structure appurtenant thereto or associated therewith.

1.3.32 **Federal Acquisition Regulation (FAR)** means Chapter 1 of Title 48, Code of Federal Regulations (CFR), as published by the federal government.

1.3.33 **Final Design** means the Design/Build Contractor's production and submittal of the design drawings, specifications, and pertinent documentation for Review, comment, and Approval by the City, and review, comment, and Approval by the Authority. Submittals shall be complete and 'approved for construction' (AFC). Each submittal may be in the form of segments or portions of the Project with drawings, specifications, and calculations (where necessary) signed and sealed by the "Engineer of Record" for the Project or portion of the Project after incorporation of comments and final Approval by the City and final Approval by the Authority.

1.3.34 **Final Environmental Impact Statement/Report (FEIS/R)** means the Final Environmental Impact Report, certified in March 2013, that analyzes and evaluates the environmental impacts of the Project and recommends measures to mitigate the potential adverse impacts, and includes any addendum, supplement, or subsequent EIR. Also includes any future National Environmental Policy Act (NEPA) documents that analyze and evaluate the environmental impacts of the Project.

1.3.35 **FTA** means the Federal Transit Administration.

1.3.36 **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, METRO, and the Authority.

1.3.37 **Industry Review** means the period of sixty (60) Days for review by potential bidders/proposers (construction and engineering firms) of the Preliminary Basis for Design/Build Contract documents providing them the opportunity to comment on the final draft documents before they are released as part of the Design/Build Procurement Documents.

1.3.38 **Joint Development** means a partnership for many different forms of public/private sector cooperation in the development or redevelopment of structures and facilities to be built in, around, over, and adjacent to the Right-of-Way.

1.3.39 **Laws** means any law, rule, regulation, ordinance, statute, code or other requirement of any Governmental Authority.

1.3.40 **List of Potential Arbitrators** has the meaning set forth in Section 5.4.1.

1.3.41 **METRO** means the Los Angeles County Metropolitan Transportation Authority, a public entity created by the California Legislature pursuant to PUC

Section 130050.2 et. seq. for many purposes including, but not limited to, the design, construction, and operation of rail and bus transit systems and facilities in Los Angeles County.

1.3.42 **Party, Parties** means one or both of the City and the Authority, as set forth in the Preamble to this Agreement.

1.3.43 **Phase I** has the meaning set forth in the recitals to this Agreement.

1.3.44 **Phase II** has the meaning set forth in the recitals to this Agreement.

1.3.45 **Phase 2A** means the portion of Phase II from the interface with Phase I in Pasadena to the end of the tail tracks for the Azusa Citrus station.

1.3.46 **Phase 2B** means the portion of Phase II from the interface with Phase 2A in Azusa to the end of the tail tracks for the Montclair station.

1.3.47 **Pre-Final Design** means the Design/Builder's draft final submittal of the design drawings, specifications, and pertinent documentation for Review, comment, and Approval by the Authority and the City. Submittals shall be near the 100% completion level (85%) and may be in the form of segments or portions of the Project.

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

1.3.49 [NOT USED].

1.3.50 **Project** means Phase 2B of Phase II.

1.3.51 **Rail Station** means the Authority Facility where the light rail trains will stop at the locations cited in Exhibit A to allow for passenger boarding and exiting, including the facilities specifically required for passengers, buses, autos, bicycles, and pedestrians to access the site, all consistent with the Americans with Disabilities Act (ADA).

1.3.52 **Rearrangement** means the alteration, removal, replacement, reconstruction, support or relocation of a Conflicting Facility or portion thereof, whether permanent or temporary, which the Authority and the City determine must be rearranged in order to design, build, and/or operate the Project. Rearrangements require the Review and Approval of the City.

1.3.53 **Replacement Facility** means a facility which is constructed or provided under the terms of this Agreement as a consequence of the

Rearrangement or portion thereof, which meets City Standards as set forth herein and is approved by the City prior to the start of Construction.

1.3.54 **Revenue Operations Date** means the date METRO commences revenue operations for Phase 2B.

1.3.55 **Review** means review by the City Representative and submittal of written comments within the review period stated in this Agreement.

1.3.56 **Right-of-Way (ROW)** means the real property required to construct, operate, and maintain the transit facilities and systems that comprise the Project.

1.3.57 [NOT USED].

1.3.58 **Technical Advisory Committee (TAC)** means that certain committee, comprised of one city manager (or such person's designee) from each of the Cities and other designated members, that ensures the appropriate level of interaction and coordination occurs between the Authority and the Cities.

1.3.59 **Temporary Facility** means (i) a City Facility constructed for the purpose of ensuring continued service while a Conflicting Facility is taken out of service, fully or partially, to undergo Rearrangement, or (ii) a facility constructed or used to facilitate or otherwise assist with the Project, including but not limited to, Construction staging and/or material storage areas.

1.3.60 **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 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. The operation of a Traffic Management Plan is affected by Construction phasing plans and Construction schedules and is subject to provisions of Section 3.1.

1.3.61 **Work Authorization** means the document(s) which the Authority will issue upon agreement by the Parties as to Scope of Work and direct and indirect costs, which document authorizes the City to perform any work, and to be reimbursed therefor under the terms and conditions of this Agreement.

1.3.62 **Working Days** means Days, excluding Saturdays, Sundays, and the legal holidays listed in Exhibit D. If the City is closed on Fridays or alternate

Fridays, those Fridays that the City is closed shall also be excluded from "Working Days".

ARTICLE 2 - DESIGN REVIEW AND CONSTRUCTION OF THE PROJECT

2.0 Engineering and Construction Coordination

The Authority and the City shall establish general guidelines, working relationships, standards of design, Design/Build Design and Construction Approval procedures, and administrative policies and procedures with respect to Review of the Advanced Conceptual Engineering, the Design/Build Procurement Documents, the Design Review process and the construction activities (including coordination and Rearrangement of City Facilities pursuant to this Agreement) to be implemented by the Design/Build Contractor in order to permit the timely completion of the Project. The major activities and the Project schedule will be shown in Exhibit B of this Agreement. Exhibit B will be provided as an Amendment after execution of the MCA. By signing this Agreement, the Authority is not waiving any of its rights to assert exemption from City ordinances in the event this Agreement is terminated. Unless otherwise indicated, two copies of documents and submittals shall be provided to the City Representative.

To ensure that work which impacts or affects City Facilities or City Rights-of-Way meets the expectation of both the Authority and the City, and to ensure that the Project meets the requirements of the Current Scope of the Project, the Authority will utilize City Standards for the design of all work in City Rights-of–Way, on City Facilities, and on private property within the City. The Authority's design standards and criteria, and City's Standards and criteria shall be contained in the mandatory requirements of the performance specifications of the Design/Build Procurement Documents. The Final Design affecting City Facilities, City Rights-of-Way, or private property within the City shall be submitted to the City for Approval.

At the time of execution of this MCA there are various unresolved city issues that the parties will continue to work together to resolve. Exhibit H contains a list of these items.

Any direct impact by the Project on City Rights-of-Way, City Facilities, businesses and private property is subject to the Review, Approval, and applicable permitting by the City. Impacts shall include street closures, encroachments, occupation, implementation of traffic control, effects on access, or any other impact as it applies to City Rights-of-Way, City Facilities, businesses, private property, including the following:

2.0.1 Rearrangements

The Rearrangement of each Conflicting Facility shall conform to applicable City Standards in effect at the time the Design/Build Contractor submits its final proposal, as well as applicable State and Federal laws.

2.0.2 Softscaping and Hardscaping

Landscaping arrangements affecting trees, softscaped and hardscaped areas under ownership or daily control of the City, including on private property, shall be preserved if practicable. The Authority's Representative shall consult and

reach agreement with the City's Representative, and if such trees and/or plantings have to be removed, then they shall be replaced by the Authority at its cost and expense, with a tree of similar size, species and quantity, in a location approved by the City. No trees, plantings and/or hardscaped areas within City Rights-of-Way or City Facility shall be removed without the prior Approval by the City. No trees, plantings and/or hardscaped areas within private property shall be removed without the prior approval by the private property owner. If affected landscaping/hardscaping is simultaneously within both City and private property, both parties shall approve the work prior to removal.

2.0.3 Changes in Approved Plans

The Authority or the City may agree to make changes in previously approved Designs for work, which affect City Facilities or City property, prior to and during the course of construction only through Approval of the other Party and compliance with the provisions of Article 6, Betterments.

2.1 Work to be Performed by the Authority

The Authority, as part of its responsibilities, shall perform the following:

2.1.1 Train Traffic Coordination

The Authority shall design, furnish and install hardware and software and, where required by engineering analysis, establish coordination and connection between the City traffic control facilities, the light rail and freight/commuter rail operation.

2.1.2 Advanced Conceptual Engineering Design

The Authority will undertake the preparation of Advanced Conceptual Engineering design documents as described in Section 2.2. The product of this effort will be the documents defining the Advanced Conceptual Engineering of the Project. The documents will be furnished to the City for Review to help ensure accuracy, reasonable completeness, timely responses in subsequent stages, and to minimize changes.

2.1.3 Final Environmental Impact Statement/Report (FEIS/R)

[NOT USED].

2.1.4 Preliminary Engineering Design

[NOT USED].

2.1.5 Development of Design/Build Contract Documents

The Authority will undertake the preparation of Design/Build Procurement Documents, as described in Section 2.3.

