

UTILITY COOPERATIVE AGREEMENT

BETWEEN

TESORO SOCAL PIPELINE COMPANY LLC

AND

**THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION
AUTHORITY**

_____, 2025

EFFECTIVE DATE

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This Agreement is entered into by and between Tesoro SoCal Pipeline Company LLC ("Utility") and the Los Angeles County Metropolitan Transportation Authority ("LACMTA" or "Metro"), (each a "Party" and collectively the "Parties").

RECITALS

- (A) LACMTA is a public entity created by the California State Legislature pursuant to California Public Utilities Code 130050.2 et. seq. as the single successor agency to the Southern California Rapid Transit District and the Los Angeles County Transportation Commission, and as such succeeded to any or all of the powers, duties, rights, obligations, liabilities, indebtedness, bonded and otherwise, immunities, and exemptions of the district and its board of directors and the commission and its governing body. In accordance with its powers, authority and responsibilities, LACMTA is a self-permitting agency that designs, builds, operates and maintains Transportation Projects that serve various cities and communities. Pursuant to Applicable Law, LACMTA is not subject to zoning, building or construction permitting ordinances of a local jurisdiction when constructing a Transportation Project.
- (B) LACMTA proposes to design, construct and operate facilities necessary and convenient for various transportation systems (including public rail and busway transit systems) within the County of Los Angeles. This Agreement applies to all of LACMTA's proposed Transportation Projects including the following (in each case, as may be more fully described at www.Metro.net) and any other Transportation Project Notified to Utility under Section 1.1(e) (Scope of Agreement):
- East San Fernando Light Rail Transit Project;
 - projects within the LACMTA highway program (including the I-5 North County Enhancements Project);
 - Southeast Gateway Transportation Project (formerly West Santa Ana Branch Transit Corridor);
 - Eastside Transit Corridor Phase 2;
 - C Line (Green) Extension to Torrance;
 - G Line (Orange Line) Improvements Project;
 - Sepulveda Transit Corridor Project;
 - projects within the LACMTA Regional Rail program (including Link Union Station);
 - various corridor congestion relief bus rapid transit projects (including Vermont Corridor, NoHo to Pasadena and North SFV);
 - Crenshaw Northern Extension; and
 - various LACMTA Transit Oriented Communities and Joint Development projects located on LACMTA-owned Rights-of-Way or acquired properties.
- (C) One or more of the proposed Transportation Projects will require the Rearrangement of portions of Utility Facilities. The Parties wish to enter into this Agreement in order to agree on the rights and obligations between the Parties in connection with such Rearrangements.
- (D) These Recitals are fully incorporated into this Agreement by reference herein.

In consideration of the mutual covenants of the Parties as set out below, the Parties hereby agree as follows:

ARTICLE 1. SCOPE AND DURATION

1.1 Scope of Agreement

- (a) The Parties have entered into this Agreement to: (i) define the applicable procedures; (ii) manage the interfaces; and (iii) allocate the roles and responsibilities and costs between LACMTA and Utility, in each case in respect of the planning, Design and Construction of any Rearrangements of Utility Facilities that are necessary in order for LACMTA to Design, Construct, operate, maintain and use any of the Transportation Projects.
- (b) The Parties acknowledge that LACMTA, at its sole discretion, may utilize various contracting methodologies to Design, Construct, operate and/or maintain Transportation Projects including with respect to any Rearrangements of Utility Facilities. LACMTA's determination of the procurement and contracting structure and/or project delivery method(s) for a Subject Transportation Project shall not impact the rights and obligations set out under this Agreement.
- (c) Utility acknowledges and agrees that LACMTA may:
 - (i) engage LACMTA Contractor(s) to carry out the Design, Construction, operation and/or maintenance work with respect to a Subject Transportation Project including performance of any LACMTA responsibilities with respect to any Rearrangements of Utility Facilities; and
 - (ii) in each LACMTA Contract, require the LACMTA Contractor to comply with and perform certain of LACMTA's obligations under this Agreement,

provided in each case that nothing in this Agreement will create any contractual relationship between Utility and any LACMTA Contractor and in accordance with Section 10.11 (Limitation on Third Party Beneficiaries), nothing contained in this Agreement is intended or will be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of Utility toward, any LACMTA Contractor.

- (d) LACMTA acknowledges and agrees that Utility may:
 - (i) engage Utility Contractor(s) to perform Utility's work under the terms of this Agreement and/or any Work Order including performance of any Utility responsibilities with respect to any Rearrangements of Utility Facilities; and
 - (ii) in each Utility Contract, require the Utility Contractor to comply with and perform certain of Utility's obligations under this Agreement,

provided in each case that nothing in this Agreement will create any contractual relationship between LACMTA and any Utility Contractor and in accordance with Section 10.11 (Limitation on Third Party Beneficiaries), nothing contained in this Agreement is intended or will be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of LACMTA toward, any Utility Contractor.

- (e) Recital (B) lists those Subject Transportation Projects that have been identified prior to the Effective Date and to which this Agreement will apply on and from the Effective Date. Each additional Subject Transportation Project to which this Agreement will apply will be identified as part of the Work Order process or by notice from LACMTA to Utility.
- (f) Utility acknowledges that LACMTA may at any time elect:
 - (i) not to proceed with any Transportation Project expressly listed in the Recitals or otherwise referenced in this Agreement or notified to Utility;

- (ii) to proceed with a Transportation Project that is not expressly listed in the Recitals; or
 - (iii) to amend the scope of any Transportation Project, each in its sole discretion.
- (g) The Parties agree that on the Effective Date, the terms of this Agreement shall supersede any conflicting terms of prior existing agreements between the Parties (or affiliates of the Parties) provided that:
- (i) any Rearrangements of Utility Facilities that have been approved and granted a Work Order number prior to the Effective Date shall continue until completed and approved under the applicable Work Order and shall be constructed in accordance with the standards and plans approved by the Parties in accordance with the applicable Work Order; and
 - (ii) this Agreement shall not negate or modify the terms and conditions of: (A) any legally binding easements or other use and/or occupancy agreements between Utility and LACMTA with respect to the occupancy by Utility of, or any interest of Utility in real property owned by or under the operating jurisdiction of LACMTA; (B) any such easements or other agreements between Utility and any former owner of real property now or hereafter owned by LACMTA, and to which LACMTA has become or hereafter becomes a successor either by assignment or by operation of law; or (C) any such easements or other agreements between Utility and any other governmental agency with respect to real property owned by or under the operating jurisdiction of such governmental agency, and in which LACMTA has a statutory or other right to install Transportation Project facilities,

and without prejudice to the foregoing, the Parties acknowledge and agree that this Agreement is not intended to, and will not, limit the Parties' ability to enter into any subsequent agreements with respect to a Transportation Project or any other subject matter.

- (h) Utility acknowledges that as between LACMTA and Utility, LACMTA has sole discretion to determine whether, and which, features or facilities are required in order for LACMTA to comply with its obligations under Applicable Law in connection with a Subject Transportation Project.

1.2 Duration of Agreement

- (a) The initial term of this Agreement (the "**Initial Term**") shall commence on the Effective Date and shall continue until the date falling 15 years after the Effective Date, unless terminated earlier or extended in accordance with the terms of this Agreement.
- (b) This Agreement shall automatically be renewed for consecutive one-year terms commencing on the day following the last day of the Initial Term and on each subsequent anniversary of such day, unless either Party provides Notice of termination to the other no later than 90 days prior to the end of any term (including the Initial Term).

ARTICLE 2. GENERAL OBLIGATIONS

2.1 Governance

- (a) Utility and LACMTA shall each designate an individual or individuals who will be authorized to make decisions and bind the Parties on matters relating to this Agreement (the "**Utility Representative**" and "**LACMTA Representative**", respectively).
- (b) Utility and LACMTA may, in addition, each designate an alternate individual or individuals who will be authorized to make decisions and bind the Parties on matters relating to the application of this Agreement to a Subject Transportation Project (in which case, any references to the Utility

Representative or LACMTA Representative under this Agreement shall be deemed to include such designated representatives with respect to that Subject Transportation Project). A single individual may serve as a designated representative for more than one Subject Transportation Project.

- (c) Either Party may change a representative designated under Section 2.1(a) or 2.1(b) (Governance) by providing seven days' prior Notice to the other Party.
- (d) LACMTA may establish Working Groups in relation to a Transportation Project or particular aspects of a Transportation Project for the purposes of providing a non-binding forum for LACMTA, the LACMTA Contractors and other attendees to monitor the progress of the Transportation Project, to consider issues, or potential issues, and to present, understand and discuss proposed solutions with respect to the Transportation Project. On LACMTA's written request, Utility shall ensure the attendance (in person or via videoconference or teleconference) of the Utility Representative (or a delegate) at any Working Group meeting held with respect to a Subject Transportation Project during normal business hours and upon reasonable notice. Any Working Group meeting attended by a Utility Representative (or a delegate) is consultative and advisory only and nothing which occurs during any such Working Group meeting and no information that is presented during any such Working Group meeting will:
 - (i) affect the rights or obligations of either Party under this Agreement;
 - (ii) entitle a Party to make any claim against the other;
 - (iii) relieve a Party from, or alter or affect, a Party's liabilities or responsibilities whether under this Agreement or otherwise according to Applicable Law;
 - (iv) prejudice a Party's rights against the other Party whether under this Agreement or otherwise according to Applicable Law; or
 - (v) be construed as a direction by a Party to do or not do anything.

Any changes discussed during a Working Group must be formalized and documented in accordance with the terms of this Agreement to take effect as a contractual obligation.

2.2 Work Orders

- (a) Utility's obligation to perform work under this Agreement shall arise upon the issuance by LACMTA of an authorized Work Order provided that where LACMTA (or another governmental agency) has prior existing rights, Utility may be obligated to perform work necessary to support a Subject Transportation Project without the issuance of a Work Order and without reimbursement for Costs under this Agreement.
- (b) If Utility is required to perform work and/or provide support and/or services under the terms of this Agreement or LACMTA requests that Utility perform work and/or provide support and/or services under the terms of this Agreement, Utility shall submit a Form 60 to LACMTA to estimate the total effort and Costs for which Utility shall require reimbursement with respect to that scope of work.
- (c) Upon LACMTA's approval of a Form 60 submitted to it by Utility with respect to a scope of work under Section 2.2(a) (Work Orders), LACMTA will issue a Work Order to Utility for such scope of work.
- (d) Each Work Order issued by LACMTA to Utility in accordance with this Agreement shall specify the work authorized to be performed and any materials or equipment to be acquired, the amount of money that Utility will be reimbursed for the authorized work as agreed under the applicable Form 60, and a schedule, including the estimated starting and finishing dates for the authorized work.

- (e) On receipt of a Work Order issued in accordance with the terms of this Agreement, Utility must: (i) promptly commence work on any elements of work authorized under the Work Order that are unchanged from the applicable Form 60; and (ii) promptly and without delay (and in any case within 10 days of issuance by LACMTA) accept any changes or additions (including any additional or supplemental provisions) agreed to the applicable Form 60 by counter-signing the Work Order or otherwise by written acceptance by the Utility Representative, followed by commencement of the applicable work under the Work Order. If Utility fails to accept the Work Order within 10 days (if applicable), the Work Order will be deemed to be accepted by Utility.
- (f) Except where authorized under a separate agreement with LACMTA (in which case, payment, credits or reimbursement will be in accordance with the terms of such agreement), Utility is not authorized to do any work and will not be paid, credited or reimbursed for Costs or expenses associated with any work performed in connection with a Rearrangement or a Subject Transportation Project or otherwise under the terms of this Agreement, that is not expressly authorized by a Work Order.
- (g) Except in the case of a change required due to an emergency (which notification may be given orally before being confirmed in writing within three days), Utility may submit proposed changes to a Work Order in writing to LACMTA for approval.
- (h) LACMTA may terminate any Work Order at any time at its sole discretion, provided that Utility will be entitled to reimbursement in accordance with this Agreement for Costs, if any, already incurred.
- (i) Utility must promptly Notify LACMTA if at any time it anticipates:
 - (i) exceeding 75% of the total estimated Costs under any Work Order within the next 60 days;
 - (ii) that the total Costs under any Work Order will be in excess of 10% greater than previously estimated Costs; or
 - (iii) that the estimated finishing date will be later than the date stated in the Work Order,
 and must request an amendment to such Work Order pursuant to Section 2.2(g) (Work Orders).
- (j) Utility must complete (either through its own forces or through Utility Contractors) all work authorized by any Work Order in accordance with Applicable Law, Governmental Approvals and the terms of this Agreement and the applicable Work Order. Utility must cooperate with LACMTA and take such actions as LACMTA may reasonably request, to ensure performance of work under a Work Order.

2.3 Deadlines and Delays

- (a) Utility agrees to cooperate and coordinate with LACMTA in accordance with the terms of this Agreement in order for LACMTA to achieve the project schedule for a Subject Transportation Project and to allocate sufficient staff and other resources necessary to provide the level of service required to meet the scope of work and work schedules, review periods and timelines identified in this Agreement and any Work Orders. Utility acknowledges that development of a Subject Transportation Project will require strict compliance with the scheduling requirements of this Agreement and the applicable Work Order, and that failure to meet the deadlines set out in this Agreement or in the applicable Work Order could cause LACMTA and/or its LACMTA Contractor(s) to incur substantial costs as a result of such delay, or may result in Utility needing to take measures to avoid delay to a Subject Transportation Project.
- (b) If Utility fails to carry out any work or obligations for which it is responsible under the terms of this Agreement and/or any Work Order in accordance with the work schedules, review periods and timelines identified in this Agreement and the applicable Work Order, and such failure is attributable

to Utility, then, to the extent such delay directly causes: (i) LACMTA to incur additional costs; or (ii) a delay to the Subject Transportation Project, Utility must reimburse LACMTA for all actual and documented costs and expenses incurred or arising out of such delay. Utility must pay such costs to LACMTA within 90 days after receipt of an invoice from LACMTA. If the Parties agree, LACMTA may deduct the amount due from Utility to LACMTA pursuant to this Section 2.3(b) from payment(s) due to Utility.