2.1.6 Final Design

The Authority will coordinate and manage the Design and Design Review process during Final Design by the Design/Build Contractor as described in Section 2.4. The Authority will forward pertinent design documents to the City for Review and conduct Design Review meetings as necessary.

2.1.7 Construction Management

The Authority will provide staff that will make reasonable definitive responses to the City, Design/Build Contractor, residents and business owners regarding impacts and concerns arising from the Project design and construction, and facilitate informational community meetings. The Authority will establish offices in close proximity to the Project for the purpose of responding to residents and business owners concerns during construction. At the discretion of the Design/Build Contractor, a field construction office may be established within the City.

2.1.8 Status of Mitigation Monitoring Plan

The Authority will provide status of Mitigation Monitoring Plan annually to City.

2.2 Review of Engineering and FEIS/R Documents

Documents shall be provided to the City Representative for Review and comment and/or Approval. Review of engineering and FEIS/R documents will occur as follows:

2.2.1 City Review of FEIS/R

As part of the FEIS/R public process, the City will be provided a copy of the FEIS/R for Review.

2.2.2 City Review of Advanced Conceptual Engineering

The Advanced Conceptual Engineering Design documents will be provided to the City for Review and comment. The City shall have a period of forty-five (45) Days from the date of receipt of the documents from the Authority's Representative to complete the Review and to make comments. The City Representative and Authority Representative shall hold a Design Review meeting to discuss the City's review comments.

2.2.3 City Review of Pre-Final Preliminary Engineering

[NOT USED].

2.2.4 City Review of Final Preliminary Engineering

[NOT USED].

2.3 Review of Design/Build Contract Documents

Documents shall be provided to the City Representative for Review and comment. Review of Design/Build Contract documents will occur as follows:

2.3.1 City Review of Preliminary Basis for Design/Build Contracting

For any Design/Build Contract that directly impacts a City Facility or City Right-of-Way, the Authority will assemble a draft set of Design/Build Contract documents for Review by the City. The City shall have a period of 60 Days from the date of receipt of the documents from the Authority's Representative to complete the Review. The City Representative and Authority Representative shall hold a Design Review meeting to discuss the City's Review comments.

2.3.2 City Review of Design/Build Procurement Documents

Once the process set forth in Section 2.3.1 has been completed, the Authority will assemble the Design/Build Procurement Documents and issue the documents to consultants, contractors, and other third parties interested in bidding for the Design/Build Contract(s). Copies of these documents will be issued to the Cities, METRO and pertinent Governmental Authorities. The City will receive one copy of the Design/Build Procurement Documents and shall receive a copy of all addenda.

2.4 Review of the Design/Build Contractor Submittals

Upon issuance of a Notice To Proceed ("NTP") by the Authority, the Design/Build Contractor will commence Design and Construction of the Project. Design will progress in accordance with the Design/Build Contractor's work plan and schedule. Design submittals will generally be provided at the Pre-final (85%) and Final (100%) Design levels as specified in the Design/Build Contract. Utility relocation Design submittals will be provided at the 60% level.

Packaging of submittals by location, type of work, or subcontractor, will be at the Design/Build Contractor's discretion; however, each submittal will be a complete Design package, including all Design disciplines related to City Facilities. Final Design levels shall include details sufficient for review, including sections and profiles, limits of work, and notes or line work to communicate the intent of all impacts and work. The Design/Build Contractor will use an electronic system to submit Design documents for

review and obtain comments from the City. One full size set of plans will be provided at a reasonable scale acceptable to the City.

The Authority will provide pre-construction video of sanitary sewers and storm drains to the City prior to the start of construction of these facilities.

2.4.1 Design/Build Contractor's Responsibilities

Upon award of the Design/Build Contract and NTP, the Design/Build Contractor shall have the responsibility for all design and engineering activities including, but not limited to: (1) the implementation of an organizational structure to successfully complete the Project within the schedule and budget while producing a quality product; and (2) effective management of the activities of the design team to provide a coordinated, well-planned project.

The Project shall be designed and constructed in accordance with the various Cooperative Agreements entered into between the Authority and the Cities, agencies, and utilities, and as permitted by the CPUC.

2.4.2 Design Reviews by the Authority and the City

The City will participate fully in the Design Review process and be involved with the Approval of all portions of design and construction performed within City property or affecting City Rights-of-Way or City Facilities to the extent that the City has authority under this Agreement.

Complete Design submittals will be forwarded to the City's Representative for Review and Approval of the Design as it affects City Facilities and City Rights-of-Way. The Review period shall be 45 Days. Upon receipt of the City's comments, the Authority shall review, meet (as necessary) and confer with the City's Representative to incorporate comments, if any, together with its own comments and those of any other agency into a response to the Design/Build Contractor who shall make the required changes. City shall be responsible for damages, including delay damages, if any, incurred by Authority that result from City's failure to submit comments within 45 Days.

The City will be provided the plans and specifications for all City Facilities and Authority Facilities crossing over City Rights-of-Way or supporting City Facilities, for review and Approval.

The City's Approval of the documents, as they relate to City Facilities, will not be unreasonably withheld.

The Design/Build Contractor shall be responsible for obtaining all permits required to build the related work, in accordance with the City's licensing and permitting process. Caltrans permits obtained by the Authority for work that affects City streets shall be submitted to the City.

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

The Design/Build Contract shall require that the Design/Build Contractor, among other things, notify the Authority after receipt of any comments if the Design/Build Contractor believes incorporation of the comments would render the Design documents, Construction documents, or any other contract documents erroneous, defective, or deficient in any respect or which would otherwise adversely affect in any manner the Design or Construction of the Project or the costs and completion schedule of the Project. The Authority shall promptly forward a copy of the Design/Build Contractor's comments to the City and confer with the City regarding these comments.

In the event that the City's comments result in a change to the Project from the Design Freeze, exceeds City Standards or codes, or otherwise exceeds the provisions of this Agreement, then the Authority reserves the right to request a Betterment to incorporate the City's comments into the Design and Construction of the Project or otherwise refrain from making such change.

2.5 Work to be Performed by the City

The City shall work cooperatively with the Authority, to the extent that is reasonable, in advancing the design/build method of delivery for the Project in a manner complying with the terms of this Agreement.

Subject to the foregoing, the City will have five (5) major responsibilities in relation to the design/build program. These responsibilities are:

2.5.1 Participation in the Organizations and Process

The City's Representative will be the point of coordination and communication with the Authority's Representative. In addition, when requested by the Authority, the City will designate individuals to participate in the working groups and technical subcommittees formed by the Authority to address the issues and subjects which arise as part of the design review process described above in Sections 2.1 through 2.4.

2.5.2 Cooperatively Implement the Design Review Process

Consistent with the provisions contained herein, the City shall take an active role in the Review of studies and the Review of design plans prepared by the Authority, and the Design/Build Contractor related to the Project. The City shall provide comments in a timely manner, as defined herein, and will work with the Authority to suggest ways to resolve various issues that arise. The Authority will make every effort to cooperatively work with the City to resolve any issues.

2.5.3 Provide Technical Support

The City shall provide reasonable technical support to the Authority throughout the design and construction period of the Project. The support may take many forms. For example, the City shall work with the Authority to Review and, where appropriate or required, shall assist the Authority with obtaining permits, construction easements over public property and clarification of any City Standards.

In addition, the Authority and the City may mutually agree that the City will perform the design of one or more specific Rearrangement(s). Under such circumstances, the Authority and the City shall develop the specific scope of work. The City's schedule for completion, coordination requirements, Review procedures, and related provisions all shall be provided to the Authority.

2.5.4 Relocation of Private Utilities and Facilities

Within eight (8) Working Days after receipt of a written request from the Authority's Representative, a written notice will be sent to all utilities whose facilities conflict with the Project, instructing them to relocate or remove the conflicting facilities in accordance with provision of the utility's franchise agreements. The Authority will prepare and send the notice to Utilities, however the City will be required to sign the document. The City will assign to Authority the City's rights to cause such removal or relocation to be performed in the event that the utility does not accomplish such removal or relocation within the time provided. The City shall not, by signing such a written request or assigning its rights pursuant to this Section, be construed as having made a determination as to the responsibility of the utility or facility or the Authority to pay the cost of such removal or relocation.

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

2.5.5 City Inspection, Testing and Audits

All work performed by the Design/Build Contractor is subject to independent quality assurance testing and inspection to confirm compliance with contract documents and applicable standards. For portions of the work, this inspection may involve the City witnessing quality control testing and inspection performed

by the Contractor. The City will be provided reasonable notice of any such testing procedures. The City shall also have the right to provide such construction testing and inspection for that portion of the Project within the City Rights-of-Way including City Facilities, Rearrangements and structures supporting City Rights-of-Way and City Facilities. The final inspection of any Rearrangement work in the City Rights-of-Way, or to a City Facility within the Project, shall be attended by the City's Inspector.

The City Representative and the Authority Representative shall inform the other, in writing within six (6) Working Days or other time period as mutually agreed upon by City and Authority, of deficiencies or discrepancies in any Construction work within the City Rights-of-Way or on a City Facility discovered in the course of such inspection. The Authority shall be responsible for ensuring that corrective action is taken by the Design/Build Contractor to correct all non-compliant work and for ensuring that all punch list items are completed to the reasonable satisfaction of the City. If the Design/Build Contractor is not diligently prosecuting a problem solution or fails to resolve the problem in a responsive manner as indicated herein, the City with the Authority's support will resolve the problem and will be reimbursed by the Authority for its costs.

All such communication to the Design/Build Contractor shall be through the Authority. For portions of the work constructed by the City, the City will be responsible for verifying compliance with approved plans, specifications, and applicable Authority and City Standards in a timely manner.

All work in City Rights-of-Way, or on a City Facility or private property within the City that will impact on pedestrian and vehicular access shall be in accordance with City Standards, City/Authority approved Traffic Management Plans and Documents, and the City adopted sections of the latest Work Area Traffic Control Handbook.

The Authority shall provide the City with the opportunity to observe the construction performance and perform quality checks of all component facilities and system elements. The Authority shall provide City all documentation describing the performance criteria for all testing within City Rights-of-Way, or affecting City Facilities.

The City will provide Construction support and services to the Project for that portion of the Project within the City Rights-of-Way or City Facility, or on private property within the City, and for the following:

- Review and Approval for Construction work within City Rights-of-Way and for City Facilities.
- Change Order Review and Approval for work within City Rights-of-Way and for City Facilities.

- Review and Approval of required material and shop drawing submittals for work within City Rights-of-Way and for City Facilities.
- Responses to requests for Project related information by the Authority.
- Issuance of construction related permits.
- Review and Approval of construction staging, traffic and detour management, temporary lane closures, work site traffic control, and various plans for traffic related items listed herein.
- Review and Approval of haul routes.
- Provide various other available support and services, as necessary and agreed to by the City.
- Review of all fire/life safety plans and field inspection of systems installed, as well as system acceptance sign-off.

Notwithstanding the foregoing, the City may provide additional services such as community outreach and information dissemination.

2.6 City Performance of Rearrangements

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

The City shall commence and thereafter diligently prosecute the Construction of such Rearrangement work to completion as authorized by the Work Authorization and in conformance with the time schedule set forth in the Work Authorization and the Final Design plans and specifications prepared pursuant to Section 2.4 of this Agreement. Such Construction shall coincide, and be coordinated, with the Authority's Construction schedule for the Project, including the schedule for Construction of all utility, cable, pipeline and other facilities in the same segment or portion of the Project. City shall coordinate its work with other property owners and contractors performing work that may connect, complement or interfere with City's work hereunder or with City Facilities.

The City shall notify the Authority at least four (4) Working Days prior to commencing each Rearrangement so that the Authority may make arrangements for such inspection and record keeping as it may desire. The cost of such work required for the Project shall be reimbursed to the City by the Authority through the Work Authorization process.

2.7 "As-Built" Drawings of Rearrangements

The Design/Build Contractor shall deliver 'As-Built' Drawings to the Authority after substantial completion, but not more than 120 Days following substantial completion, of the respective discipline of work. The Authority shall transmit the 'As-Built' Drawings of all Rearrangements within the City's jurisdiction to the City for final Review and comment. After incorporation of any City comments by the Design/Build Contractor, the Authority shall furnish the City 'As-Built' drawings on 22" x 34" (full scale) format, together with electronic files, showing all Rearrangements installed by the performing Party within the City's jurisdiction. The City shall have a period of 45 Days from the date of receipt of the documents from the Authority's Representative to complete the Review and to make comments.

Where Rearrangements are performed by the City, the reciprocal arrangement shall exist. If the drawings submitted by either Party are incomplete or nonconforming to agreed-upon standards, the drawings will be returned to that Party for correction at that Party's expense. Additionally, within eight (8) Working Days after completion of a temporary traffic signal or temporary Street Lighting System, or temporary modifications to a Street Lighting System, the Party that performed the work shall furnish to the City "red-line As-Builts" — hand drawings showing the approximate locations of the material component elements — of those temporary facilities.

2.8 Underground Service Alert

Prior to commencement of any underground work by either Party, an Underground Service Alert shall be a standard procedure, in accordance with state law by the Party contemplating the work, or their contractor.

ARTICLE 3 - AUTHORIZATIONS AND PROPERTY RIGHTS

3.0 Permits

All work on the Project that affects City Rights-of-Way, City Facilities or private property, over which the City has jurisdiction, is subject to the City's licensing and permitting process. As such, the issuance of City permits is required for both permanent and temporary construction work including the installation of traffic control or temporary street closures. The City shall waive the payment of permit fees for all work under City jurisdiction associated with the Project.

The City shall work with the Authority and its Design/Build Contractor to cooperate and expedite permit processing as is reasonable. Based upon the permit request and submission to the City of a complete and previously City-Approved set of required documents and in accordance with the permitting process, the City will provide a permit for the work within four (4) Working Days in accordance and as allowed within the City's Standards. Any request not allowed within City Standards may require City Council approval.

3.1 Work in City Streets

The Authority recognizes that the City has the duties of supervising, maintaining, and controlling City Rights-of-Way, including access to business and residential areas. Accordingly, the City shall be provided advance written notice by the Authority where and when the Project requires work within City Rights-of-Way or affects City Rights-of-Way or City Facilities. The City shall be provided reasonable time to Review and Approve such notices and supporting documents before the work proceeds and to issue appropriate permits in accordance with the permitting process referenced herein. The Authority shall secure City Approval of notifications and supporting documents such as plans for the work.

3.1.1 Construction Staging and Traffic Management Plans

The City shall be provided detailed construction staging and traffic management plans, which provide among other things, for the handling of vehicular and pedestrian traffic on streets adjacent to the Project and shall show construction phases, temporary street closures, detours, haul routes and staging areas, signing and warning devices. The Design/Build Contractor shall begin the work only after City Approvals have been received and appropriate City permits issued, and shall take all appropriate actions in accordance with City Approvals and permits to ensure safe operations of the work and the continuance of service of City Rights-of-Way and City Facilities. If the Design/Build Contractor fails to perform the work in the manner as called for by the approved contract plans prepared hereunder, and City permits and authorizations issued by the City in connection with such work, the City will inform the Authority and the Authority

shall have its Design/Build Contractor promptly correct the problem and effect a solution with City concurrence.

3.1.2 Construction Staging Assistance to Local Businesses and Residents by Authority

The Authority shall assist the business community and residents in the area of the Project by providing informational and directional signage, loading and unloading access, and other assistance as required to minimize the impacts of construction on the business and residential community. A community relations program shall be developed by the Authority and Approved by the City prior to implementation. The City reserves the right to order changes to the Construction staging and Traffic Management Plans at no cost to the City based on field reviews of the site conditions.

3.2 Private Property/Encroachments

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

The Authority will require additional property in order to construct the Project. The Authority will evaluate the Project's private property needs, and notify the City which private parcels are required for the Project. The Authority will provide the City an update on the status of any eminent domain proceedings within City.

3.3 Temporary Street Closures

The construction of the Project will require temporary closures of City Rights-of-Way. All temporary street closures require the Review and Approval by the City prior to being implemented.

Requests for temporary street closures shall be made by the Authority Representative to the City for Review and Approval. Requests shall be in writing with properly prepared plans such as Traffic Management or Construction Staging Plans. The City will expedite

processing of these requests and the Authority will cooperate to minimize requests for temporary closure of City Rights-of-Way. Notwithstanding the foregoing, this Article does not preclude the City from requesting that certain streets not be closed to accommodate "Special Events" utilizing those streets and the Authority cooperating with such requests.

3.4 Traffic Management and Construction Staging Plans

The Authority through its representatives and contractors shall develop traffic management and construction staging plans in accordance with the requirements of this Agreement.

3.4.1 Traffic Management Plan

The Traffic Management Plan will include all relevant traffic information, including:

a. The minimum number of lanes and minimum lane width, the time and duration of the interruption during peak traffic hours and non-peak traffic hours for each involved street.

b. Streets which may be closed during construction, including the duration of the closure, detour routes, temporary modifications to existing traffic signals and timing sheets, etc.

c. Parking restrictions which will be imposed during the construction period including specific time, days, and duration.

d. Restrictions on work, excavation, or closure due to special events or other seasonally related concerns.

3.4.2 Construction Staging Plan

City Facilities (other than street) Construction Staging Plans will include restrictions on work sequencing and timing, including:

a. Facilities in which service must be maintained

b. Facilities in which service may be abandoned only during construction but must be restored when construction is complete.

c. Proposed phasing or sequencing of construction of Facility Rearrangements.

d. Major parallel arterials shall not be closed at the same time unless Approved by the City. See Section 2.5.2 of FEIS/R for list of major arterials within City.

e. The Authority shall notify the City of those facilities that may be impacted.

3.5 Federal, State and Other Agency Permit and License Requirements

Nothing in this Agreement shall be deemed to abridge any applicable federal or state law regarding permits, orders, licenses and like authorizations that may be required or available in connection with the Project. As required by the State, the City shall Review plans for and shall perform inspections as needed throughout the term of the Construction. To the extent the California Public Utilities Commission ("CPUC") has jurisdiction over establishment of street and pedestrian crossings with rail tracks and their subsequent maintenance or alteration and formal application for establishment or alteration of the crossings is required by the CPUC, the Authority shall prepare and submit to the CPUC formal applications and various documents as required. The City will support the Authority in this process by reasonably cooperating and timely processing the various plans and documents subject to the City's Review and Approval. Notwithstanding the foregoing, the City is not required to support CPUC applications for permanent street closures. The Authority shall submit CPUC applications to the City for Review prior to submittal to the CPUC and include the City on the Service List of the application to the CPUC.