- (c) To the extent a failure by LACMTA to perform its work and obligations in accordance with the work schedules, review periods and timelines identified in this Agreement and/or any Work Order results in a delay to the performance of Utility's work under a Work Order, Utility will be entitled to an equivalent extension to the affected deadline and any other relief expressly contemplated under the terms of the applicable Work Order.

2.4 Coordination and Cooperation

- (a) The Parties acknowledge that the timely completion of a Subject Transportation Project will be influenced by the ability of LACMTA and Utility to coordinate their activities, communicate with each other, and respond promptly to reasonable requests.
- (b) Utility agrees to each Rearrangement and to cooperate with LACMTA's applicable requirements for the Subject Transportation Project, in accordance with the terms of this Agreement subject to the following:
 - (i) whenever it is reasonably possible to do so without causing increased costs for or delay in a Transportation Project, as determined by LACMTA, relocation of Utility Facilities will be avoided and Utility Facilities will be Protected-in-Place;
 - (ii) reimbursement of Costs in accordance with and to the extent contemplated by Section 6.2 (Reimbursements to Utility);
 - (iii) LACMTA shall give Utility at least 30 days (unless prior rights are involved) written Notice before requiring Rearrangement of a Utility Facility; and
 - (iv) if necessary to ensure continuity of transmission or distribution of the applicable public utility service during any Rearrangement work, Utility may install a Temporary Facility to provide the applicable public utility service until such time as the related Rearrangement work is complete or the usual service is restored, whichever is earlier.
- (c) The Parties acknowledge that Utility is required to address the interests of joint users of its Utility Facilities. Where there are joint users of a Utility Facility (or a part of it) that is the subject of a Rearrangement, Utility shall identify and Notify LACMTA of all joint users of such Utility Facility prior to commencing any work with respect to that Rearrangement and Utility shall be responsible for addressing any applicable joint users' interests when exercising its rights under this Agreement.

2.5 Coordination of Utility Activities

- (a) If Utility plans to undertake any Adjacent Work, Utility will coordinate the design and performance with LACMTA so that such Adjacent Work will not pose a safety hazard or interfere with, disrupt or delay the Design, Construction, operation or maintenance of, or threaten the structural integrity of, a Subject Transportation Project or the Design and Construction of a Rearrangement by LACMTA including by:
 - (i) complying with the terms of this Section 2.5 and LACMTA's standard procedures for Adjacent Works;

- (ii) delivering copies of all designs and plans for the Adjacent Work to LACMTA and giving LACMTA the right to review and comment on the designs and plans for the Adjacent Work and to approve the final designs and plans for the Adjacent Work; and
 - (iii) if LACMTA reasonably determines and notifies Utility that the Adjacent Work will, in whole or in part, pose a safety hazard or interfere with, disrupt or delay the Design, Construction, operation or maintenance of, or threaten the structural integrity of, a Subject Transportation Project, conditioning the implementation of the Adjacent Work (or relevant part of it) on scheduling adjustments and/or other modifications as LACMTA deems appropriate to ensure the Project Schedule for the Subject Transportation Project will not be directly delayed by the proposed Adjacent Work.
- (b) The terms of this Section 2.5 shall not apply in emergency situations; however, in such situations, Utility will coordinate with LACMTA to the extent feasible in light of the circumstances, subject to all related safety requirements described in this Agreement and any applicable Work Order.
- (c) Utility will, and will ensure that any Utility Contractor performing any Adjacent Work and/or Construction and maintenance of any Rearrangement under the terms of this Agreement or a Work Order is obligated under contract and/or a permit process to:
 - (i) fully co-operate and coordinate with LACMTA and the LACMTA Contractors including:
 - (A) attending interface definition and coordination meetings upon reasonable request; and
 - (B) providing any other interface data reasonably requested by LACMTA or the relevant LACMTA Contractor and necessary to complete interface coordination;
 - (ii) perform the work so as to minimize any interference with or disruption or delay to construction, operation or maintenance of the Subject Transportation Project or the Design and Construction of a Rearrangement;
 - (iii) comply with LACMTA's or the relevant LACMTA Contractor's site access, track allocation/work permit procedures and work health and safety policies and procedures; and
 - (iv) promptly advise LACMTA of all matters arising out of the work that may interfere with, disrupt, delay or otherwise have an adverse effect upon the Subject Transportation Project or Rearrangement.

2.6 Governmental and Lender Requirements

If a Subject Transportation Project is subject to financial assistance provided by loan agreements with the U.S. Department of Transportation, Federal Transit Administration, other Governmental Entities, and/or financial institutions providing grants, funding or financing, LACMTA will Notify Utility and the Parties will comply with the terms and conditions set out in Exhibit 4 (Federal and Other Requirements) and any additional prescribed governmental and lender requirements set out in an applicable Work Order or otherwise under the applicable grant, funding or financing agreements notified to Utility.

2.7 Discretions

Except as otherwise expressly provided in this Agreement, all determinations, consents, waivers, or approvals of a Party under this Agreement must not be unreasonably withheld, conditioned, or delayed.

ARTICLE 3. DESIGN

3.1 Design Responsibilities

- (a) Except to the extent of any Design work requested to be performed or to be performed by Utility under Section 3.1(b) (Design Responsibilities), LACMTA will (directly or through LACMTA Contractors) Design all Rearrangements and produce all Design Documentation relevant to those Rearrangement works in accordance with the terms of this Agreement. LACMTA shall be responsible for any errors and omissions in the Design Documentation prepared by LACMTA or a LACMTA Contractor.
- (b) LACMTA may request and authorize Utility to Design a Rearrangement and provide Design Support with respect to that Rearrangement or to provide Design Support and perform Design-related activities with respect to the Design of a Rearrangement prepared by LACMTA under Section 3.1(a) (Design Responsibilities), in each case pursuant to the procedures set out under Section 2.2 (Work Orders). A Form 60 submitted by Utility in accordance with this Section 3.1(b) and Section 2.2 (Work Orders) shall estimate the total effort required to perform the requested Design, Design Support and/or other Design-related activities and shall attach the schedule prepared in accordance with this Agreement and agreed by the Parties for the performance of the requested Design, Design Support and/or other Design-related activities. Utility must diligently perform and shall ensure that any Utility Contractors diligently perform the Design, Design Support and/or other Design-related activities authorized under a Work Order in accordance with the terms of that Work Order and this Agreement. Utility shall be responsible for any errors and omissions in any Design Documentation prepared by Utility or a Utility Contractor.
- (c) Without prejudice to the scope of and timelines for any Design Support services agreed under Section 3.1(b) (Design Responsibilities), within 30 days after Utility's receipt of a written request from LACMTA, Utility shall identify and disclose to LACMTA the nature and location of all Utility Facilities which are located under or over LACMTA Right-of-Way and on adjacent public street right-of-way, whether or not Abandoned, and such other information as may be requested by LACMTA with respect to the identification of the nature and location of all Utility Facilities. Any Form 60 submitted by Utility to LACMTA in accordance with Section 2.2 (Work Orders) for Design Support services with respect to the identification of existing Utility Facilities shall comply with the following:
 - (i) where potholing of existing Utility Facilities for the purpose of Design verification is agreed by the Parties as a Design Support service: (A) such potholing activities shall be shown in the applicable Form 60 as an 'Other Direct Cost (ODC)'; (B) preparation and execution of the related potholing work plan shall be considered a Design Support activity; and (C) submission of the applicable Form 60 shall indicate: whether the scope involved is to excavate a trench of certain width, length, and depth; use of ground penetrating radar where physical ground disturbance may be problematic; whether traditional drilled holes with vacuum extraction of soil is the recommended method of exploration; that the findings shall be presented in a brief report by a qualified utility engineer; coordination activities such as DigAlert markings, obtaining a public works street-use type permit; and
 - (ii) where Utility is requested to provide LACMTA as-built utility plans and records as a matter of routine course of conducting business with LACMTA, such as during the Planning Phase of a Transportation Project (as opposed to the Design Development phase), it shall be at no cost to LACMTA.
- (d) Prior to submitting a Form 60 to LACMTA with respect to any Design work for a Rearrangement to be performed by Utility in accordance with Section 3.1(b) (Design Responsibilities), Utility will arrange a documented working group meeting amongst all applicable stakeholders (including the local City public works "Utility Coordination" representative) to agree on the scope of the Rearrangement and the Design work required with respect to the Rearrangement.

- (e) Where Utility is responsible for the Design of a Rearrangement, Utility shall coordinate with the local City public works "Utility Coordination" representative, to apply for and obtain all necessary permits and approvals from all local jurisdictions in order to perform the Construction of that Rearrangement.
- (f) Following issuance of a Work Order for the performance by Utility of Design work for a Rearrangement, LACMTA will provide to Utility the Subject Transportation Project plans and other information relevant to the Design work if available.

3.2 Design Requirements

Any Design work for any Rearrangements shall be performed in accordance with:

- (a) the Design requirements set out in this Agreement and any applicable Work Orders;
- (b) all Governmental Approvals, Applicable Law, and the final EIR/EIS; and
- (c) subject to Section 3.5 (Utility Standards), the Utility Standards or, in the case of those Rearrangements of Utility Facilities that will cross over, above or below a Project Right-of-Way, the applicable requirements in the most recent version of LACMTA's 'Metro Rail Design Criteria', 'Metro BRT Design Criteria', and/ or contract specifications for the Subject Transportation Project (as applicable).

3.3 Design Review Procedure

All Designs for Rearrangements (whether the responsibility of LACMTA or Utility under Section 3.1 (Design Responsibilities)) shall be submitted, reviewed and approved in accordance with the procedures and review periods set out in Exhibit 1 (Submittal Review Procedure) and otherwise in accordance with the terms of this Agreement and any applicable Work Orders.

3.4 Design Development

- (a) The Parties acknowledge and agree that the Design Documentation for any Rearrangement will be submitted for review progressively in Packages and in a manner and at a rate which, having regard to the quantum of Design Documentation submitted, will give the other Party a reasonable opportunity to review the submitted Design Documentation.
- (b) In the case of Rearrangements where LACMTA is responsible for the Design under Section 3.1 (Design Responsibilities), LACMTA and the applicable LACMTA Contractor will retain responsibility for defining the scope and timing of delivery of the Packages at each stage of Design, taking into account the Subject Transportation Project schedule and contracting methodology.
- (c) The Design Documentation for the Design of a Rearrangement will be complete in all respects and will specify any Utility pre-approved design details and Construction practices utilized in the Design, including specifying proprietary underground vaults, shoring systems, standard plans, and parts (including connectors, valves, gaskets and custom components).

3.5 Utility Standards

- (a) Utility shall explicitly identify the Utility Standard(s) applicable to a Rearrangement in the initial Form 60 submitted with respect to the Design, Design Support and/or other Design-related activities for that Rearrangement and prior to the issuance of the first Work Order for Design, Design Support and/or other Design-related activities for that Rearrangement.
- (b) Any changes or additions to the Utility Standards applicable to a Rearrangement:

- (i) after notification under Section 3.5(a) (Utility Standards), requires prompt written Notice from Utility (and in any case within 15 days' of adoption), with supporting information including the formal date of adoption and, in the case where Utility is responsible for the Design of the applicable Rearrangement under Section 3.1 (Design Responsibilities), the schedule and cost impact to the applicable Design work; and
- (ii) after the establishment of the Basis of Design for that Rearrangement, shall be considered a "Betterment" for the purposes of this Agreement.
- (c) Utility agrees that it shall not adopt any new Utility Standard(s) or otherwise amend or supplement any existing Utility Standards or its interpretation or application of any existing Utility Standards for the sole or primary purpose of affecting a Subject Transportation Project or Rearrangement. All Utility Standards shall be applied to the Rearrangements hereunder in the same manner as they are applied by Utility to standalone projects that are financed primarily by Utility or projects constructed by Utility's in-house crews or Utility Contractors.
- (d) Without prejudice to the other terms of this Section 3.5, with respect to both Design and Construction of a Rearrangement, in interpreting applicable Utility Standards, and in exercising any discretion granted by applicable Utility Standards, the Parties shall make such interpretations and exercise such discretion in a manner so as to impose the minimum requirements necessary to comply with Applicable Law. Any Design or Construction issues affecting Rearrangements which are not addressed by applicable Utility Standards shall be resolved in such a manner as to impose the minimum requirements necessary to make a Replacement Facility the equivalent (in terms of level of service, capacity, service life, capability, appearance, efficiency and function) to the Conflicting Facility it replaces and to otherwise minimize Rearrangement work.

3.6 Changes to Design

LACMTA or Utility may make changes to a previously approved Design only with written concurrence of the other Party. Except where changes are required to accommodate an unanticipated site condition or a change in a site condition, LACMTA shall have no obligation to consent to or approve any Utility requested changes that will necessitate re-submittal of Design for new approvals, delay Construction of the Rearrangement or construction of the Subject Transportation Project, or increase the cost of Construction of the Rearrangement or construction of the Subject Transportation Project. The cost of the increased scope, if any, attributable to changes in approved plans or specifications requested by Utility and approved by LACMTA shall be borne by Utility, unless the change in approved plans or specifications was necessitated by an unanticipated site condition or event.

3.7 Permits

- (a) After approval of the Final Design of a Rearrangement in accordance with this ARTICLE 3 the Party performing the Design work for the Rearrangement or the Applicable Contractor shall obtain all necessary Governmental Approvals, Railroad PUC permits and required track allocation request approvals for the Construction of the Rearrangement; provided, however, LACMTA shall be responsible for obtaining (or causing its LACMTA Contractor(s) to obtain) all such Governmental Approvals required for any Construction to be performed by LACMTA or its LACMTA Contractor(s) in accordance with ARTICLE 4 (Construction) whether or not it performed the Design work for the Rearrangement. Each Party shall use reasonable efforts to assist the other Party in securing any necessary Governmental Approvals. Without prejudice to Sections 3.2 (Design Requirements) and 4.2 (Construction Requirements), each Party shall comply with the terms of all applicable Governmental Approvals in carrying out its work under this Agreement.
- (b) Where the Subject Transportation Project is federalized (use of federal funds as notified by LACMTA to Utility in accordance with Section 2.6 (Governmental and Lender Requirements)) and Utility has

been requested to perform Design work in accordance with Section 3.1(b) (Design Responsibilities). Utility acknowledges the requirements to process "Utility Agreements" and "R/W Certification" (as those terms are used in the LAPM) in accordance with Caltrans Local Assistance Procedures Manual (LAPM) Chapter 14 – Utilities, local agency internal City and public works adopted procedures and LACMTA's third party administration procedures (as published and notified to Utility from time to time).