3.6 Grant of Rights

If, prior to the Authority's scheduled date of the commencement of construction in a section or portion of the Project, any Rearrangement necessary to eliminate a conflict has not been completed, the City will grant the Authority sufficient property rights or licenses it possesses, if necessary and to the extent permissible in accordance with law, to allow the Authority to proceed with the construction of that section or portion of the Project in accordance with the Authority's schedule; provided, however, that such grant does not unreasonably and adversely interfere with the provisions of City's services to the public. Notwithstanding the foregoing, the City shall be entitled to 15 days notice and opportunity to resolve any impediments to the Rearrangement prior to City assigning its property rights or licenses to the Authority.

If a Rearrangement to replace a Conflicting Facility is located within Authority property, the Authority shall provide the City with an appropriate permanent easement or (if agreed to by the City) license if such is necessary to access, maintain, repair and/or operate the Rearrangement. The Authority will dedicate or otherwise transfer jurisdiction to the City all necessary street, sewer, storm drain, water, light and power and all other public utility easements to the City.

The Authority may request the City's assistance to secure any grant of rights or licenses it does not possess during the construction of the Project. Any City staffing costs incurred by the City associated with assistance from the City in procurement of grant of rights or licenses shall be the City's responsibility.

3.7 City Property Required for Project Rights-Of-Way

The Authority will require additional property in order to construct the Project. The Authority will evaluate the Project's property needs, and will send a request to the City to convey the parcels and interests in property (if any) that are required for the Project. No city-owned properties will be conveyed to the Authority without City Approval; however, the City agrees to make a good faith effort to comply with the Authority's requests for property conveyances.

The property interests may be in the form of a "license" for a specified use, permanent or temporary easement, or a release of interests and rights, as determined by the Authority. In the event that the Project requires a permanent interest, such as fee title or an easement in perpetuity, the Parties shall consider a property exchange, to the extent the Authority owns property in the City that is not needed for the Project. The property conveyance will be at no cost to the Authority or in the event of an exchange no cost to either Party. Neither Party will be required to go through the appraisal, negotiations, offer, or an agreement process, all to the extent permitted by law.

The Authority will prepare all required documents for conveyance. The City agrees to process the Authority provided documents, once Reviewed and Approved by the City, for conveyance before the start of actual construction of that portion of the Project. All conveyances of City property require compliance with City Standards and approval by the City Council.

3.8 Replacement Rights-of-Way

Replacement rights-of-way for the Rearrangement of Conflicting Facilities shall be determined during Design and, if needed, may be acquired by Authority following Approval by the Parties of the location and type of such replacement rights-of-way. It is mutually understood and agreed, however, that when reasonably possible, Rearrangements shall be located in existing City Rights-of-Way where the Facilities being replaced were in City Rights-of-Way. The required Rights-of-Way shall be acquired so as not to unreasonably impair the Authority's schedule. The City may assist the Authority in the acquisition of any necessary private property. Authority shall be responsible for all costs associated with the acquisition of any necessary private property. The Parties shall mutually agree to eventual conveyance, if permitted by applicable law and agreement, of City real property interests being taken out of service, or for which replacement property interests are provided. The Authority agrees to recognize the City's legitimate interests in maintaining control over property and Facilities providing City services that were impaired or altered due to Project construction and that City access to Facilities for access and maintenance shall not be unreasonably impaired by any Authority action.

3.9 City License/Easement Within Project Right-of-Way

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

3.10 Night Work

City recognizes that, in order for the Authority to meet the Construction schedule for the Project, the Authority and its contractors may need to perform a significant amount of work after business hours, on weekends, and/or by multiple shifts spanning up to 24 hours per day and up to seven (7) days per week. The Authority shall secure from the City authorization for night and weekend work in accordance with the City Standards, but will cooperate with City to minimize such work where reasonably requested and to provide reasonable mitigation for the impact of such work.

In instances where exceptions to City Standards are needed, the Authority shall advise the City a minimum of 16 Working Days in advance of the need.

ARTICLE 4 - WORK PERFORMED BY THE CITY

4.0 [NOT USED]

4.1 Work Performed by the City

Work to be performed by the City under this Agreement shall coincide, as closely as possible, with the Authority's Project schedule as indicated in Exhibit B to this Agreement and the terms established herein. Exhibit B will be provided as an Amendment after execution of the MCA. The City agrees to commit sufficient resources necessary to provide the level of service required to meet those schedules.

To assist the City in estimating the level of service to be provided for the Project, the Authority shall submit to the City annually beginning within 30 Days of the Effective Date, and on March 31 in succeeding years, a work plan setting forth each item of work and the documentation associated therewith including corresponding start and finish dates for all milestone activities that the Authority anticipates it will request the City to perform.

4.2 City Contribution to Project

Work performed by the City as part of this Agreement shall be at the City's cost except as set forth in Section 2.6. The City's fulfillment of its responsibilities under this Agreement shall be considered the City's contribution to the Project.

4.3 Issuance of Work Authorizations and Cost Management

Only for work performed pursuant to Section 2.6, the Authority shall issue a Work Authorization to the City on the form provided in Exhibit C. Each Work Authorization to the City will authorize the direct and indirect costs involved in the performance of one or more tasks and/or the purchase of materials and equipment required under the terms and conditions of this Agreement.

4.4 Work Authorization Changes

Any proposed changes in a Work Authorization issued under this Agreement shall be submitted in writing to the Authority for its prior Approval; provided, however, that any proposed change occasioned by an emergency may be submitted to the Authority orally or by telephone and later confirmed in writing within 15 Working Days by the City. In such event, the Authority agrees to act on such oral request immediately.

Whenever practicable, the City will notify the Authority formally in writing at least 10 Working Days prior to the scheduled submission date when it has reason to believe the estimated completion date of a task, a report, or a deliverable will be later than the date set forth in the Work Authorization. The City agrees promptly to notify the Authority and

request written revisions of Work Authorization estimated costs and completion dates in the event of unanticipated cost overruns or completion delays.

4.5 Termination of Work Authorizations

The Authority or the City may terminate any Work Authorization at any time upon written notification. Upon termination by the Authority, the Authority shall reimburse the City for any outstanding incurred costs in accordance with this Agreement.

4.6 Procedures for Payments to the City by the Authority

Subject to Section 4.2, upon execution of Work Authorizations per Section 4.1 and commencement of work by the City, the Authority shall pay invoices (or uncontested portions thereof) within 60 days after receipt of a proper invoice per Section 4.7.

4.7 Preparation of Billings

The City, its contractors and subcontractors agree to comply with Federal and State procedures in accordance with the following: (a) Office of Management and Budget Circular A-87, Cost Principles for State and Local Governments; (b) 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; and (c) Title 21, California Code of Regulations, Section 2500 et seq, when applicable, and other matters connected with the performance of City's contracts with third Parties pursuant to Government Code Section 8546.7. Any costs for which City has received payment that are determined by subsequent audit to be unallowable under the Office of Management and Budget Circular A-87 or 49 CFR, Part 18 are subject to repayment by the City to the Authority.

The Parties agree that the following procedures will be observed for submission of monthly billings by the City to Authority on a progress basis for work performed by the City under a specific Work Authorization requiring monthly billings. City's billings shall begin as soon as practicable following the commencement of a specific Rearrangement or other work under a given Work Authorization. Billings shall specify Costs incurred for that billing, shall bear Authority's Work Authorization number, shall be submitted every month (within 60 days of when expenses incurred), and shall be supported by copies of invoices, timesheets and other cost data that details hourly rates via payroll register and details overhead rates and shall be maintained for audit on file in City's accounting center and shall be addressed to Authority Representative. Each billing shall be noted as either progress or final. The final billing, with a notation that all work covered by a given Work Authorization has been performed, shall be submitted to Authority as soon as practicable following the completion of the Rearrangement or other work, including resolution of all construction contractor claims, and shall recapitulate prior progress billings and shall show inclusive dates upon which work billed therein was performed.

4.8 Audit and Inspection

All accounting records and other supporting papers of City, its contractors and subcontractors connected with the performance under this Agreement shall be maintained for a minimum of four years from the date of Project completion and shall be held open for inspection and audit by representatives of the Authority, the Federal Transportation Administration, the California State Auditor, representatives of the State and auditors of the Federal Government. The City shall have the right to inspect and audit the Authority records at any time for a like period to that permitted for the Authority to Audit the City records.

ARTICLE 5 - DISPUTES RESOLUTION

5.0 Disputes

In the event of any dispute, controversy or claim arising between the City and the Authority in connection with or relating to this Agreement, or any Construction involving or otherwise relating to the Project ("Dispute"), the Parties shall make good faith efforts to resolve the Dispute through negotiation, a hearing of the dispute by a three-member panel selected from members of the Technical Advisory Committee (TAC) and, if the Parties so elect, non-binding mediation. Any Dispute that cannot be settled through direct negotiation, may be resolved by arbitration as set forth in Section 5.4.

5.1 Dispute Notice

In the event of any Dispute, the complaining Party shall provide a notice of the Dispute ("Dispute Notice") to the other Party. The Dispute Notice shall describe the facts surrounding the Dispute in sufficient detail to apprise the other Party of the nature of the complaint. The complaining Party may, but will not be required to, aggregate the Dispute with other Disputes into one Dispute Notice. Except with respect to Design and Construction defects that manifest themselves following the conclusion of the Project, the Dispute Notice must be delivered to the other Party no later than 60 Days after Revenue Operations Date. For Design and Construction defects that manifest themselves following the conclusion of the Project, the Dispute Notice must be delivered to the other Party no later than 60 Days after expiration of the warranty period specified in Section 7.5.

5.2 Provisional Remedies

Notwithstanding the requirements of Sections 5.0 and 5.1 hereof, a Party may seek from the Los Angeles County Superior Court any interim or provisional relief that may be necessary to protect the rights or property of that Party ("Provisional Relief") without first serving a Default Notice or first attempting to settle the Dispute. Notwithstanding the foregoing, no provisional remedy of any type or nature shall be available to stop or otherwise interfere with any Construction relating to the Project, or any portion thereof, unless requested by Authority, or required to prevent imminent danger to public health or safety. Following the appointment of an Arbitrator pursuant to Section 5.4 hereof, any Provisional Relief which would be available from a court of law shall be available from the Arbitrator, subject to the limitations set forth in Section 5.6 hereof.

5.3 Negotiation and TAC Hearing; Reference Proceeding

The Parties shall attempt to settle all Disputes. To this effect, the Parties shall conduct at least one face-to-face meeting in which they shall consult and negotiate with each other, and, recognizing their mutual interests, attempt to reach a solution satisfactory to both Parties. Such meeting shall take place within six (6) Working Days following delivery of a Dispute Notice. In the event face-to-face negotiations do not reach a solution satisfactory to both Parties, a three-member panel selected from members of

the TAC shall convene a nonpublic, informal hearing (TAC Hearing) of the dispute and issue a non-binding proposed solution. No such proposed solution shall be admissible as evidence in any future arbitration or litigation concerning the same Dispute. The three-member panel will be selected as follows: The City and Authority will each select one member from the TAC and those two members will select the third member who will chair the panel. No members of the panel shall be a TAC representative from a city involved in the Dispute.

Except with respect to the provisional relief available from the Arbitrator subject to the limitations set forth in Section 5.6 hereof (as defined below), compliance with the Dispute Notice, TAC Hearing, and negotiation provisions hereof shall be a condition precedent to the filing of any action involving a Dispute.

5.4 Arbitration

5.4.1 Qualification and List of Potential Arbitrators

Any Dispute that cannot be settled through direct negotiation and the TAC hearing (including, if the Parties so elect, non-binding mediation) may, but shall not be required to, be resolved before a neutral arbitrator (the "Arbitrator") selected from the list of retired judges of the Los Angeles County Superior Court or any California appellate court attached as Exhibit E to this Agreement in accordance with this Section 5.4.1. If the Parties decide in the future to submit a Dispute to arbitration, the provisions of 5.4.1 through 5.10 shall apply. The list of retired judges as set forth on Exhibit E, as may be amended from time to time in accordance with this Section 5.4.1, is hereinafter referred to as the "List of Potential Arbitrators." The List of Potential Arbitrators shall comprise five (5) retired judges selected by the Authority and five (5) retired judges selected by the City. If, at any time, any retired judge listed on Exhibit E dies, retires from acting as an arbitrator in disputes, or is otherwise unwilling to serve as an Arbitrator to decide Disputes under this Agreement, the Party who selected the retired judge may select another retired judge of the Los Angeles County Superior Court or any California appellate court for inclusion on Exhibit E by written notice to the other Party. The Arbitrator selected from the List of Potential Arbitrators to decide any Dispute shall have no material, financial, or personal interest in the results of the arbitration and shall make the disclosures required by Section 1281.9 of the California Code of Civil Procedure. The Arbitrator shall sign an oath of impartiality upon appointment to hear the Dispute. In addition to the grounds set forth in California Code of Civil Procedure Section 1286.2, failure to disclose any such interest or relation shall be grounds for vacating the award of the Arbitrator in the Dispute.

5.4.2 Selection of Arbitrator

The Arbitrator for each Dispute shall be chosen from the List of Potential Arbitrators as follows: Upon the written request of either the City or the Authority

for arbitration of any Dispute, the Authority and the City shall, within eight (8) Working Days thereafter, or within such extended period as they shall agree to in writing, attempt to agree upon a mutually satisfactory Arbitrator from the List of Potential Arbitrators. If they are unable to agree, the Authority and the City, prior to the expiration of the eight (8) Working Days or agreed extended period, shall prepare and forward to the other a list of three (3) names from the List of Potential Arbitrators to act as Arbitrator of the Dispute. The Authority and the City shall promptly review the other's list and shall strike up to two (2) names from the list provided by the other part. If the Parties cannot agree to using one of the two (2) names remaining on the respective lists, the two (2) named individuals shall select a neutral Arbitrator, other than themselves, from the List of Potential Arbitrators, who shall be the Arbitrator of the Dispute. If the Authority or the City fail to designate its Arbitrator of the Dispute from the List of Potential Arbitrators within eight (8) Working Days after the date of delivery of the demand for arbitration or the agreed extended period, or if the two (2) designated Arbitrators are unable to select a neutral Arbitrator from the List of Potential Arbitrators within four (4) Working Days after their appointment, a neutral Arbitrator shall be designated by the Los Angeles County Superior Court from the List of Potential Arbitrators pursuant to Section 1281.6 of the California Code of Civil Procedure, as modified herein, and the court appointed Arbitrator shall hear the Dispute as the sole Arbitrator. A hearing date on the Dispute shall be set within thirty (30) Days of the selection of the Arbitrator.

The Authority and the City agree that all disputes to be resolved by arbitration under this Agreement arising from the same or related set of circumstances or facts shall be heard by the same Arbitrator, if available. If such Arbitrator is unavailable, the Parties shall select another Arbitrator in accordance with the provisions of this Section 5.4.2.

5.4.3 Hearing; Award

No Arbitrator shall be selected who is unable to (a) hear the Dispute within 30 Days after being selected, and (b) render or make and serve on the Parties an award or decision (the "Award") within eight (8) Working Days of the conclusion of the hearing. Notwithstanding Sections 1282.2(b) and 1286.2(e) of the California Code of Civil Procedure (regarding postponement of the hearing), the Arbitrator may not postpone nor adjourn the hearing except for good cause or upon the stipulation of all Parties to the arbitration. The Arbitrator may proceed in absence of a Party who, after due notice, fails to appear.

The arbitration shall be held in Los Angeles County, California. Section 1283.05 of the California Code of Civil Procedure is specifically made applicable; provided however, that the time for responding to any discovery permitted by the California Code of Civil Procedure, including but not limited to, inspection demands and written discovery, shall be 10 Working Days of any notice or demand, or as

otherwise directed by the Arbitrator, or as may be extended by mutual agreement by the Parties.

Any Award rendered by the Arbitrator shall be in writing stating a factually detailed, reasoned opinion of the Arbitrator's findings of fact and conclusions of law, and shall be signed by the Arbitrator. The Arbitrator, in deciding any Dispute, shall base his or her Award on the record, shall have no power or authority to award special, consequential, punitive, or exemplary damages, and shall look to the substantive laws, and not the laws of conflicts, of the State of California for the resolution of the Dispute. In deciding a Dispute, the Arbitrator shall follow the express intent of the Parties as set forth in this Agreement. The making of an Award failing to comply with the requirements of this paragraph shall be deemed to be in excess of the Arbitrators' powers and a 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. In addition, the Award of the Arbitrator shall be subject to vacation for any of the other reasons described in California Code of Civil Procedure Section 1286.2. A petition to confirm, correct, or vacate the Award shall be filed with the Los Angeles County Superior Court pursuant to California Code of Civil Procedure Section 1285 (or successor thereto). In the event the arbitration procedure provided by in this Article is deemed for any reason to infringe upon the jurisdiction of the Los Angeles County Superior Court, the arbitration procedure will be deemed to be a reference agreement and any arbitration Award deemed to be a decision of a referee pursuant to Chapter 6 of the California Code of Civil Procedure subject to the procedures specified in this Article.

Notwithstanding the foregoing, any Award rendered by the Arbitrator shall be final and binding on each of the Parties hereto and their respective successors only as follows:

a. If the amount that is the subject of the Dispute (the "Disputed Amount") is less than or equal to $500,000, then the Arbitrator's Award shall be final and binding.

b. If the Disputed Amount is greater than $500,000, then within six (6) months following issuance of Award by Arbitrator, either Party may submit the Dispute to judicial resolution by filing a complaint in a court of competent jurisdiction. If the Disputed Amount is greater than $500,000 and the Dispute has not been submitted to judicial resolution by the filing of a complaint in a court of competent jurisdiction within the required six (6) month period, then the Arbitrator's Award shall be final and binding.

5.4.4 Prevailing Party

In the final Award, in addition to any other damages assessed, the prevailing Party shall be entitled to its reasonable attorneys' fees, expert witness fees, and all other costs and expenses incurred in connection with resolving such Dispute, including the prevailing Party's share of the administrative fee and the arbitrator's fees and expenses, if any. The attorneys' fees which the prevailing Party is entitled to recover shall be awarded for any supplemental proceedings until the final Award is satisfied. In addition to the forgoing award of attorneys' fees to the prevailing Party, the prevailing Party shall be entitled to its reasonable attorneys' fees incurred in any post arbitrator proceeding to collect or enforce the judgment.

5.4.5 Injunctive and Other Interim Relief

Each of the Parties also reserves the right to file with the Los Angeles County Superior Court an application for temporary or preliminary injunctive relief, attachment, writ of possession, temporary protective order, and/or appointment of a receiver on the grounds that the arbitration award to which the applicant may be entitled may be rendered ineffectual in the absence of such relief.

5.4.6 Confidential Proceedings

The arbitration proceedings shall be confidential, except to the extent otherwise provided by applicable Laws. Neither Party shall disclose any information about the evidence adduced by the other in the arbitration proceeding or about documents produced by the other in connection with the proceeding, except in the course of a judicial, regulatory or arbitration proceeding, as may be requested by any Governmental Authority or to the extent required by applicable Laws. Before making any disclosure permitted by the preceding sentence, the Party shall give the other Party reasonable written notice of the intended disclosure so as to afford the other Party an opportunity to protect its interests and challenge any intended disclosure. The Arbitrator, expert witnesses and stenographic reporters shall sign appropriate nondisclosure agreements.