ARTICLE 4. CONSTRUCTION

4.1 Construction Responsibilities

- (a) Utility shall perform (through a Utility Contractor or in-house construction crews) all Construction for each Rearrangement, unless, during the Design phase, LACMTA and Utility mutually agree that LACMTA shall perform all or part of the Construction for a Rearrangement. The Party performing Construction may perform such Construction either prior to construction of the Subject Transportation Project, concurrently with such construction, or through a combination of said alternatives, as mutually agreed by the Parties, taking into account the contracting methodology selected by LACMTA for the Subject Transportation Project as referenced in Section 1.1(b) (Scope of Agreement) and the project schedule for the Subject Transportation Project, as referenced in Section 2.3 (Deadlines and Delays).
- (b) If agreed by the Parties under Section 4.1(a) (Construction Responsibilities) that LACMTA (or a LACMTA Contractor) shall perform the Construction of a Rearrangement, LACMTA may request and authorize Utility to provide Construction support services and related activities with respect to the Construction of that Rearrangement, pursuant to the procedures set out in Section 2.2 (Work Orders) and Utility agrees to coordinate its efforts and cooperate with the relevant LACMTA Contractor(s) performing Construction and to diligently perform and to ensure that any Utility Contractor diligently performs, all such Construction support services and related activities, in accordance with the terms of the applicable Work Order and this Agreement.
- (c) LACMTA shall be responsible for all claims and stop notices or mechanic's liens filed by LACMTA Contractors for Construction work performed on Utility Facilities.

4.2 Construction Requirements

All Construction work for the Rearrangement shall be performed in accordance with:

- (a) the approved Final Design (including any changes agreed under the terms of this Agreement);
- (b) all Governmental Approvals, Applicable Law and, subject to Section 3.5 (Utility Standards), the Utility Standards;
- (c) applicable environmental mitigation and control requirements under the final EIR/EIS for the applicable Subject Transportation Project including without limitation to construction noise and vibration, air pollution controls, and potential archaeological, biological, and paleontological monitoring measures as applicable;
- (d) subject to Section 3.5 (Utility Standards), the Utility Standards or, in the case of those Rearrangements of Utility Facilities that LACMTA is responsible for Constructing under Section 4.1 (Construction Responsibilities) and that will cross over, above or below the Project Right-of-Way, the applicable requirements in the most recent version of LACMTA's 'Metro Rail Design Criteria', 'Metro BRT Design Criteria', and/ or contract specifications for the Subject Transportation Project (as applicable); and
- (e) all other Construction requirements set out under the terms of this Agreement and any applicable Work Order.

4.3 Rights-of-Way

- (a) Replacement rights-of-way for the relocation of Conflicting Facilities shall be determined during Design Development and, if needed, may be acquired by LACMTA or Utility following approval by the Parties of the location and type of such replacement rights-of-way. When reasonably possible and where the Utility Facilities being Rearranged are located in a public right-of-way, a Rearrangement shall be located in existing public rights-of-way. The required rights-of-way shall be acquired so as not to impair LACMTA's schedule for the Subject Transportation Project. If Utility cannot acquire necessary private rights-of-way without out-of-pocket expense to itself, such private rights-of-way may be acquired by LACMTA. Upon acceptance of the applicable Replacement Facility, Utility shall convey or relinquish to LACMTA or its designee, if permitted by Applicable Law and agreement, at no cost, all Utility real property interests (except franchise rights and except where Utility owns the property in fee) being taken out of service by the Rearrangement, and for which replacement real property interests are provided. Where Utility requires replacement rights-of-way within Project Right-of-Way owned by LACMTA, LACMTA shall be responsible for providing such replacement rights-of-way, subject to the rights and needs of LACMTA.
- (b) Subject to the other terms of this Section 4.3, any cost associated with Utility acquiring any temporary construction easements or other real property rights (including for installation of temporary Utility Facilities) that are needed for any Construction of a Rearrangement performed by Utility shall be considered a "Cost" under this Agreement. LACMTA will be responsible for obtaining any temporary construction easements or other real property rights that are needed for Construction of a Rearrangement that LACMTA is performing and any cost associated with Utility using such easements or other rights shall be considered a "Cost" under this Agreement.
- (c) Within 60 days after request by LACMTA and as part of the Design Support performed by Utility, Utility shall furnish to LACMTA copies of any non-privileged agreements or other documents evidencing Utility's franchise, easements, or other existing rights in real property for its Utility Facilities that are located within the Subject Transportation Project area. Utility's cost to provide such documentation shall be reimbursed by LACMTA as Design Support services under an authorized Work Order issued under Section 2.2 (Work Orders).
- (d) For any Utility Facilities located within the Project Right-of-Way owned by LACMTA that are being Abandoned in place or dismantled, but are not being replaced by a Replacement Facility, upon request by LACMTA, Utility shall quitclaim to LACMTA (or otherwise terminate by appropriate documentation) all of Utility's right, title and interest in and to any such portion of such Project Right-of-Way on which such Utility Facilities were located.
- (e) Without prejudice to Section 2.5 (Coordination of Utility Activities), each Party shall provide the other with a real property license to such Party's right-of-way located within or near the Project Right-of-Way, in a form reasonably acceptable to such other Party, for the purpose of carrying out construction, operation or maintenance of the Subject Transportation Project (in the case of a license granted to LACMTA) or operating or maintaining a Utility Facility (in the case of a license granted to Utility).
- (f) Real property interest Costs shall be invoiced separately from other Cost items, but shall be reimbursable to the extent provided in Sections 6.2 (Reimbursements to Utility) and 6.3 (Reimbursement and Credits to LACMTA).

4.4 Utility Construction of Rearrangements

LACMTA shall request and authorize Utility to perform the Construction of all or part of a Rearrangement that Utility shall perform under Section 4.1 (Construction Responsibilities), pursuant to the procedures set out in Section 2.2 (Work Orders). A separate Work Order will be issued for the Construction of each Rearrangement. In such event:

- (a) Utility shall commence and diligently perform and shall ensure that any Utility Contractor commences and diligently performs, the Construction of such Rearrangement to completion as authorized by the Work Order, in accordance with the terms of this Agreement and the Work Order and the work schedule for such Construction set out in the Work Order. Utility acknowledges and agrees that the work schedule for such Construction shall coincide closely and be coordinated with LACMTA's schedule for the Subject Transportation Project, including the schedule for Construction of Rearrangements of Utility, cable, pipeline, and other facilities in the same segment or portion of the Subject Transportation Project; provided, however, that the schedule for work by Utility shall allow Utility a reasonable period of time for performance of its responsibilities under this Agreement and the Work Order;
- (b) to the extent applicable, Utility shall include a copy of any standalone environmental clearance of the Rearrangement as an attachment to the Form 60 for that Rearrangement; and
- (c) the name of the Utility's or Utility Contractor's lead superintendent and/or project manager assigned to the Construction of a Rearrangement shall be provided to LACMTA in the applicable Form 60. The resume(s) of the assigned lead superintendent and/or project manager shall also be attached to the applicable Form 60. The resume(s) shall demonstrate Utility or Utility Contractor has assigned a lead superintendent and/or project manager with the appropriate qualifications, capability and experience to perform the applicable Construction work.

4.5 Construction Staging Plans

- (a) A construction staging plan shall be developed for any Construction of a Rearrangement to be performed within public rights-of-way. The Parties will agree on which Party (directly or through its Applicable Contractors) will be responsible for the preparation of construction staging plans for such Construction work. Where Utility is responsible for the preparation of the construction staging plans under this Section 4.5(a), LACMTA shall request and authorize Utility to perform the work of preparing the construction staging plan pursuant to the procedures set out in Section 2.2 (Work Orders); and, where practicable, in the same Work Order authorizing the applicable Construction work.
- (b) Each construction staging plan will be agreed on prior to the commencement of the applicable Construction work and provide, among other things, for:
 - (i) the handling of vehicular and pedestrian traffic on streets adjacent to the Construction with the Construction phasing showing street closures, detours, warning devices and other pertinent information specified on the plan (worksite traffic control plans);
 - (ii) actions to maintain access to businesses adjacent to the Construction areas, as possible, and actions to ensure safe access and circulation for pedestrians and vehicular traffic as described in the worksite traffic control plans; and
 - (iii) elements of public awareness as well as mechanisms to assist affected parties in complaint resolutions.

4.6 "As-Built" Drawings and Contract Documents

- (a) LACMTA and Utility shall each maintain a set of "as-built" plans of Rearrangements performed by LACMTA and Utility, respectively, during the progress of Construction. Upon completion of the Rearrangement work, the Party that performed the work shall furnish the other Party with reproducible "as-built" drawings showing all Replacement Facilities installed by the performing Party, within 75 days after completion of such work for each set of plans. All "as-built" plans (whether provided by LACMTA or by Utility) shall be native CAD files (including, for example, in Auto-Cad by Autodesk format or equivalent interoperable MicroStation version file format).

- (b) LACMTA and Utility agree to provide the other with electronic files of those final contract documents that they have prepared, or caused to be prepared, to govern the Construction of a given Rearrangement by their Applicable Contractor so that each Party may compile a complete set of contract documents. Each Party shall prepare, or cause to be prepared, the contract documents for which it is responsible.

4.7 Underground Service Alert

Prior to any commencement of underground Construction work by either Party, the Party performing such work, or its Applicable Contractors, shall Notify Underground Service Alert in accordance with Applicable Law.

4.8 Hazardous Substances and Archaeological Remains

- (a) As between Utility and LACMTA, LACMTA shall be responsible, at its sole cost and expense, for the investigation of potential environmental hazards on, in, under or about any Utility Facility, including but not limited to, any "**Hazardous Substance**" as that term is defined under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.), or Archaeological Remains within the Project Site that would directly impact Construction of a Subject Transportation Project.
- (b) Without prejudice to the terms of Section 3.7 (Permits), LACMTA shall prepare, at its sole cost and expense, all environmental impact reports/statements required by Applicable Law for the Construction of a Subject Transportation Project.
- (c) Each Party shall provide the other Party with all information, reports and data relating to the existence of any Hazardous Substance and/or Archaeological Remains within the Project Site, or any site on which Construction work for a Rearrangement will be carried out, promptly after becoming aware of such information or documents including, without limitation, any environmental impact reports or soil tests.
- (d) Where LACMTA is responsible for costs relating to the presence or existence of any environmental hazard under Section 6.2(c) (Reimbursements to Utility), LACMTA will be responsible for the management, treatment, handling, storage, monitoring, remediation, removal, transport, and disposal of such environmental hazard ("**Remedial Action**"). Utility shall not commence Construction of any Rearrangement until: (i) LACMTA has completed the required Remedial Action in accordance with this Section 4.8(d); or (ii) LACMTA issues a Work Order pursuant to Section 2.2 (Work Orders) authorizing Utility or a Utility Contractor to carry out such Remedial Action. For the avoidance of doubt, to the extent an environmental hazard is caused by, arises out of, or as a consequence of, any action of Utility or a Utility Contractor, LACMTA will not be responsible for any Remedial Action under this Section 4.8(d) or for costs under Section 6.2(c) (Reimbursements to Utility).
- (e) Utility shall promptly, and before the environmental hazard is disturbed, Notify LACMTA of any environmental hazard encountered in carrying out Construction under this Agreement. If: (i) pursuant to Section 4.8(d), LACMTA is responsible for any Remedial Action with respect to such environmental hazard, LACMTA shall: (A) promptly commence such Remedial Action; or (B) issue a Work Order pursuant to Section 2.2 (Work Orders) authorizing Utility or a Utility Contractor to carry out such Remedial Action; or, (ii) the environmental hazard was caused by, arises out of, or as a consequence of, any action of Utility or a Utility Contractor, Utility shall promptly commence any Remedial Action required under Environmental Law. Utility shall suspend Construction work (excluding any Remedial Action, if applicable) at the site of the environmental hazard until the required Remedial Action is complete.
- (f) The Party discovering an environmental hazard shall make any required notifications to federal, state, and/or local agency(ies) in accordance with Applicable Law (with a copy to the other Party).

- (g) If Archaeological Remains are encountered by Utility in carrying out Construction under the terms of this Agreement, Utility must:
 - (i) immediately report the discovery to the LACMTA Representative;
 - (ii) ensure that the Archaeological Remains are preserved and protected in place and not disturbed further including by halting Construction work in the vicinity of the Archaeological Remains, if necessary;
 - (iii) comply with all requirements of Governmental Entities and any lawful directions of the LACMTA Representative in relation to the Archaeological Remains; and
 - (iv) continue to perform the Work, except to the extent otherwise: (A) lawfully directed by the LACMTA Representative; (B) ordered by a court or tribunal; or (C) required by Applicable Law.
- (h) All Archaeological Remains found on or under the surface of the Project Site will, as between the Parties, be the absolute property of LACMTA and LACMTA shall be responsible for making any required notifications to federal, state, and/or local agency(ies) in accordance with Applicable Law.

4.9 Inspection and Acceptance

The Parties agree that inspection and acceptance of the Construction of Rearrangements performed under this Agreement will be carried out in accordance with the procedure set out in Exhibit 2 (Inspection and Acceptance Procedure).

4.10 Maintenance

Utility shall schedule, in coordination with LACMTA and its LACMTA Contractors and in accordance with Sections 2.5 (Coordination of Utility Activities) and 4.3(e) (Rights-of-Way), any maintenance of Utility Facilities that may be necessary after the completion of the Rearrangement so as not to interfere with the construction of the Subject Transportation Project or its operation, maintenance and use once completed.