5.5 Governing Law; Waiver of Jury

The Arbitrator shall hear and decide the Dispute according to all of the substantive, procedural and evidentiary laws of the State of California, unless the Parties stipulate to the contrary. The Parties may, on a case-by-case basis agree to waive their right to a trial by jury.

5.6 Scope of Authority

Except as set forth in the next sentence, the Arbitrator shall have the authority to award any remedy or relief that a court of this State could order or grant. The Arbitrator shall have no power or authority to award: (a) any injunctive or other relief which would stop or otherwise interfere with any Construction relating to the Project, or any portion

thereof, unless such relief is requested by the Authority, or required by reason of imminent danger to public health or safety, or (b) special, consequential, punitive, or exemplary damages. The Arbitrator shall be empowered to impose sanctions and to take such other actions with regard to the Parties as the Arbitrator deems necessary to the same extent such actions could be taken by a judge of this State pursuant to the California Rules of Civil Procedure or other applicable law.

5.7 Continuing Performance

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

5.8 Implementation

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

5.9 Cooperation

The Parties shall diligently cooperate with each other and the Arbitrator, and shall perform such acts as may be necessary, to ensure an efficient and expeditious resolution to each Dispute. If either Party fails to cooperate diligently, the other Party shall give notice of that fact to the non-cooperating Party, setting forth the Party's basis for its contention of non-cooperation and requesting specific action. Upon a determination that the noticed Party thereafter failed to act with substantial justification, the Arbitrator may sanction the noticed Party for its non-cooperation. Sanctions may include, but are not limited to, the payment of another Party's attorneys' fees and costs incurred to secure the required cooperation.

5.10 Provisional Sum for Resolving Scope Disputes

The Authority shall establish a provisional sum of at least $250,000 in the Design/Build Contract for use in resolving Disputed Betterment issues. The provisional sum amount and the use of those funds shall be at the sole discretion of the Authority.

ARTICLE 6 - BETTERMENTS

6.0 Payments for Betterments

In accordance with the methodology described in Article 2, the City shall make every effort to define Betterments prior to the Design Freeze of the Project. Nevertheless, the City may make requests for Betterments at any time, and the Authority shall provide the Betterments, as long as design and implementation of the Betterments would not delay the Project and subject to payment as set forth in this Section 6.0. The Authority shall be paid by the City for work performed under this Agreement for any Betterments requested by the City. The amount of the payments for Betterments, if any, shall be estimated by the Authority based on City's request(s) for Betterments.

After City has reviewed the estimated cost, the City's Representative shall inform the Authority's Representative of any Betterments the City wants included in the Project. Along with the request for any Betterments, the City shall commit to provide funds to implement the Betterments so that the design and construction of the Betterments can be estimated by the Design/Build Contractor and considered for inclusion in the Project. The Authority agrees to incorporate any Betterments requested and paid for by the City, subject to METRO approval. Authority consultants and contractors may perform any work so authorized. Consultants and contractors engaged by the Authority to perform Betterment work shall comply with all applicable labor and other laws, grants, and agreements.

The City shall fully compensate the Authority for the direct costs and indirect costs of the Betterments, including Authority personnel, the Authority's consultants, and the Design/Build Contractor. However, given the administrative effort required to track, compile, and audit the costs for Authority personnel and the Authority's consultants, the City and Authority have the option to agree, in advance, on a flat compensation of 10% of the cost of all Betterments, in lieu of payment of the actual administrative costs incurred in completing the Betterment(s).

Direct Costs are defined as those labor costs and costs of purchasing equipment and/or materials. Indirect Costs are defined as the allowable overhead rate as determined by external audit using applicable Federal Acquisition Regulations (FARs). The Authority shall earn no profit or mark-up fee based on the cost of the Betterments requested by the City. Consultant fees and profits shall be charged in accordance with Authority practice or existing contract limits.

ARTICLE 7 - INDEMNIFICATION, MAINTENANCE AND WARRANTIES

7.0 Indemnification of the City

The Authority agrees to indemnify, defend and hold harmless the City, its officials, officers, agents and employees from and against any and all liability, expenses (including engineering and defense costs and legal fees and expert witness fees), claims, losses, suits and actions of whatever kind, and for damages of any nature whatsoever, including but not limited to, bodily injury, death, personal injury, or property damage (including allegations thereof) arising from or connected with Design and Construction performed by, or under the management or control of the Authority. Any rights of the Authority hereunder to inspect, Review and/or Approve any Design or Construction performed by the City shall not be deemed to render such Design or Construction under the management or control of the Authority.

7.1 Indemnification of the Authority

The City agrees to indemnify, defend and hold harmless the Authority, its members, agents, officials, officers and employees from and against any and all liability, expenses (including engineering and defense costs and legal fees and expert witness 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 (including allegations thereof) arising from or connected with Design and Construction performed by, or under the management or control of the City. Any rights of the City hereunder to inspect, Review and Approve any Design or Construction performed by the Authority shall not be deemed to render such Design or Construction under the management or control of the City.

7.2 Indemnification of Both City and Authority

The obligations of the Parties under Sections 7.0, 7.1, 7.2 and 7.3 shall survive the termination or expiration of this Agreement. In contemplation of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities solely by reason of such entities being Parties to an agreement as defined by Government Code Section 895, the Parties hereto, as between themselves and pursuant to the authorization contained in Government Code Sections 895.4 and 895.6, will each indemnify and defend the other for the full liability imposed upon it, or any of its officers, officials, agents or employees, by law for injury caused by negligent or wrongful act or omission occurring in the performance of this Agreement to the same extent that such Party would be responsible under Sections 7.0, 7.1, 7.2 and 7.3 hereof. The provisions of Section 2778 of the California Civil Code are a part hereof as if fully set forth herein.

7.3 Insurance Program

The Authority intends to enter into an insurance program for the Design and Construction of the Project (including areas adjacent to the location where incidental

operations are performed, excluding permanent locations of any insured Party other than owner) and will enroll the City in such insurance program.

The insurance program will become effective on and will remain in force throughout construction and operational startup of the Project.

7.4 Maintenance

The Authority's Design/Build Contractor shall be responsible for the maintenance of all portions of the Project during Construction. Upon completion of Construction, the City shall own and be responsible for the maintenance of all Project elements constructed in the City Rights-of-Way (City Facilities). Authority and its successors shall be responsible for the maintenance of all Project elements constructed in the Right-of-Way.

7.5 Warranties

Warranties supplied by Contractors shall be made for the benefit of both the City, for work in City Rights-of-Way and on City Facilities, and the Authority. Additionally and again in connection solely with work performed by the Authority, the City or either of their Contractors, the City and the Authority each warrant to the other for a period of one (1) year from and after acceptance of the work that any work performed by or for them shall be free from defect; this limited warranty is the sole warranty given by the City and the Authority, and, pursuant to this warranty, and for the warranty period only, the City or the Authority, as the case may be, shall remedy any such discovered defect at its sole expense. Such remedy will be commenced and completed, if reasonably feasible, within 10 Days after written notice to the warranting Party.

7.6 Contractor Bonds

The City and the Authority shall require their respective contractors to secure payment and performance bonds, or other equivalent sureties, naming both the City and the Authority as an additional obligee or co-beneficiary, as appropriate. Such bonds shall be issued by a California licensed surety, and shall comply with bond requirements specified in Exhibit F.

ARTICLE 8 - MISCELLANEOUS PROVISIONS

8.0 Approvals

Except as otherwise provided herein, where this Agreement requires Approval, consent, permission, satisfaction, agreement or authorization by either Party, such Approval, consent, permission, satisfaction, agreement or authorization shall not be unreasonably withheld, and shall not be effective unless it is in a writing executed by the City Representative or the Authority Representative, as applicable.

In the case of Approvals by the City, absence of written comments and/or disapproval by the City Representative within the later to occur of (a) expiration of the review period stated in this Agreement or (b) five (5) days after the effective date (in accordance with Section 8.4) of a notice from the Authority to the City marked "Second and Final Notice", shall be deemed as Approval by the City Representative. Approval by the City Representative shall not, unless specifically indicated, constitute a waiver of any City Standard, code, or other requirement in this Agreement

8.1 Counterparts

This Agreement may be executed in several counterparts, and all counterparts so executed shall constitute one Agreement, binding on all of the Parties hereto, notwithstanding that all of the Parties are not signatory to the original or the same counterpart.

8.2 Survival of Rights

Neither Party shall have the right to assign any of its rights, interests or obligations under this Agreement, without the consent of the other Party, except to the extent the Authority transfers the Project or any portion thereof to METRO. This Agreement shall be binding upon, and, as to permitted successors or permitted assigns, inure to the benefit of, the City and the Authority and their respective successors in all cases whether by merger, operation of law or otherwise.

8.3 Severability

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

8.4 Notification or Notices

Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if personally delivered, transmitted by facsimile (with mechanical confirmation of transmission), sent by same-day or overnight courier that provides a receipt showing date and time of delivery or deposited in the United

States mail, registered or certified, postage prepaid, addressed to the Parties' addresses set forth below. Notices given in the manner provided for in this Article 8.4 shall be deemed effective on the third Day following deposit in the mail or on the day of transmission if given by facsimile, or on the day of delivery if delivered by hand or same-day or overnight courier. Notices must be addressed to the Parties hereto at the following addresses, unless the same shall have been changed by notice in accordance herewith:

If to the City:

City of Claremont
Attention: Tony Ramos, City Manager
207 Harvard Avenue
Claremont, Ca 91711
Tel.: (909) 399-5441
Fax: (909) 399-5492

With a copy to:

City of Claremont
Attention: Sonia Carvalho, City Attorney
18101 Von Karman Avenue, Suite 1000
Irvine, CA 92612
Tel.: (949) 263-2600
Fax: (949) 260-0972

If to the Authority:

Metro Gold Line Foothill Extension Construction Authority
406 East Huntington Drive, Suite 202
Monrovia, California 91016
Attn: Mr. Habib Balian, Chief Executive Officer
Tel: (626) 471-9050
Fax: (626) 471-9049

With a copy to:

Nossaman LLP
777 South Figueroa Street, 34th Floor
Los Angeles, CA 90017
Attn: Alfred E. Smith II, General Counsel
Tel: (213) 612-7831
Fax: (213) 612-7801

8.5 Statutory References

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

8.6 Construction

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

8.7 Section Headings

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

8.8 Governing Law

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

8.9 Pronouns and Plurals

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

8.10 Time of the Essence

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

8.11 Legal Rights

The rights and remedies of the Authority and the City for default in performance under this Agreement or any Work Authorization are in addition to any other rights or remedies provided by law.

8.12 Bonds/Fees

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

8.13 Further Actions

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

8.14 Force Majeure

Neither Party shall be held liable for any loss or damage due to delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence; such causes may include acts of God, acts of civil or military authority, government regulations (except those promulgated by the Party seeking the benefit of this section), embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, strikes, power blackouts, volcanic action, other major environmental disturbances or unusually severe weather conditions; provided, however, lack of funds or funding shall not be considered to be a cause beyond a Party's control and without its fault or negligence. The foregoing events do not constitute force majeure events where they are reasonably foreseeable consequences of Construction.

8.15 Third Party Beneficiaries

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

8.16 Damage to Property

The Authority shall be responsible for restoring to original condition, damage to public or private property occurring as a result of Construction activity on the Project, exclusive of any Construction undertaken by City.

8.17 Authority of Parties

Each of the Parties hereby represents and warrants that it has full legal authority and is duly empowered to enter into this Agreement, and has taken all actions necessary to authorize the execution and delivery of this Agreement. Each Party further agrees and represents and warrants that the execution, delivery, and performance by it of this Agreement does not and will not:

8.17.1 require any consent or approval not heretofore obtained of any person or judicial or administrative body;

8.17.2 violate any order, writ, judgment, injunction, decree, determination or award having applicability to such Party;

8.17.3 result in a breach of or constitute a default under, cause or permit the acceleration of any obligation owed under, or require any consent under, any indenture or any agreement, contract, lease, or instrument to which such Party is bound or affected.

Further, the Parties represent that, to their actual knowledge, there are no orders, judgments, injunctions, awards, decrees, rulings, charges or writs of any Governmental Authority in effect preventing the consummation of, nor any pleadings filed in connection with any actions seeking an injunction against, any of the transactions contemplated by this Agreement.

8.18 Funding Sources

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

8.19 Nondiscrimination

Authority and City each covenant to the other that in the performance of their respective obligations under this Agreement there shall be no discrimination against or segregation of, any person or group of persons on account of any impermissible classification including, but not limited to, race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry.

8.20 Nonliability of Authority and City Officials

No officer, official, employee, agent, representative, or volunteer of the Authority or City shall be personally liable in the event of any default or breach by the defaulting Party or for any amount which may become due to the non-defaulting Party or to its successor, or for breach of any obligation of the terms of this Agreement.

8.21 Federal Requirements

The City agrees to include the clauses set forth in Exhibit F in all contracts promulgated through this Agreement for which the Authority is reimbursing all or part of the costs to the City from Federal funds. In the event of any change in applicable Federal law during the term of this Agreement, the City shall also include such additional or revised clauses as may be appropriate in light of such changes in applicable Federal law.

8.22 Exhibits

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

8.23 Entire Agreement

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

8.24 Binding Obligation

This Agreement is when executed and delivered, the legal, valid and binding obligation of the Parties hereto.

8.25 Amendments

This Agreement may not be amended except by written amendment signed by both Parties after approval of the governing boards of each Party. Notwithstanding any other provision of this Agreement to the contrary, if the form of agreement entered into between the Authority and any other Phase 2B city is different (other than clerical differences) than this form of agreement hereby approved by the Parties, whether such other form of agreement is different initially or becomes different by change or amendment thereto, the Authority, within five (5) Working Days of its actual knowledge of such difference, change, or amendment, shall notify City in writing of same. Upon receipt of such written notice the City shall have the unilateral right, but not the obligation, to cause, by written notice to Authority, an amendment to this Agreement to incorporate the same or materially similar difference, change, or amendment into this Agreement, and Authority shall not withhold approval of such amendment to this Agreement.

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

CITY OF CLAREMONT

By: _____
Corey Calaycay, Mayor

Attest: _____
Shelley Desautels, City Clerk

APPROVED AS TO FORM:

By: _____
Sonia Carvalho, City Attorney

METRO GOLD LINE FOOTHILL EXTENSION CONSTRUCTION AUTHORITY

By: _____
Habib Balian
Chief Executive Officer

APPROVED AS TO FORM:

By: _____
Alfred E. Smith II
General Counsel

Exhibit A

DESCRIPTION OF THE PROJECT

The Metro Gold Line Foothill Extension Project is a phased project that extends the existing Metro Gold Line 24 miles to the east, from the City of Pasadena to the City of Montclair. The project will connect the cities of Arcadia, Monrovia, Duarte, Irwindale, Azusa, Glendora, San Dimas, La Verne, Pomona, Claremont, and Montclair (see Figure 1).

The extension is proceeding in two phases. The first phase – referred to as Phase 2A – begins at the terminus of the existing Gold Line (Sierra Madre Villa station) in Pasadena and ends in Azusa at Citrus Avenue. Construction of this phase began in late 2011, and is anticipated to be complete in late 2015.

The proposed second phase – referred to as Phase 2B – would provide light rail service from the terminus of Phase 2A (Azusa-Citrus station) to the City of Montclair Transcenter, located just east of Monte Vista Avenue. The project will share right-of-way with Metrolink, but the light rail trains will operate on separate tracks and use different platforms than Metrolink commuter trains. The travel time is anticipated to be approximately 18 minutes between the Azusa-Citrus station and the Montclair station.

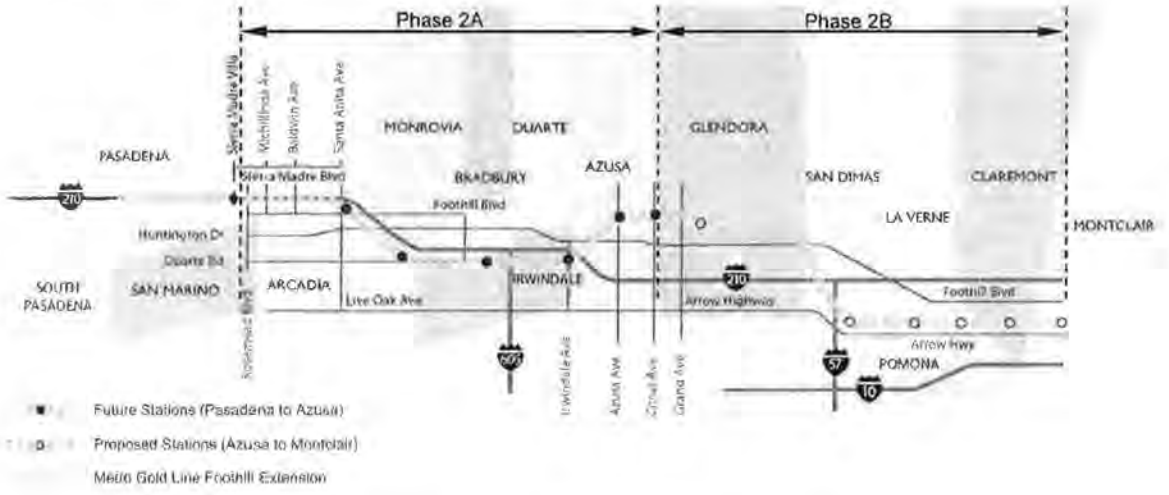

Figure 1 - Gold Line Foothill Extension Proposed Alignment

The Project includes six stations and associated parking facilities, new and modifications of existing bridge structures, numerous at-grade crossings with gate protection, and an extension of the Phase 2A power, signaling and communications systems.

The Foothill Construction Authority is responsible for managing the design and construction of the project. The Los Angeles County Metropolitan Transportation Authority (Metro) will oversee design and construction in coordination with the Authority and operate the Gold Line from Azusa to Montclair service.

Exhibit B

PROJECT SCHEDULE

[TO BE ADDED UPON FULL FUNDING OF THE PROJECT]

Exhibit C

WORK AUTHORIZATION
METRO GOLD LINE FOOTHILL EXTENSION CONSTRUCTION AUTHORITY

Work Authorization # _____

Effective Date: _____

TASK or SUBTASK	DESCRIPTION OF WORK	AMOUNT
DURATION OF WORK FROM: _____ TO: _____		TOTAL AMOUNT $ _____

FOR: _____

ACCEPTED: _____

_____
TITLE

_____
DATE

FOR AUTHORITY

BY: _____
NAME

_____
TITLE

_____
DATE

* The attached Scope of work and detailed cost data are made a part of this document.