ARTICLE 5. BETTERMENTS

5.1 Procedure

Promptly after identifying a Betterment, if possible during the Advanced Conceptual Engineering phase of the Subject Transportation Project and in any event prior to the establishment of the Basis of Design for a Rearrangement, Utility shall inform LACMTA what Betterments, if any, Utility desires or has intentions to pursue as part of a Rearrangement by submitting a completed Utility Betterment Request such that LACMTA can review the Betterments and determine whether they satisfy the requirements set out in Section 6.3(f) (Reimbursements and Credits to LACMTA). In addition:

- (a) each Design furnished by Utility under the terms of this Agreement shall specifically identify any Betterments included in such Design and where Betterments are identified, shall be accompanied by a completed Utility Betterment Request submitted for LACMTA's review and approval; and
- (b) if LACMTA identifies a Betterment included in Designs or any other Submittals furnished by Utility or in comments provided by Utility on LACMTA-completed Designs or other Submittals, LACMTA will deliver a LACMTA Notice of Potential Betterment to Utility and within 10 days of delivery of that notice, Utility will: (i) withdraw the relevant comment or Design; or (ii) submit a request for the applicable Betterment by submitting a Utility Betterment Request for LACMTA's review and approval. If Utility fails to respond within 10 days of a Notice delivered by LACMTA under this Section 5.1(b), the comment or Design will be deemed to be withdrawn provided that such withdrawal shall be without

prejudice to Utility's right to submit the Betterment under a subsequent Utility Betterment Request under this Section 5.1.

5.2 Cost and Performance

- (a) Utility shall be responsible for the cost of any Betterment and LACMTA shall not be responsible for the cost of any Betterment. No Betterment may be performed in connection with any Rearrangement irrespective of whether the Design is performed by either Party or jointly, and whether the Construction is performed by either Party or jointly, unless that Betterment is:
 - (i) approved by LACMTA (as demonstrated by the LACMTA counter-signing the Utility Betterment Request, updated to include any changes negotiated and agreed by LACMTA and Utility); and
 - (ii) constructed in accordance with the scope and specifications agreed to and documented in the applicable Utility Betterment Request.
- (b) Under no circumstances shall Utility receive payment for, or reimbursement of, any Costs associated with or related to Betterments, and the issuance of a Work Order authorizing Utility work or other activity relating to a Betterment shall not constitute the agreement of LACMTA to make any payments to Utility with respect to that Betterment.

5.3 Right to Refuse

LACMTA shall have the right to refuse and withhold approval for any Betterment that:

- (a) is incompatible with the Subject Transportation Project;
- (b) cannot be performed within the constraints of Applicable Law, any Governmental Approvals and/or the project schedule for the Subject Transportation Project; or
- (c) is requested after the establishment of the Basis of Design for the Rearrangement.

ARTICLE 6. SALVAGE, REIMBURSEMENT AND CREDITS

6.1 Disposition of Salvaged Materials

- (a) LACMTA may not salvage materials from the Conflicting Facility belonging to Utility during the course of its work on a Rearrangement, unless agreed to in writing by Utility. If LACMTA desires to use salvaged materials, subject to the consent of Utility, materials removed shall be stored by LACMTA until such time as the progress of work allows the reinstallation of such materials. Materials that are not to be reused in a Rearrangement, but that Utility desires to retain may be recovered by Utility staff within an agreed time frame or shall be delivered by LACMTA to a location proximate to the salvage site and suitable to Utility. Subject to acceptance by LACMTA, if materials removed by LACMTA are not reused and are not desired by Utility, such materials shall become the property of LACMTA.
- (b) Salvaged materials which are removed by Utility and not reused in a Rearrangement shall be retained by Utility.
- (c) LACMTA shall receive a credit or payment, as provided in Section 6.3 (Reimbursements and Credits to LACMTA), for salvage, storage and transporting of such materials described herein which are retained by Utility.

6.2 Reimbursements to Utility

- (a) Except with respect to Betterments and Rearrangements performed by Utility pursuant to a franchise agreement, and without prejudice to Section 3.5(d) (Utility Standards), LACMTA will reimburse Utility for Costs incurred for work performed by Utility or the Utility Contractors under a Work Order in accordance with the terms of this Agreement and the applicable Work Order provided that:
 - (i) LACMTA's obligation to reimburse Utility for Costs is subject to the limitations established under Applicable Law and under the terms of this Agreement, including the limitations established in Section 3.1(c)(ii) (Design Responsibilities), Section 3.5(d) (Utility Standards), this ARTICLE 6 and ARTICLE 7 (Billings);
 - (ii) the Parties acknowledge that pursuant to Applicable Law, LACMTA is responsible for performing or for reimbursing Utility's actual cost to perform Rearrangements in a manner that maintains the functioning of the applicable Utility Facility at its previous level of service; and
 - (iii) where a Subject Transportation Project is federalized (use of federal funds on the Rearrangement as notified by LACMTA to Utility in accordance with Section 2.6 (Governmental and Lender Requirements)), reimbursements to Utility will, in addition to the terms of this Agreement, be subject to Applicable Law at the federal level.
- (b) Where LACMTA and Utility agree that the Construction of a Subject Transportation Project will eliminate the service need for a specific Conflicting Facility and the Rearrangement to be performed under the applicable Work Order is to be limited to the removal or elimination of the Conflicting Facility, LACMTA will only be responsible for any Costs incurred in Abandonment of such Conflicting Facility by Utility.
- (c) LACMTA will not be responsible for any costs relating to the presence or existence of any environmental hazard on, in, under or about any Utility Facility, including but not limited to, any Hazardous Substances, unless LACMTA or any LACMTA Contractor caused the environmental hazard through its actions.

6.3 Reimbursements and Credits to LACMTA

- (a) LACMTA shall receive a credit against work performed by Utility under this Agreement at LACMTA's expense for salvage, Betterments and Expired Service Life Value of Utility. The amount of credits shall be determined in accordance with this Section 6.3. All credits pertaining to a particular Rearrangement or other item of work hereunder shall be reflected on the applicable invoice(s) submitted by Utility.
- (b) Where LACMTA performs work under this Agreement, LACMTA shall receive compensation from Utility (by credit or payments in accordance with this Section 6.3) for salvage and Expired Service Life Value of Utility Facilities as applicable, as well as for costs incurred by LACMTA for Betterments, and for any other costs incurred by LACMTA that are Utility's responsibility pursuant to this Agreement. The amount of compensation shall be determined in accordance with this Section 6.3. To the extent possible, LACMTA may take such compensation in the form of credits against amounts owed by LACMTA to Utility in connection with the Rearrangement for which the compensation is owed. LACMTA shall invoice Utility for any remaining amounts due in accordance with Section 7.2 (Procedures for LACMTA Billings to Utility), and Utility shall make payments to LACMTA in accordance with Section 7.1 (Procedures for Utility Billings to LACMTA).
- (c) For purposes of determining the amounts due from Utility to LACMTA (as a credit or payment) pursuant to this Section 6.3, the term "cost" shall mean all actual, allowable and reasonable direct and indirect costs incurred by LACMTA and attributable to activity or work performed or materials acquired in performing a task pursuant to this Agreement. Subject to the foregoing, direct costs shall

include allowable direct labor, equipment and materials costs spent specifically for work performed under this Agreement, and shall include but not be limited to those associated with Design, project review, construction management, permit fees, inspection, processing, remediation plan development and implementation, real property acquisition and contract administration. Indirect costs shall include administrative and overhead costs at the rate therefore established by LACMTA from time to time. LACMTA shall maintain its standard forms of records showing actual time expended and costs incurred.

- (d) The amount of credits or payments, as applicable, due to LACMTA for salvage and Expired Service Life Value shall be determined by agreement based upon Utility's applicable books, records, documents and other data. In addition, LACMTA and Utility may conduct an inspection survey and/or inventory of a Conflicting Facility during the Design Development process. Pursuant to a Work Order authorized under to Section 2.2 (Work Orders), Utility shall provide LACMTA, to the extent such exist and are known and available, with drawings, plans or other records necessary to conduct such survey or inventory pursuant. Surveys shall describe the physical attributes of the Conflicting Facility such as number, length, diameter, dimensions, and type of material. The survey shall further describe, for each Conflicting Facility, the date of construction or installation; the present condition; the expected service life of each Conflicting Facility as derived from Utility's records; and whether materials contained therein are salvageable. The results of such survey shall also be applied in the determination of Betterments, as necessary.
- (e) As applicable, credit shall be allowed or Utility shall pay for salvage for items of materials and equipment recovered from the Conflicting Facility in the performance of Rearrangement work which are subsequently retained by Utility in accordance with Section 6.1(b) (Disposition of Salvaged Materials). The amount of a salvage credit or payment, if any, shall equal the depreciated value of like or similar materials as determined by agreement of the Parties, plus storage and transportation costs of such materials salvaged for Utility's use.
- (f) As applicable, credit shall be allowed or Utility shall pay for Betterments in accordance with this Section 6.3. The amount of a Betterment payment, if any, shall be the estimated cost of the Replacement Facility, less the estimated cost of the Conflicting Facility. The amount of Betterment credit, if any, shall be a fixed amount determined by the Parties during Design Development based upon estimates provided by Utility and agreed to by LACMTA under a Utility Betterment Request.
- (g) LACMTA shall receive a credit for the Expired Service Life Value of each Conflicting Facility being replaced if the Replacement Facility will have an expected period of useful service greater than the period which the existing Conflicting Facility would have had, had it remained in service and the Rearrangement not been made. For purposes of this Agreement, "Expired Service Life Value" shall mean the depreciated value of the Conflicting Facility as determined by Utility utilizing its standard depreciation calculation. The amount of credit or payment for Expired Service Life Value shall be calculated prior to the commencement of the applicable Rearrangement work and documented in the applicable Work Order.
- (h) Where a Replacement Facility falls within the public right-of-way, above or below grade:
 - (i) Utility and LACMTA shall apply the Utility Service Life Credits (calculated from the Expired Service Life Value) to attribute the cost share of the new Utility Rearrangement total cost;
 - (ii) the calculation to determine the cost share attributable to Utility and LACMTA shall be based on the following table:

Percentage of Service Life	LACMTA's Share	Utility's Share
50%	100%	0%

Percentage of Service Life	LACMTA's Share	Utility's Share
60%	90%	10%
70%	80%	20%
80%	70%	30%
90%	60%	40%
100%	50%	50%

; and

- (iii) Utility shall make progress payments based on the proportion cost share of Replacement Facility or LACMTA may elect to offset the Utility cost share from the amounts owed by LACMTA to Utility for other activities in progress on the same Work Order. If LACMTA elects to advance funds during the Design phase, the cost share for construction progress payment by Utility will be adjusted accordingly to arrive to the calculated cost share. Similarly, if LACMTA elects to fund the Construction phase with LACMTA funds, then Utility is anticipated to provide a one-time up-front payment based on its proportionate share of cost prior to the award of the Rearrangement construction contract or Work Order.
- (i) Where a Replacement Facility falls within a LACMTA-owned Project Right-of-Way, Service Life Credit cost sharing does not apply.

ARTICLE 7. BILLINGS

7.1 Procedures for Utility Billings to LACMTA

- (a) Utility shall use the following procedures for submission of its billings to LACMTA, on a progress basis, for work performed by Utility under a Work Order:
 - (i) Utility shall commence its monthly billing (in an electronic format where possible) within no more than 30 days following the commencement of work under a specific Work Order and shall bill monthly thereafter;
 - (ii) each billing shall: (A) be addressed to the LACMTA Representative; (B) include a "Project Labor Report" identifying by task both Utility staff (and applicable Utility Contractor) hours charged for administrative, Design, inspection and management services and Utility direct field labor; (C) specify all Costs incurred for that billing period including copies of invoices and other supporting Cost data; (D) reflect any applicable credits due to LACMTA under this Agreement with respect to the Subject Transportation Project applicable to the Work Order under which the billing is being submitted; (E) be noted as either "in-progress" or "final"; (F) include a certification that the Costs identified in such billing were appropriate and necessary to performance of the work under the Work Order and have not previously been billed or paid; and (G) include a monthly progress billing report prepared by the Utility lead project manager including a narrative description of the work for the prior billing period with a statement on work progress, schedule deviations, cost to complete, subcontractor utilization, DBE usage if any, and, where applicable, a statement on adherence to federal requirements. If requested by LACMTA, Utility shall provide a full description of any labor charges during the billing period that were not identified in the Project Labor Report;
 - (iii) the final billing, with a notation that all work covered by a given Work Order has been performed, shall be submitted to LACMTA within 90 days after completion of the work under

the applicable Work Order, and shall summarize prior progress billings, show inclusive dates upon which work was performed, and include a certification that the Costs identified in such billing were appropriate and necessary to the performance of the work under the Work Order and have not previously been billed or paid; and

- (iv) after the expiration of the 90 day period described in Section 7.1(a)(iii) (Procedures for Utility Billings to LACMTA), LACMTA may Notify Utility in writing that the 90 day closing billing period has expired, and upon Utility's receipt of such Notice from LACMTA, Utility shall have 30 days to submit its final invoice.
- (b) Utility agrees to retain, or cause to be retained, for inspection and audit by LACMTA or other governmental auditors for the period required pursuant to Section 7.4 (Inspection and Audit), all records and accounts relating to the work performed by Utility under this Agreement and shall maintain separate records and accounts for each Work Order including signed individual labor time sheets clearly identifying of the Work Order number and the Subject Transportation Project title; provided, however, that if any actions brought under the dispute resolution provisions set out in ARTICLE 9 (Resolution of Disputes) have not been finally resolved by such deadline, then any records that pertain to any such actions shall be maintained until such actions have been finally resolved.

7.2 Procedures for LACMTA Billings to Utility

- (a) Where LACMTA is due a payment under the terms of this Agreement, LACMTA shall submit regular progress billings to Utility, which shall: (i) specify costs incurred for that billing period; (ii) bear the Subject Transportation Project name and any related Work Order number; (iii) be supported by copies of data that support the costs incurred; and (iv) be addressed to the Utility Representative. Each billing shall be noted as either progress or final billing and shall include a certification that the charges identified in such billing were appropriate and necessary to the performance of the applicable work and have not previously been billed or paid. The final billing, with a notation that all applicable work has been performed, shall be submitted to Utility as soon as practicable, but no later than 90 days following the completion of the work, and shall summarize prior progress billings, show inclusive dates upon which work was performed, and include a certification that the costs identified in such billing were appropriate and necessary to the performance of the applicable work and have not previously been billed or paid. After the expiration of the 90-day period described above, Utility may Notify LACMTA that the 90-day closing billing period has expired, and upon LACMTA's receipt of such Notice from Utility, LACMTA shall have 30 days to submit its final invoice.
- (b) LACMTA agrees to retain, or cause to be retained, for inspection and audit by Utility or other governmental auditors for the period required pursuant to Section 7.4 (Inspection and Audit), all records and accounts relating to all work performed by LACMTA for Utility under this Agreement; provided, however, that if any actions brought under the dispute resolution provisions set out in ARTICLE 9 (Resolution of Disputes) have not been finally resolved by the foregoing deadline, then any records that pertain to any such actions shall be maintained until such actions have been finally resolved.

7.3 Payment of Billings

Payment of each bill properly submitted pursuant to Sections 7.1 (Procedures for Utility Billings to LACMTA) or 7.2 (Procedures for LACMTA Billings to Utility) shall be due within 60 days of receipt, provided that:

- (a) all such payments shall be conditional, subject to post-audit adjustments;

- (b) final payment for each Rearrangement shall be contingent upon final inspection (and acceptance, where applicable) of the work by the Party billed for such work, which inspection (and acceptance, where applicable) will not be unreasonably withheld or delayed; and
- (c) LACMTA may withhold payments in the amount of any credit amounts due to LACMTA if Utility has not posted such credits within 60 days after submittal of requests for the same by LACMTA.

7.4 Inspection and Audit

For the period commencing on the Effective Date and ending on the date falling three years after the end of the Term or such later date as is required under other terms of this Agreement or under Applicable Law, each Party (and its authorized representatives) will have such rights to review and audit the other Party and its books, records and documents as may be deemed necessary for the purposes of verifying compliance with this Agreement, Applicable Law and the Utility Standards at all times during normal business hours. Each Party shall bear its own costs and expenses in connection with undertaking any inspection and audit, and in responding to an inspection and audit. Examination of a document or record on one occasion shall not preclude further review or reexamination of such document or record on subsequent occasions. By providing any of its records to the other Party for examination, the Party providing such records represents and warrants the completeness and accuracy in all material respects of all information it or its agents provides in connection with any audit by the other Party. If an audit shows that a financial adjustment is required, the Parties will use good faith efforts to agree such adjustment. The rights granted pursuant to this Section 7.4 shall not obligate either Party to inspect or audit the other Party's records. The Parties must ensure that any contract entered into in connection with performance of the work under this Agreement contains provisions acknowledging the rights of Utility or LACMTA (as applicable) under this Section 7.4.

ARTICLE 8. INDEMNITY AND INSURANCE

8.1 Indemnity

EACH PARTY SHALL RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OTHER PARTY AND ITS RESPECTIVE OFFICERS, AGENTS, REPRESENTATIVES, AND EMPLOYEES FROM AND AGAINST ALL LIABILITIES, EXPENSES (INCLUDING LEGAL FEES AND COSTS), CLAIMS, LOSSES, SUITS, AND ACTIONS OF ANY KIND, AND FOR DAMAGES OF ANY NATURE, INCLUDING BUT NOT LIMITED TO, BODILY INJURY, DEATH, PERSONAL INJURY, OR PROPERTY DAMAGE ARISING FROM OR CONNECTED WITH ITS PERFORMANCE UNDER THIS AGREEMENT. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY IN ANY CLAIM FOR CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES. Each Party agrees to Notify the other promptly upon receipt of any third-party claim for which a Party is entitled to indemnity under this Agreement.

8.2 Insurance

- (a) The Parties must ensure that any contract entered into in connection with performance of the work under this Agreement contains:
 - (i) a provision requiring the general contractor, as part of the liability insurance requirements, to provide an endorsement to each policy of general liability insurance naming Utility and LACMTA as additional insureds; and
 - (ii) unless otherwise mutually agreed by the Parties, the requirement for: (A) construction general contractors to provide evidence of insurance in the following amounts: \$5,000,000 in general liability; \$1,000,000 in workers' compensation/employer's liability; and \$1,000,000 in

combined single limit (CSL) in auto liability; and (B) design contractors to provide evidence of insurance in the following amounts: \$5,000,000 in general liability; \$1,000,000 in workers' compensation/employer's liability; \$1,000,000 (CSL) in auto liability; and \$1,000,000 in professional liability, if applicable to the Design contractor's scope of work.

- (b) Each Party must:
 - (i) give the other Party 30 days' Notice prior to any reduction in scope or cancellation or expiration of any insurance procured by it under this Section 8.2;
 - (ii) give the other Party 30 days' Notice prior to it agreeing to a reduction in scope or the cancellation or expiration of any insurance procured by a LACMTA Contractor or Utility Contractor (as applicable) under this Section 8.2; and
 - (iii) Notify the other Party within five days if it receives a Notice from a LACMTA Contractor or Utility Contractor (as applicable) of the expiration of any insurance procured under this Section 8.2.
- (c) Notwithstanding the foregoing, Utility shall have the option to self-insure in full satisfaction of the insurance requirements, so long as the Utility agrees to protect LACMTA, its officers and employees at the same level with respect to types of coverage and minimum limits of liability as LACMTA would have required of third party insurance, and Utility agrees that such self-insurance shall include all duties, obligations and responsibilities of an insurance company with respect to any claim made under such self-insurance program. At least 30 days prior to the implementation of any self-insurance program, Utility shall provide to LACMTA certification that Utility meets the requirements of this Section 8.2. If Utility does not self-insure in accordance with this Section 8.2(c), Utility shall itself obtain insurance complying with the requirements of Sections 8.2(a) (Insurance) and 8.2(b) (Insurance).

ARTICLE 9. RESOLUTION OF DISPUTES

9.1 Attempt to Resolve

In the event of a dispute or difference arising under, out of or in connection with or relating to this Agreement, including any question regarding its existence, validity or termination ("**Dispute**"), the Parties shall make good faith efforts to resolve the Dispute through negotiation, including as set out in Section 9.3 (Resolution Processing).

9.2 Continuation of Performance

- (a) The existence and details of a Dispute notwithstanding, both Parties shall continue, without delay, their performance under this Agreement, except for any performance which LACMTA, in its sole and absolute discretion, determines should be delayed as a result of such Dispute. LACMTA shall continue to pay sums not in Dispute, during any such period of continued performance.
- (b) If Utility fails to continue its performance under this Agreement, which LACMTA in its sole and absolute discretion, determines should not be delayed as a result of such dispute, then any additional costs which may be incurred by LACMTA as a result of Utility's failure to continue to so perform shall be borne by Utility, and Utility shall make no claim whatsoever against LACMTA for such costs. Utility shall promptly reimburse LACMTA for such LACMTA costs, as determined by LACMTA or LACMTA may deduct all such additional costs from any amounts due to Utility from LACMTA.

9.3 Resolution Processing

In the event of any Dispute between the Parties with respect to this Agreement:

- (a) Utility and LACMTA shall submit the Dispute to their respective project managers and contract administrators to resolve the Dispute;
- (b) if the project managers and contract administrators are unable to resolve the dispute within a reasonable time not to exceed five days from the date of submission of the Dispute to them, then the matter shall immediately be submitted to a representative of executive management from each of Utility and LACMTA to resolve the Dispute;
- (c) if the representatives of executive management nominated by Utility and LACMTA under Section 9.3(b) (Resolution Processing) are unable to resolve the dispute within a reasonable time not to exceed 30 days from the date of submission of the Dispute to them, then the matter shall immediately be submitted to Utility's Chief Executive Officer and to LACMTA's Chief Executive Officer, or their designees, to resolve the dispute; and
- (d) in the event that Utility's Chief Executive Officer and LACMTA's Chief Executive Officer are unable to resolve the Dispute within a reasonable time not to exceed 90 days from the date of submission of the Dispute to them, then: (i) the Parties may mutually agree to refer the Dispute to an alternative dispute resolution process; and (ii) each Party may assert its other rights and remedies provided under this Agreement and/or any rights and remedies as provided by Applicable Law.

9.4 Documentation of Disputes

All Disputes utilizing the dispute resolution procedure set out in this ARTICLE 9 shall be documented in writing by each Party and shall state the specifics of each alleged Dispute and all actions taken.

ARTICLE 10. MISCELLANEOUS

10.1 Force Majeure

No Party may bring a claim for a breach of obligations under this Agreement by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party if a Force Majeure Event occurs and the affected Party is prevented from carrying out its obligations by that Force Majeure Event. During the continuation of any Force Majeure Event, the affected Party shall be excused from performing those of its obligations directly affected by such Force Majeure Event provided that the occurrence or continuation of any Force Majeure Event shall not excuse any Party from performing any payment obligations contemplated under this Agreement. If a Force Majeure Event occurs, Utility agrees, if requested by LACMTA pursuant to Section 2.2 (Work Orders), and if deemed possible and feasible by Utility (acting reasonably), to accelerate the performance of its obligations under this Agreement and any Work Order to mitigate any delay arising from the Force Majeure Event provided that LACMTA agrees to reimburse Utility for the incremental actual costs of such acceleration.

10.2 Approvals, Further Documents, and Actions

- (a) Any determination, acceptance, approval, consent, permission, satisfaction, agreement, waiver, authorization or any other similar action (collectively, "**Approval**") required or permitted to be given by any Party pursuant to this Agreement or any Work Order:
 - (i) must be in writing to be effective (except as otherwise specifically allowed by this Agreement); and
 - (ii) shall not be unreasonably withheld, conditioned or delayed; and if Approval is withheld, such withholding shall be in writing and shall state with specificity the reasons for withholding such

Approval, and every effort shall be made to identify with as much detail as possible what changes are required for Approval.

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

10.3 Notices

- (a) Except as otherwise provided in this Agreement, all notices or communications pursuant to this Agreement shall be in writing and: (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (iv) sent by email communication followed by a hard copy, to the following addresses (or to such other address as may from time to time be specified in writing by such person):

To Utility:

Supervisor Right of Way
6 Centerpointe Dr 5th Floor
La Palma CA, 90623-2503
Attn: Evan J. Bencic
Email address: ejbencic@marathonpetroleum.com
Phone number: (801) 366-2058

To LACMTA:

Chief Program Management Officer
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, CA 90012
Email: lindholmt@metro.net
Attn: Tim Lindholm

With a copy to:

Deputy Executive Officer, Third Party Administration
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, CA 90012
Email: cervantese@metro.net
Attn: Eduardo Cervantes

County Counsel
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza, 24th Floor
Los Angeles, CA 90012
Email: eggerse@metro.net
Attn: Elena Eggers, Senior Deputy County Counsel

- (b) Any notice served personally shall be deemed delivered upon receipt, and any notice served by certified mail or by recognized overnight mail or courier service shall be deemed delivered on the date of receipt as shown on the addressee's registry or certification of receipt or on the date receipt is refused as shown on the records or manifest of the U.S. Postal Service, courier service or other person making the delivery, and any notice sent by email communication will be deemed delivered

on the date of receipt as shown on the received email transmission (provided the hard copy is also delivered pursuant to this Section 10.3). All notices (including by email communication) delivered after 5:00 p.m. PST will be deemed delivered on the first day following delivery that is not a Saturday, a Sunday, or a federal public holiday. Utility or LACMTA may from time to time designate any other address or addressee or additional addressees for this purpose by written notice given to the other Party in accordance with this Section 10.3.

- (c) The Parties may also designate other procedures for the giving of notice as required or permitted under the terms of this Agreement, but each such alternate procedure shall be described, in writing and signed by the LACMTA Representative and by the Utility Representative.

10.4 **Assignment; Successors and Assigns**

A Party cannot assign, novate, or otherwise transfer any of its rights or obligations under this Agreement without the prior consent of the other Party unless this Agreement expressly provides otherwise. This Agreement is binding upon and will inure to the benefit of LACMTA and Utility and their respective successors and permitted assigns.

10.5 **Waiver**

- (a) No waiver of any term, covenant, or condition of this Agreement will be valid unless in writing and executed by the obligee Party.
- (b) Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other terms of this Agreement at any time will not in any way limit or waive that Party's right to subsequently enforce or compel strict compliance with every term, covenant, condition, or other provision of this Agreement, despite any course of dealing or custom of the trade (other than the waived breach or failure in accordance with the terms of such waivers).

10.6 **Entire Agreement and Modification**

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties and no oral understanding or agreement not incorporated herein shall be binding on either of the Parties.

10.7 **Time**

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

10.8 **Governing Law and Jurisdiction**

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

10.9 **Severability**

If any part of this Agreement is found to be invalid or unenforceable by a ruling or decision reached in accordance with ARTICLE 9 (Resolution of Disputes), or otherwise by a court having proper jurisdiction, such finding shall not invalidate the remaining portions hereof, but such provisions shall remain in full force and effect to the fullest extent permitted by law; provided, however, that the Parties shall immediately renegotiate, reasonably and, in good faith, the terms or provisions found to be invalid, as well as any other terms and provisions as necessary to achieve as nearly as possible the Parties' original contractual intent.

10.10 Counterparts

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

10.11 Limitation on Third Party Beneficiaries

Nothing in the terms of this Agreement is intended: (a) to create duties for, obligations to, or rights in third parties not parties to this Agreement, except to the extent that, specific provisions (such as the indemnity provisions) identify third parties and provided that they are entitled to benefits hereunder; or (b) to affect the legal liability of either Party to the Agreement by imposing any standard of care with respect to the development, design, construction, operation or maintenance of highways, Transportation Projects and other public facilities that is different from the standard of care imposed by Applicable Law.

10.12 Survival

The representations, warranties, indemnities, waivers and dispute resolution provisions set out in ARTICLE 9 (Resolution of Disputes), all payment obligations hereunder incurred prior to termination of this Agreement, and all other provisions that by their inherent nature should survive termination of this Agreement, shall survive the termination of this Agreement for any reason whatsoever, and shall remain in effect unless and until terminated or modified in writing by mutual agreement.