Exhibit D

LEGAL HOLIDAYS

New Year's Day
Martin Luther King, Jr. Day
Presidents' Day
Memorial Day
Independence Day
Labor Day
Veterans Day
Thanksgiving Day
Day after Thanksgiving
Christmas Eve Day
Christmas Day

Exhibit E

LIST OF POTENTIAL ARBITRATORS

A. Authority Selections

TO BE PROVIDED BY AUTHORITY WITHIN EIGHT (8) WORKING DAYS AFTER THE WRITTEN REQUEST FROM EITHER PARTY FOR ARBITRATION OF ANY DISPUTE

B. City Selections

TO BE PROVIDED BY CITY WITHIN EIGHT (8) WORKING DAYS AFTER THE WRITTEN REQUEST FROM EITHER PARTY FOR ARBITRATION OF ANY DISPUTE

Exhibit F

FEDERAL REQUIREMENTS

[***Will insert current prior to execution***]

The City agrees to include the following clauses in all contracts promulgated through this Agreement for which the Authority is reimbursing all or part of the costs to the City from Federal funds:

a. Federal Changes: Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation to those listed directly or by reference in this Agreement, as they may be amended or promulgated from time to time during the term of this Agreement. Contractor's failure to so comply shall constitute a material breach of this Agreement.

b. Fly America: Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub recipients of Federal funds and their Contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

c. Energy Conservation: Contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

d. Clean Water: Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

e. Lobbying: Pursuant to the Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.], Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal Contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the Authority. This requirement shall pass through to any and all Subcontractors engaged to perform services under this Agreement.

f. Access to Records and Reports: Contractor agrees to provide the Authority, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this agreement for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Firm access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a) 1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the Authority, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

g. Clean Air: Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. Contractor agrees to report each violation to the

Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

h. Recovered Materials: Contractor agrees to comply with all requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

i. No Government Obligation to Third Parties: The Authority and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Authority, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.

   Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

j. Program Fraud and False or Fraudulent Statements or Related Acts: Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying agreement, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

   Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Contract connected with a project that

is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

k. Debarment and Suspension: Contractor shall comply with U.S. DOT regulations, "Government wide Debarment and Suspension" (Non-procurement). This requirement shall pass to any and all subcontractors engaged to perform services under the Agreement.

l. Privacy: Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, Contractor agrees to obtain the express consent of the Federal Government before Contractor or its employees operate a system of records on behalf of the Federal Government. Contractor understand that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individual involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement.

Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

m. Civil Rights:

Nondiscrimination: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Contractor agrees to comply with all applicable

equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,"41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. 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 addition, Contractor agrees to comply with any implementing requirements FTA may issue.

Age: In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

Disabilities: In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

n. Drug Free Workplace: Contractor shall comply with the terms of the U.S. DOT regulations for Drug Free Workplace Requirements, 49 C.F.R. Part 29, Subpart F.

o. Interest of Members of or Delegates to Congress: In accordance with 18 U.S.C. Section 431, no member of, or delegate to, the Congress of the United States shall be admitted to any share or part of the Agreement or to any benefit arising there from.

p. Environmental Protection: Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq. consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

q. Access Requirements For Persons With Disabilities: Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. Contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

(3) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26;

(4) Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

(5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(6) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(7) U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(8) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(9) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;

(10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

(11) Any implementing requirements FTA may issue.

r. Buy America: Contractor shall comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the Unites States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the Unites States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than $100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(c) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

Authority may investigate Contractor's, and subcontractor's, and any supplier's compliance with this article. If an investigation is initiated, Contractor, subcontractor, and supplier shall document its compliance, in accordance with 49 CFR 661.15, and cooperate with the investigation. Contractor shall incorporate the Buy America conditions set forth in this article in every subcontract or purchase order and shall enforce such conditions.

s. Cargo Preference - Use of United States-Flag Vessels: The Contractor agrees to: (i) use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (ii) furnish within 20 working days following the date of loading for shipments

originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Authority (through the Contractor in the case of a subcontractor's bill-of-lading); and (iii) include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

t. Construction Activities:

Davis-Bacon and Copeland Anti-Kickback Acts

Minimum Wages

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each

classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting

officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v) (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

Withholding

The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal Contract with the same prime Contractor, or any other federally-assisted Contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Authority may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

Payrolls and Basic Records

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall

maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Authority for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall

satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

Apprentices and Trainees

(i) Apprentices: Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered

program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees: Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved

by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity: The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

Compliance With Copeland Act Requirements

The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the Contract clauses in 29 CFR 5.5.

Contract Termination: Debarment

A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

Compliance With Davis-Bacon And Related Act Requirements

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

Disputes Concerning Labor Standards

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

Certification of Eligibility

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government Contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government Contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Contract Work Hours and Safety Standards

Overtime Requirements

No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

Violation; Liability For Unpaid Wages; Liquidated Damages

In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in

excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

Withholding For Unpaid Wages And Liquidated Damages

The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any other Federal Contract with the same prime Contractor, or any other federally-assisted Contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

u. Bonding:

Bid Bond Requirements (Construction)

(1) Bid Security

A Bid Bond must be issued by a fully qualified surety company acceptable to Authority and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described there under.

(2) Rights Reserved

In submitting this Bid, it is understood and agreed by bidder that the right is reserved by Authority to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of Authority.

It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid

opening without the written consent of Authority, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of Authority's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by Authority as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense Authority for the damages occasioned by default, then the undersigned bidder agrees to indemnify Authority and pay over to Authority the difference between the bid security and Authority's total damages, so as to make Authority whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

(i) Performance bonds

(A) The penal amount of performance bonds shall be 100 percent of the original Contract price, unless the Authority determines that a lesser amount would be adequate for the protection of the Authority.

(B) The Authority may require additional performance bond protection when a Contract price is increased. The increase in protection shall generally equal 100 percent of the increase in Contract price. The Authority may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(ii) Payment bonds

(A) The penal amount of the payment bonds shall equal:

(1) Fifty percent of the Contract price if the Contract price is not more than $1 million.

(2) Forty percent of the Contract price if the Contract price is more than $1 million but not more than $5 million; or

(3) Two and one half million if the Contract price is more than $5 million.

(B) If the original Contract price is $5 million or less, the Authority may require additional protection as required by subparagraph 1 if the Contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the Authority's interest.

(i) The following situations may warrant a performance bond:

(A) Authority property or funds are to be provided to the Contractor for use in performing the Contract or as partial compensation (as in retention of salvaged material).

(B) A Contractor sells assets to or merges with another concern, and the Authority, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

(C) Substantial progress payments are made before delivery of end items starts.

(D) Contracts are for dismantling, demolition, or removal of improvements.

(ii) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

(A) The penal amount of performance bonds shall be 100 percent of the original Contract price, unless the Authority determines that a lesser amount would be adequate for the protection of the Authority.

(B) The Authority may require additional performance bond protection when a Contract price is increased. The increase

in protection shall generally equal 100 percent of the increase in Contract price. The Authority may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(iii) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the Authority's interest.

(iv) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

The penal amount of payment bonds shall equal:

(v) 50% of the Contract price if the Contract price is not more than $1 million;

(vi) 40% of the Contract price if the Contract price is more than $1 million but not more than $5 million; or

(vii) $2.5 million if the Contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the Contract contains an advance payment provision and a performance bond is not furnished. The Authority shall determine the amount of the advance payment bond necessary to protect the Authority.

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The Authority shall determine the amount of the patent indemnity to protect the Authority.

Warranty of the Work and Maintenance Bonds

The Contractor warrants to Authority, the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by Authority, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the Authority, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by Authority and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to Authority. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item x below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to Authority written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

v. Seismic Safety: The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

w. Nonconstruction Activities:

Contract Work Hours and Safety Standards

Overtime Requirements

No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

Violation; Liability For Unpaid Wages; Liquidated Damages

In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor

shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

Withholding For Unpaid Wages And Liquidated Damages

The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any other Federal Contract with the same prime Contractor, or any other federally-assisted Contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

x. Conformance with National ITS Architecture: To the extent applicable, the contactor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by TEA-21 § 5206(e) , 23 U.S.C. § 502 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and other Federal requirements that may be issued.

y. Notification of Federal Participation: To the extent required by law, in the announcement of any third party Contract award for goods or services (including construction services) having an aggregate value of $500,000 or more, the Authority agrees to specify the amount of Federal assistance intended to be used to finance that acquisition and to express that amount of that Federal assistance as a percentage of the total cost of that third party Contract.

z. Incorporation of Federal Transit Administration (FTA) Terms: The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests, which would cause Authority to be in violation of the FTA terms and conditions.

Exhibit G [NOT USED]

Exhibit H

CITY-SPECIFIC ISSUES

The following is a list of City-specific items:

1. The final parking structure design has not yet been completed. The pedestrian flow and overall design and usability remain issues that are of the utmost importance to the City. This includes but is not limited to continued discussion and feasibility planning of retail on the college frontage, elevator access to college park, and location of pedestrian walkways.

2. It remains critical to the City that all of the at-grade crossings remain open once the construction is complete. We will continue to work with the Authority through the CPUC approval process and appeal process if necessary to that end.

3. As final engineering is completed it remains a priority of the City to see the Metrolink platform located in such a way that the gates at Indian Hill Blvd do not have to be down while the train is at the station.