10.13 Confidential Information

It may be necessary or advisable for LACMTA to share confidential information with Utility to carry out the objectives of this Agreement for a particular Subject Transportation Project. In connection with such sharing of confidential information, the Parties shall enter into a Non-Disclosure Agreement in the form attached as Part B of Exhibit 3 (*Forms*) to preserve the confidentiality of such information. A separate Non-Disclosure Agreement shall be entered into for each Transportation Project as applicable.

ARTICLE 11. DEFINITIONS AND INTERPRETATION**11.1 Definitions**

Unless the context otherwise requires, capitalized terms and acronyms used in this Agreement have the meanings given in this Section 11.1.

"Abandonment" means the permanent termination of service of an existing Utility Facility (or a portion of it) and, if the Utility Facility (or portion of it) is not being removed from its existing location, the work necessary to permit such abandoned Utility Facility to remain in place in accordance with Applicable Law. **"Abandoned"** shall be construed accordingly.

"Adjacent Work" means any removal, demolition, repair, restoration, relocation or reconstruction of existing Utility Facilities and/or construction of new Utility Facilities and/or other physical works by Utility or a Utility Contractor that is performed or to be performed within, or within 100 feet of, a Project Right-of-Way or Construction of a Rearrangement; or the performance of which is otherwise reasonably likely to conflict with the Design, Construction, operation or maintenance of a Subject Transportation Project.

"Advanced Conceptual Engineering" or "ACE" means the phase of the Design process that advances the Subject Transportation Project's scope from a conceptual state to a level of schematic design that describes the project technical and architectural approach in order to address environmental and community impacts, significant interfaces and operational characteristics to support environmental approvals. The plan percentage complete ranges generally from the initiation of Design (0%) to 15%.

"Advanced Partial Design Unit" means a portion of the Design for a Rearrangement, submitted to the Reviewing Party for review and approval prior to Submittal of a fully integrated Design for the Rearrangement in accordance with the terms of this Agreement and which enables Construction to begin on a portion of a Rearrangement before the Final Design for the applicable Rearrangement in full is complete.

"AFC Design" means, with respect to a Rearrangement, the Final Design for the Rearrangement that is approved for Construction and that otherwise satisfies all of the other conditions under Section 5 (No Commencement of Construction Work) of Exhibit 1 (Submittal Review Procedure).

"Agreement" means this agreement and any schedules, exhibits, attachments and annexures to it.

"Applicable Contractor" means a LACMTA Contractor or a Utility Contractor, as the context requires.

"Applicable Law" means any statute, law, code, regulation, ordinance, rule, common law, judgment, judicial or administrative order, decree, directive, or other requirement having the force of law or other governmental restriction (including those resulting from the initiative or referendum process) or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Entity which is applicable to the Subject Transportation Project, Rearrangements, any work performed under this Agreement or any relevant person, whether taking effect before or after the date of this Agreement. "Applicable Law" excludes Governmental Approvals, customs, duties and tariffs.

"Approval" is defined in Section 10.2(a) (Approvals, Further Documents, and Actions).

"Archaeological Remains" means any antiquities, fossils, coins, articles of value, precious minerals, cultural artifacts, human burial sites, paleontological and human remains, articles of scientific interest and other similar remains of archaeological, paleontological or scientific interest discovered in any part of the Project Site.

"Basis of Design" means the basis of design defined by LACMTA in the Work Order for Design, Design Support and/or other Design-related activities for a Rearrangement which shall, depending on the contracting mechanism adopted by LACMTA for the Subject Transportation Project, be:

- (a) the scope, criteria, specifications and requirements that form the basis of the applicable request for proposal issued by LACMTA for the part of the Subject Transportation Project scope of work that includes or necessitates the Rearrangement; or
- (b) such other level of Design Development agreed to in the applicable Work Order.

"Betterment" means work performed in connection with any Rearrangement or as part of a Rearrangement:

- (a) comprising an upgrade, change or addition to a Utility Facility (or a part of a Utility Facility) requested by Utility that provides for greater capacity, capability, durability, appearance, efficiency or function or other betterments of that Utility Facility over that which was provided by the Utility Facility prior to the Rearrangement; or
- (b) for which the Utility Standards applicable to that Rearrangement are changed or added to after the establishment of the Basis of Design for that Rearrangement,

provided that the term "Betterment" shall exclude:

- (i) an upgrade, which the Parties agree, will be of direct and principal benefit to the construction, operation and/or maintenance of the Subject Transportation Project;
- (ii) an upgrade resulting from Design or Construction in accordance with the applicable Utility Standards as set out in Section 3.5 (Utility Standards) and any changes or additions to those

Utility Standards notified to LACMTA prior to the establishment of the Basis of Design for the Rearrangement and that have not been adopted by Utility in breach of Section 3.5(b) (Utility Standards);

- (iii) measures to mitigate environmental impacts identified in the Subject Transportation Project's final environmental impact report or statement and any supplemental environmental reports for the Subject Transportation Project;
- (iv) Replacement of devices or materials no longer regularly manufactured with the next highest grade or size; or
- (v) an upgrade that is the consequence of changes made by LACMTA or a LACMTA Contractor after the establishment of the applicable Basis of Design for the Subject Transportation Project.

"Compliance Comment" means a comment on, objection to, or the withholding of approval to a Submittal on the basis of one or more of the following:

- (a) the Design or Construction work that is the subject of the Submittal fails to comply with (or is reasonably likely to fail to comply if implemented in accordance with the Submittal) any applicable covenant, condition, requirement, term or provision of this Agreement; or
- (b) not all content required with respect to the Submittal has been provided.

"Conflicting Facility" means an existing Utility Facility, or a portion of it, which the Parties determine requires Rearrangement in order to construct, operate or maintain a Subject Transportation Project including as a result of:

- (a) a physical conflict between the Subject Transportation Project (including its construction, operation, maintenance or use) and the Utility Facility; and/or
- (b) even where there is no physical conflict, an incompatibility between the Subject Transportation Project as designed and the Utility Facility based on the requirements of Utility Standards, LACMTA's applicable standards, and/or Applicable Law.

"Construction" means all construction activities necessary to complete the Subject Transportation Project including any Rearrangements and the procurement, installation, inspection, and testing of new facilities including temporary and permanent materials, equipment, systems, software, and any components of such permanent materials, systems, and software. **"Construct"** shall be construed accordingly.

"Cost" means all eligible direct and indirect costs actually incurred for activities or work performed or materials acquired by Utility or a Utility Contractor in accordance with the terms of this Agreement, less (in respect of Utility) credits to LACMTA as provided in Section 6.3 (Reimbursements and Credits to LACMTA) where:

- (a) eligible direct costs include allowable direct labor costs, equipment and materials costs, and storage and transportation costs of materials salvaged for Utility's use in performing the applicable work;
- (b) eligible indirect costs shall be computed based upon the indirect cost rates approved annually for Utility by its cognizant agency, and as noted on the Form 60, for allocation to federally funded or state funded contracts; and
- (c) unless the Internal Revenue Service and the CPUC issue regulations or rulings to the contrary, the eligible direct and indirect costs shall not include taxes purportedly arising or resulting from LACMTA's payments to Utility under this Agreement.

"County" means the County of Los Angeles, California.

"CPUC" means the California Public Utilities Commission.

"Days" or **"days"** means, unless otherwise stated, calendar days.

"Design" means all activities related to the design, redesign, engineering or architecture of any Construction work.

"Design Development" means the phase of the Design process that occurs after Advanced Conceptual Engineering and that develops, on a progressive basis, a clear indication of the design solutions for the applicable requirements and the major features of the architectural and structural design and third-party interfaces that are intended to form the basis for the Final Design.

"Design Documentation" means all drawings (including plans, profiles, cross-sections, notes, elevations, typical sections, details and diagrams), specifications, reports, studies, working drawings, shop drawings, calculations, electronic files, records and Submittals necessary for, or related to, the Design of the Rearrangements. "Design Document" shall be construed accordingly.

"Design Support" means Design support to assist LACMTA and the LACMTA Contractors to identify Conflicting Facilities and progress Design Development and preparation of a Final Design for Rearrangements including by:

- (a) identifying potential conflicts and impacts including Utility Facilities in which service must be maintained without interruption, Utility Facilities in which service may be permanently Abandoned, Utility Facilities which may be temporarily Abandoned and the maximum allowable duration of such temporary Abandonment;
- (b) estimating duration of street closures or restrictions necessary to construct Rearrangements of Utility Facilities; and
- (c) conducting exhaustive research to locate all: (i) as-built plans including site specific schematics, maps, legal description of land, prior physical work logs, soils and hazardous substance data if any, and other available or related data; (ii) prior agreements including franchise, license, and other agreements with railroads, LACMTA, local agencies or other third parties; and (iii) any other Utility-specific or proprietary design details relevant to the identification of Conflicting Facilities and Design Development and preparation of a Final Design for Rearrangements.

"Dispute" is defined in Section 9.1 (Attempt to Resolve).

"Effective Date" means the date stated as such on the first page of this Agreement, which shall be the date when this Agreement has been fully executed on behalf of LACMTA and Utility.

"EIS/EIR" means any Environmental Impact Report and/or Environmental Impact Statement for a Subject Transportation Project completed pursuant to the California Environmental Quality Act and/or National Environmental Policy Act (as applicable).

"Environmental Law" means all Applicable Laws, regulations, codes, and common law applicable to LACMTA or to the work under this Agreement, now or hereafter in effect relating to pollution control, remediation, hazardous or contaminated substances, resource conservation and management, protection of public health, public welfare, and the environment.

"Expired Service Life Value" is defined in Section 6.3(g) (Reimbursements and Credits to LACMTA).

"Final Design" means the phase of the Design process which provides the detailed design for all temporary and permanent project facilities and addresses and resolves all Design review Compliance Comments and finalizes all engineering, architectural and systems designs necessary for Construction. It ends with an approved-for-construction plan status and with the Design being signed and sealed by the 'Engineer of Record'.

"Final Design Document" means, with respect to a Rearrangement (or an element of a Rearrangement), the complete (to 100%) final Construction drawings, including plans, profiles, cross-sections notes, elevations, typical sections, details and diagrams, Design criteria, specifications, reports, studies, calculations, electronic files, records, and Submittals for the Rearrangement (or the element of the Rearrangement).

"Force Majeure Event" means the occurrence of any of the following events after the date of this Agreement that directly causes either Party (the "affected Party") to be unable to comply with all or a material part of its obligations under this Agreement:

- (a) war, civil war, invasion, violent act of foreign enemy or armed conflict or any act of terrorism;
- (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is brought to or near the Project Site by affected Party;
- (c) ionizing radiation unless the source or cause of the ionizing radiation is brought to or near the Project Site by the affected Party;
- (d) any fire, explosion, unusually adverse weather, flood or earthquakes;
- (e) any named windstorm and ensuing storm surges, including the direct action of wind originating from a named windstorm;
- (f) any riot or civil commotion;
- (g) any blockade or embargo;
- (h) government declared epidemic, pandemic or quarantine; or
- (i) any official or unofficial strike, lockout, go-slow or other dispute, generally affecting the construction industry or a significant sector of it,

except, in each case, to the extent attributable to any breach of this Agreement or Applicable Law by, or any negligent act or negligent omission of, the affected Party.

"Form 60" means Form 60 (Professional Services Cost/Price Summary) in the form attached as Part A of Exhibit 3 (Forms).

"Governmental Approval" means any approval, authorization, certification, consent, license, permit, registration or ruling, issued by any Governmental Entity required to carry out the Rearrangements, the Subject Transportation Project or any other work to be performed under the terms of this Agreement.

"Governmental Entity" means any federal, state, or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity (including the California Department of Transportation, CPUC and United States Army Corps of Engineers) other than LACMTA.

"Hazardous Substance" is defined in Section 4.8 (Hazardous Substances and Archaeological Remains).

"LACMTA" is defined in the Preamble.

"LACMTA Contract" means any contract, subcontract or other form of agreement between LACMTA and a LACMTA Contractor or between a LACMTA Contractor and its lower tier subcontractor.

"LACMTA Contractor" means any contractor, consultant, tradesperson, supplier, private developer, employee, member of staff, engineer, architect, agent, operator, or other person engaged or authorized by LACMTA to carry out works with respect to a Subject Transportation Project, any Rearrangement or otherwise contemplated under the terms of this Agreement and any other person with whom any LACMTA Contractor has further subcontracted part of such works (other than Utility and Utility Contractors).

"LACMTA Notice of Potential Betterment" means a notice from LACMTA to the Utility notifying the Utility of a potential Betterment in accordance with ARTICLE 5 (Betterments) and in the form set out in Part D of Exhibit 3 (Forms).

"LACMTA Representative" is defined in Section 2.1(a) (Governance).

"Non-conforming Work" means Design work or Construction work not in accordance with the requirements of this Agreement.

"Notice" means any communication under this Agreement including any notice, consent, approval, request, and demand and **"Notify"** shall be construed accordingly.

"Package" means, with respect to a Subject Transportation Project, each package of Design Documentation submitted by a Submitting Party in accordance with this Agreement.

"Planning Phase" means, with respect to a Subject Transportation Project, the phase in which LACMTA carries out activities related to the planning and environmental clearance of the relevant Subject Transportation Project including, but not limited to:

- (a) conducting alternative analysis and feasibility studies;
- (b) preparing the draft and final environmental impact reports/statements required by Applicable Law;
- (c) preparation of Advanced Conceptual Engineering;
- (d) seeking LACMTA board approval of the locally preferred alternative;
- (e) seeking certification of the final EIR by the LACMTA board;
- (f) activities related to FTA issuance of the record of decision; and
- (g) preparation of the mitigation monitoring and reporting plan.

"Project Labor Report" is defined in Section 7.1(a)(ii) (Procedures for Utility Billings to LACMTA).

"Project Right-of-Way" means the permanent right-of-way for a Subject Transportation Project as Notified to Utility by LACMTA and compliant with that Subject Transportation Project's final environmental impact report or statement and any supplemental environmental reports for the Subject Transportation Project or, if the final environmental reports have not yet been obtained, the anticipated permanent right-of-way as Notified to Utility by LACMTA.

"Project Site" means, with respect to a Subject Transportation Project, collectively, the Project Right-of-Way and each temporary construction easement for the Subject Transportation Project, as Notified to Utility.

"Protection-in-Place" means any activity undertaken to avoid damaging a Utility which does not involve removing or relocating that Utility, including staking the location of a Utility, avoidance of a Utility Facility's location by construction equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de-energizing power lines, and installing physical barriers. "Protected-in-Place" will be construed accordingly.

"Rearrangement" means, with respect to a Subject Transportation Project, the work of:

- (a) removal (including Abandonment), replacement, restoration, alteration, reconstruction, support (including Protection-in-Place), or relocation of all or a portion of a Conflicting Facility, whether permanent or temporary, which:
 - (i) LACMTA determines in its sole discretion is necessary in order for the Subject Transportation Project to comply with Applicable Law; or
 - (ii) LACMTA and Utility mutually agree is necessary in order to Construct, operate, or maintain the Subject Transportation Project; or
- (b) the installation of new and required Utility Facilities which:
 - (i) LACMTA determines in its sole discretion is necessary in order for the Subject Transportation Project to comply with Applicable Law; or
 - (ii) LACMTA and Utility mutually agree is necessary as a result of the impact of the Construction, operation or maintenance of the Subject Transportation Project.

"Remedial Action" is defined in Section 4.8(d) (Hazardous Substances and Archaeological Remains).

"Replacement Facility" means a Utility Facility that may be constructed or provided under the terms of this Agreement as a consequence of a Rearrangement of a Utility Facility or a portion thereof.

"Reviewing Party" means, the Party responsible for reviewing and approving Submittals submitted by the Submitting Party.

"Service Life" means the total useful life of a Utility Facility in years after it is first constructed and functional for the intended service or conveyance.

"Service Life Credits" means the remaining unused portion of a Utility Facility's Service Life, converted to cost or dollars, for the purpose of calculating the proportional share of cost between LACMTA and Utility where applicable.

"SSPWC" means Standard Specifications for Public Works Construction.

"Subject Transportation Project" when referenced generally, means a Transportation Project involving a Rearrangement as listed in Recital B or identified in accordance with Section 1.1(e) (Scope of the Agreement) or anticipated to involve a Rearrangement (as the context requires); or when referenced in connection with a particular Rearrangement, means the Transportation Project which necessitates such Rearrangement; provided, however, that if LACMTA enters into more than one LACMTA Contract for Construction of a particular Transportation Project, then where the context so requires, the term "Subject Transportation Project" shall refer to that portion of such Transportation Project which is being Constructed by a particular LACMTA Contractor and which necessitates such Rearrangement.

"Submittal" means, with respect to a Subject Transportation Project:

- (a) Design Documentation for a Rearrangement performed as part of that Subject Transportation Project (other than any Design Documentation for which a Party is responsible); and
- (b) any other documents which a Party must submit to the other Party with respect to that Subject Transportation Project in accordance with this Agreement.

"Submitting Party" means, the Party responsible for preparing and submitting a Submittal to a Reviewing Party for review and approval which may include a contractor, consultant, tradesperson, supplier, private developer, employee, or member of staff.

"Submittal Review Period" means, for each Submittal, a period of 14 days from the date of delivery of the Submittal under the provisions of this Agreement (including Section 10.2 (Approvals; Further Documents and Actions)) or as the Parties may agree under the applicable Work Order.

"Temporary Facility" means a facility constructed for the purpose of ensuring continued service while a Utility Facility is taken out of full or partial service as part of any Rearrangement work, but which will be removed, relocated or restored to its original condition after such work is complete.

"Transportation Project" means a project undertaken by or at the direction of LACMTA pursuant to its authority under Applicable Law to design, construct, operate and/or maintain light rail, heavy rail (including subway), busway, tram, highway, high occupancy toll (HOT) lanes (including Express Lanes/Fastrak, etc.), bike path, active transportation or other forms of transportation or mobility systems, and includes either a new transportation or mobility system or a project to modify, alter, extend or maintain an existing Transportation Project and **"Transportation Project"** shall mean any one of such projects. LACMTA has sole discretion in the interpretation of its authority under Applicable Law.

"Utility" is defined in the Preamble.

"Utility Betterment Request" means a Notice from Utility to LACMTA requesting a Betterment in accordance with ARTICLE 5 (Betterments) and in the form set out in Part C of Exhibit 3 (Forms).

"Utility Contract" means any contract, subcontract or other form of agreement between Utility and a Utility Contractor or between a Utility Contractor and its lower tier subcontractor.

"Utility Contractor" means any contractor, consultant, tradesperson, supplier, private developer, employee, member of staff, engineer, architect, agent, operator, or other person engaged or authorized by Utility to carry out Design, Construction or other work with respect to any Rearrangement or otherwise contemplated under the terms of this Agreement and any other person with whom any Utility Contractor has further subcontracted part of such works.

"Utility Facility" or "Utility Facilities" means any line, facility or system:

- (a) under the ownership or operating jurisdiction of Utility;
- (b) impacted by the construction, operation and/or maintenance of a Transportation Project; and
- (c) used for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, waste or other similar public utilities, including wires, cables, poles, cross-arms, anchors, guys, fixtures, vaults, conduits, duct banks, vents, fittings, pipelines and manholes together with any and all necessary appurtenances but excluding any buildings of Utility or other facilities or property of Utility, whether or not devoted to public use, not used for transmitting or distributing a public utility or not impacted by the construction, operation and/or maintenance of a Transportation Project.

"Utility Representative" is defined in Section 2.1(a) (Governance).

"Utility Standards" means Utility's written design and safety standards applicable to the Design of a Rearrangement, as notified to and agreed to by LACMTA in accordance with the terms of this Agreement.

"Work Order" means a work request submitted by LACMTA to Utility authorizing the performance of any work associated with a Subject Transportation Project and the associated purchase of required materials.

11.2 Construction and Interpretation

- (a) In this Agreement unless otherwise expressly stated:
- (i) headings are for convenience only and do not affect interpretation;
 - (ii) a reference to this Agreement or any other agreement, instrument, or document is to this Agreement, or such other agreement, instrument, or document as amended or supplemented from time to time;
 - (iii) a reference to this Agreement or any other agreement includes all exhibits, schedules, forms, appendices, addenda, attachments, or other documents attached to or otherwise expressly incorporated in this Agreement or any such other agreement (as applicable);
 - (iv) subject to Section 11.2(a)(v) (*Construction and Interpretation*), a reference to an Article, Section, subsection, clause, Exhibit, schedule, form or appendix is to the Article, Section, subsection, clause, Exhibit, schedule, form, or appendix in or attached to this Agreement;
 - (v) reference in the main body of this Agreement, or in an Exhibit, to an Article, Section, subsection, or clause is to the Article, Section, subsection, or clause of the main body of this Agreement, or of that Exhibit (as applicable);
 - (vi) a reference to a person includes such person's permitted successors and assigns;
 - (vii) a reference to a singular word includes the plural and vice versa (as the context may require) and the masculine, feminine and neuter genders shall each be deemed to include the other or others whenever the context so indicates;
 - (viii) the words "including", "includes" and "include" mean "including, without limitation", "includes, without limitation" and "include, without limitation", respectively and the word "or" is not exclusive;
 - (ix) an obligation to do something "promptly" means an obligation to do so as soon as the circumstances permit, avoiding any unreasonable delay and "shall" when stated is to be considered mandatory;
 - (x) in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" mean "to and including";
 - (xi) all determinations, consents, waivers, or approvals of a Party under this Agreement must not be unreasonably withheld, conditioned, or delayed; and
 - (xii) all Notices, "notices", "requests", requirements to "Notify" or "notify", and other communication between the Parties are required to be in writing, and all references to Notices, "notices", "requests", "Notify", "notify", and other communications, by whatever term used shall be deemed to be followed by the words "in writing" or preceded by the word "written" and delivered in accordance with Section 10.3 (*Notices*).


- (b) This Agreement is not to be interpreted or construed against the interests of a Party merely because that Party proposed this Agreement or some provision of it, or because that Party relies on a provision of this Agreement to protect itself.

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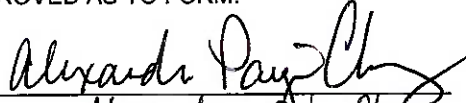
[AGREEMENT SIGNATURES APPEAR BELOW]

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

UTILITY: TESORO SOCAL PIPELINE COMPANY LLC

By (Signature): 
Print Name: Evan Bencic
Print Title: Authorized Signatory
Date Signed: March 13, 2025

APPROVED AS TO FORM:

By: 
Print Name: Alexander Paig Chen
Print Title: Authorized Signatory
Date: March 22, 2025

AMB
Approved as to Form

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION:

By (Signature): _____
Print Name: Stephanie Wiggins
Print Title: Chief Executive Officer
Date Signed: _____

APPROVED AS TO FORM:

By: _____
Print Name: _____
Print Title: _____
Date: _____

EXHIBIT 1

Submittal Review Procedure

The procedures set out in this Exhibit 1 will govern all Submittals under this Agreement.

Part A – Submittal and Review Procedure

1. PREPARATION AND SUBMISSION OF SUBMITTALS

1.1 General

- (a) A Submitting Party shall prepare and submit all Submittals to the Reviewing Party at the times and in the form required under this Agreement and, in the case of the Design Documentation, in accordance with the requirements set out under Section 1.2 below.
- (b) The Reviewing Party shall ensure that any individual undertaking Design review on the Reviewing Party's behalf under this Agreement has the appropriate qualifications, capability and experience to perform the review including, where applicable to a Rearrangement or the Subject Transportation Project, prior experience and expertise in the Design standards that may apply.

1.2 Preparation and Submission of Design Documentation

Each party shall, and will ensure that its contractor shall:

- (a) ensure that the Design Documentation is consistent with the level of detail required for that level of Design development, and unless otherwise agreed by the Parties;
- (b) ensure that the Design Documentation submitted for the Final Design is of a level of detail which is sufficient to permit the Reviewing Party to determine whether the Design Documentation complies with the Applicable Law or applicable standards in accordance with this Agreement;
- (c) ensure that each submission of Design Documentation highlights any material amendments made since any earlier Submittal of that Design Documentation;
- (d) where the Final Design documents for an Advanced Partial Design Unit are submitted for review at the Final Design stage and the other Party proposes to begin Construction of that Advanced Partial Design Unit prior to the Reviewing Party's review and approval of the Final Design documents for the Rearrangement in full, ensure that the Submittal for the Advanced Partial Design Unit includes supporting reports to verify that the Advanced Partial Design Unit work may proceed without impact to the Design of the Rearrangement as a whole. This shall include supporting information including:
 - (i) the limits of work (with stationing and references to the plan sheets of each adjacent design unit);
 - (ii) the plan sheets of each adjacent Advanced Partial Design Unit, if applicable;
 - (iii) that the Design Documentation for the Advanced Partial Design Unit includes plans for all proposed Rearrangements of street, sanitary sewer, storm drain, trees and landscaping, traffic control, traffic signing and striping, traffic signal, street lighting, and composite utility adjustments;
 - (iv) that existing field conditions have been properly identified and are being addressed; and

- (v) that coordination has occurred within the Design disciplines so as to eliminate or minimize any possible inconsistency with the Final Design documents for the applicable Rearrangement in full.

A Submitting Party must resolve all comments from the Reviewing Party related to the Advanced Partial Design Unit received at preceding stages of Design Development prior to submission of that Advanced Partial Design Unit for review at Final Design. A Reviewing Party may reject any Advanced Partial Design Unit where the above documentation does not demonstrate that the Advanced Partial Design Unit work may proceed without impact to the design of the Rearrangement as a whole.

2. REVIEW PROCEDURE

- 2.1 A Party may invite the other Party (or its contractor) to attend a pre-submittal workshop where Design Documentation for a Rearrangement is to be presented for the Parties to identify any information that may be missing from the Submittal. The Party convening the pre-submittal workshop will make reasonable endeavors to provide a copy of the Design Documentation for a cursory review at least five days prior to the pre-submittal workshop.
- 2.2 Within three days of delivery of a Submittal, the Reviewing Party shall inform the Submitting Party of any missing information based on a review of the Submittal against: (a) subject to Section 3.5 (Utility Standards) of the Agreement, the standards applicable to the Subject Transportation Project; and (b) the scope, criteria, specifications, and requirements for the applicable Rearrangements. When informing the Submitting Party of an incomplete Submittal, the Reviewing Party shall fully describe the missing information, including by reference to the standard and/or criteria, specification, or requirement.
- 2.3 If a Reviewing Party informs the Submitting Party that a Submittal is incomplete in accordance with Section 2.2 above, the Submitting Party shall re-submit a complete Submittal for review. If the Reviewing Party is reasonably able to commence its review notwithstanding the missing information, the Parties may agree that the Reviewing Party will continue with its review of the Submittal. If the Reviewing Party does not deliver a Notice of incomplete information within seven days of delivery of a Submittal, the Submittal shall be deemed complete and acceptable for review purposes.
- 2.4 For those Submittals submitted for review but not for formal approval (including, Design Documentation submitted for those stages of Design Development review that precede the Final Design), the Reviewing Party shall complete its review and issue its comments to the Submitting Party within the Submittal Review Period. For those Submittals that have been designated as requiring review and approval under this Agreement (including, submission of a Final Design Document for approval), the Reviewing Party shall complete its review, issue its comments, and confirm its approval or rejection, within the Submittal Review Period.
- 2.5 All Compliance Comments shall be transmitted in the form of a comment matrix or, if mutually agreed to, through another equivalent format or database, and if applicable, shall be accompanied by an annotated Submittal. Where a database is used for transmission of comments, the Reviewing Party shall provide the Submitting Party (and the relevant contractors) with user accounts and training for this purpose.
- 2.6 The Submitting Party shall consult with the Reviewing Party with respect to the Compliance Comments provided by the Reviewing Party, including in comment resolution meetings, and provide written responses and resolutions to all Compliance Comments transmitted by the Reviewing Party with respect to a Submittal prior to its re-submittal (or, in the case of Design Documentation, prior to submitting the subsequent Design Development stage submittal). In the case of Design Documentation, the Submittal shall include the comment matrix addressing the Reviewing Party's comments to the previous Design stage, if applicable.
- 2.7 Prior to the expiry of the Submittal Review Period, the Parties may agree to an extension of time for review, taking into account the size and complexity of the Submittal and the number of concurrent Submittals. If no

comments are received within the Submittal Review Period, the Submittal will be deemed complete and approved.

3. REQUESTS FOR INFORMATION

Either party may submit to the other a Request for Information or clarification. Upon delivery of any such request, the receiving Party must provide the information requested to the other Party promptly and in any case within 24 hours of delivery of the request.

4. GROUNDS FOR OBJECTION OR COMMENT

- 4.1 The Reviewing Party will only be entitled to reject a Submittal submitted for approval under this Exhibit 1 if the Submittal is incomplete, as described under Section 2.2 above, or fails to comply with the requirements set out in this Agreement, as specified in the Reviewing Party's Compliance Comments.
- 4.2 If the Reviewing Party rejects a Submittal in accordance with this Exhibit 1, the Submitting Party must address the Compliance Comments and re-submit the Submittal for review; or Notify the Receiving Party that it does not agree with the grounds for rejection and the reason it does not agree and the Parties will meet and confer to discuss the Submittal.

5. NO COMMENCEMENT OF CONSTRUCTION WORK

- 5.1 A Party shall not commence or permit the commencement of any Construction of a Rearrangement prior to the date that the Design Documentation for that Construction work has become an AFC Design. Any Final Design Document for any Rearrangement, or any element of a Rearrangement, shall only become an AFC Design when:

- (a) the Reviewing Party has approved the Final Design Document;
- (b) the Final Design Document has been signed and sealed by the Engineer of Record that is responsible for that Final Design Document;
- (c) any other conditions for the Final Design Document to be ready for Construction set out under this Agreement have been satisfied; and
- (d) the Party (or relevant contractor) has approved the Final Design Document as being ready for Construction and has re-issued the Final Design Document with the notation "Approved for Construction" accordingly.

Unless an element is clearly noted as otherwise in an AFC Design, all of the work detailed in an AFC Design will be interpreted as being approved and ready for Construction.

- 5.2 A party may submit Final Design documents for an Advanced Partial Design Unit's review at the Final Design stage, in order to seek approval to commence Construction of that portion of a Rearrangement prior to completion of the Final Design documents for the applicable Rearrangement in full. In accordance with Section 5.1 above, a Party shall not commence or permit the commencement of any Construction of the work under an Advanced Partial Design Unit prior to the date that the Design Documentation for that work has become an AFC Design. In addition to the Advanced Partial Design Unit Submittal, a Submitting Party shall furnish any additional supporting information which is reasonably requested with respect to that Advanced Partial Design Unit. Construction without prior approval and not conforming to Utility standards (as applicable to the Subject Transportation Project under Section 3.5 (Utility Standards) of this Agreement) shall be at the risk of removal and replacement by the Submitting Party. Approval of Final Design Documents for an Advanced Partial Design Unit as the AFC design for that Advanced Partial Design Unit shall not constitute approval of the Final Design Documents for the applicable Rearrangement in full. Where the Final Design

Documents for an Advanced Partial Design Unit are approved by the Reviewing Party as an AFC design, those approved Final Design Documents shall be submitted as part of the Final Design Documents for the applicable Rearrangement in full within 10 days of the commencement of Construction of the Advanced Partial Design Unit, unless the Parties agree to an alternative schedule. Failure to complete the Final Design process for the applicable Rearrangement within the foregoing time period will result in the Reviewing Party suspending the Construction work for the Advanced Partial Design Unit.

EXHIBIT 2

Inspection and Acceptance Procedure

1. INSPECTION DURING CONSTRUCTION

- 1.1 Each Party shall give the other Party at least five days' Notice prior to commencing a Rearrangement for which it is responsible to enable such other Party to make arrangements for inspection of such work.
- 1.2 Any Construction of Rearrangements performed by LACMTA (directly or through the LACMTA Contractor) under this Agreement shall be subject to inspection and final acceptance by Utility provided that any such inspection carried out by Utility shall be solely for the purposes of assessing whether the Construction work conforms with, subject to Section 3.5 (Utility Standards) of this Agreement, the Utility Standards and Section 3.2 (Design Requirements) and Section 4.2 (Construction Requirements) of this Agreement. Such inspection services shall be authorized by LACMTA under a Work Order issued in accordance with Section 2.2 (Work Orders) of this Agreement. If Utility inspection services are authorized under a Work Order, Utility shall:
- (a) provide inspectors at LACMTA's cost as needed to comply with the schedule for such inspections set out in the Work Order;
 - (b) cooperate and coordinate with the LACMTA Representative and the LACMTA Contractors to observe and inspect any Rearrangements so that upon completion of Construction, Utility will have a basis for acceptance of the work;
 - (c) ensure that all Utility inspectors submit copies of daily written inspection reports to LACMTA, each within 48 hours after such inspection; and
 - (d) remove and replace any inspector three days after LACMTA's reasonable written request.
- 1.3 Any Construction work performed by Utility or a Utility Contractor pursuant to a Work Order agreed under the terms of this Agreement shall be subject to LACMTA inspection and final acceptance.
- 1.4 If, in carrying out an inspection, a Party identifies Non-conforming Work, the Party must provide the other Party with immediate Notice with detailed reasons (and in any event, no later than 48 hours from discovery). The Party that performed the relevant work must rectify any Non-conforming Work.
- 1.5 Utility shall not have any inspection rights with respect to any structures or physical elements that are owned and maintained by LACMTA, a LACMTA Contractor, or a tenant or licensee of LACMTA.
- 1.6 Utility acknowledges and agrees that LACMTA may delegate its inspection and acceptance rights under this Exhibit 2 to an independent engineer appointed under the terms of any LACMTA Contract.

2. ACCEPTANCE PROCEDURE

- 2.1 Promptly following completion of any Rearrangement, the Party that performed the Construction shall Notify the other Party that the Rearrangement is ready for final inspection.
- 2.2 The final inspection shall be carried out within 10 days of receipt of a Notice under Section 2.1 (Acceptance Procedure) and within five days of the completion of the final inspection, the inspecting Party shall Notify the other Party of any Non-conforming Work. If no Notice is received, the relevant work will be deemed accepted by the inspecting Party.
- 2.3 Utility shall accept all Rearrangements that are in conformance with Section 3.2 (Design Requirements) and Section 4.2 (Construction Requirements) of this Agreement.

EXHIBIT 3

Forms

Part A: Form 60 (Modified for UCA)

Name of Offeror/Contractor/Utility Company (Name of Preparer):		Scope of Work/Deliverable (provide expanded description on Form 60 page 2)			
Home office address					
Division(s) and Locations where Work is to be performed		LACMTA Solicitation/Proposal/Contract Number/Work Order/Change Notice and/or Change Order Reference Number(s):			
NOTE: For proper calculations of cost elements link additional sheets to this summary page.					
1.	Direct Labor	Est. Hours	Rate Per Hour	Est. Cost	TOTAL
2.		0.00	\$0.00	\$0.00	
3.		0.00	\$0.00	\$0.00	
4.		0.00	\$0.00	\$0.00	
5.	TOTAL DIRECT LABOR HOURS	0.00	TOTAL DIRECT LABOR	\$0.00	
6.	Labor Overhead (O/H)	O/H Rate	x Base	Est. Cost	
7.		0%		\$0.00	
8.	TOTAL LABOR OVERHEAD				\$0.00
9.	Direct Material	Est. Cost			
10.	a. Purchase Parts	\$0.00			
11.	b. Subcontracted items	\$0.00			
12.	c. Other	\$0.00			
13.	TOTAL DIRECT MATERIAL				\$0.00
14.	Equipment	Unit Cost	Est. Cost		
15.		\$0.00	\$0.00		
16.		\$0.00	\$0.00		
17.	TOTAL EQUIPMENT				\$0.00
18.	Subcontractors*	Est. Cost			
19.		\$0.00			
20.		\$0.00			
21.		\$0.00			
22.	TOTAL SUBCONTRACTORS				\$0.00
23.	TOTAL BURDENED COST (add lines 5, 8, 13, 17 and 22)				\$0.00
24.	Other Direct Costs	Est. Cost			
25.		\$0.00			
26.		\$0.00			
27.		\$0.00			
28.	TOTAL OTHER DIRECT COSTS				\$0.00
29.	Travel	Est. Cost			
30.	a. Transportation	\$0.00			
31.	b. Per Diem or Subsistence	\$0.00			
32.	TOTAL TRAVEL				\$0.00
33.	General and Administrative Expense	Rate %	% x Line 23		
34.		0%	\$0.00		
35.	TOTAL GENERAL AND ADMINISTRATIVE EXPENSE				\$0.00
36.	TOTAL ESTIMATED COSTS (Total Lines 23, 28, 32 and 35)				\$0.00

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37.	Profit/Fee	Total Labor and Overhead (line 5 + line 8)	Rate %	% x Total Labor and Overhead		
38.			0%			\$0.00
39.	TOTAL FEE					\$0.00
40.	TOTAL ESTIMATED PRICE (Total of Lines 36 and 39)					\$0.00
41.	Milestone /Task Number	Milestones/Tasks	Hours	Completion Date	Payment Amount	
42.					\$0.00	
43.					\$0.00	
44.					\$0.00	
45.	TOTAL MILESTONES/TASKS (Must equal line 40)					\$0.00
* Attach Form 60 for all proposed subcontractors performing work under Form 60 Prime Contractor where applicable. Transfer Est. Cost to this Section.						
46.	Fill in applicable sections only					
47. Has any Agency of the United States Government, State government, local public agency or the Los Angeles County Metropolitan Transportation Authority (LACMTA) performed any review of your account or records, overhead rates and general and administrative rates in connection with any public prime contract or subcontract within the past twelve months? Yes No If yes, when? Reference Contract No.						
48.a. Agency Name/Address				48.b. Individual to contact/Telephone Number		
49. As required by LACMTA, firms not audited, as described above, shall submit financial data and calculations in sufficient detail to support all proposed direct costs and subcontractor costs.						
50. The proposal reflects our estimates and/or actual costs as of the date and by submitting this proposal, Proposer/Consultant grants to LACMTA Contracting Officer and authorized representative(s) the right to examine, at any time before award, those records, which include books, documents, accounting procedures and practices, and other supporting data, regardless of type and form or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of such cost or pricing data, along with the computations and projections used therein, for the purpose of verifying the cost or pricing data submitted. This right may also be exercised in connection with any negotiations/discussions prior to contract award or execution of contract modification.						
51. CERTIFICATE						
The labor rates and overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Proposer/Consultant represents: (a) that it has , has not , employed or retained any company or person (other than a full time bona fide employee working solely for the Proposer/Consultant) to solicit or secure a contract, and (b) that it has , has not , paid or agreed to pay to any company or person (other than a full time bona fide employee working solely for the Proposer/Consultant) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to information relating to (a) and (b) above, as requested by the Contracting Officer.						
52. CERTIFICATE OF CURRENT COST OR PRICING DATA						
This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in Section 2.101 of the Federal Acquisition Regulations (FAR) and required under subsection 15.403-4) submitted, either actually or by specific identification in writing, to LACMTA's Contracting Officer or to LACMTA's Contracting Officer's representative in support of _____ * are accurate, complete and current as of _____						
** This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the Proposer/Consultant/Contractor and LACMTA that are a part of the proposal.						
53. This proposal as submitted represents our best estimates and/or actual costs as of this date.						
54. Type Name and Title of Authorized Representative				Signature		Date***
55.		* Identify the proposal, quotation, request for price adjustment, or other submission involved, giving appropriate identifying number (e.g., Information For Bid No., Work Order No., Request for Proposal No., Change Order No., Modification No., etc.)				

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56.		** Insert the day, month and year when price negotiations were concluded, and price agreement was reached.
57.		*** Insert the day, month and year of signing (i.e., When price negotiations were concluded, and mutual agreement was reached on contract price).
Form 60 Attachments (Applicable if Box is checked)		
Scope of Work Expanded Description for which Cost Estimate is based on:		
1		
2		
3		
4		
Schedule in which Scope of Work is based on:		
1		
2		
3		
4		
Track Allocation Request for Metro active rail right-of-way encroachment is anticipated per stated Scope of Work. The following information is provided in advance to facilitate final Metro TAR approval:		
1		
2		
3		
4		
FORM 60 IS SIGNED AND EXECUTED WITH THE FOLLOWING ADDITIONAL ASSUMPTIONS:		

Below, list all of Utility's Authorized Personnel (as defined in the Non-Disclosure Agreement (NDA) set out in Part B of Exhibit 3 to the Utility Cooperative Agreement (UCA)) and Affiliates with executive-level involvement and decision making, provide name, Utility, job title, and relation to Utility.

Authorized Personnel			
Name	Utility (or Affiliates)	Title	Relation to Utility

Part B: Form of LACMTA-Utility Non-Disclosure Agreement**Non-Disclosure and Confidentiality Agreement – [insert name of relevant Subject Transportation Project]**

This Non-Disclosure and Confidentiality Agreement ("**Agreement**") is made effective as _____, 20__ (the "**Effective Date**") by and between Tesoro SoCal Pipeline Company LLC ("**Utility**"), and the Los Angeles County Metropolitan Transportation Authority ("**LACMTA**"), (each a "**Party**" and collectively the "**Parties**").

RECITALS

- (A) The Parties have entered into an Utility Cooperative Agreement between Utility and LACMTA dated _____, 20__ (the "**UCA**") to agree the rights and obligations of the Parties in connection with the rearrangement of portions of Utility's facilities as may be required as part of the design, construction, operation and maintenance of LACMTA's proposed Transportation Projects.
- (B) LACMTA may share certain Information relating to [insert name of relevant Subject Transportation Project] with Utility for the limited purpose of carrying out its obligations as described in the UCA (the "**Purpose**"). As contemplated by the UCA, the Parties wish to enter into this Agreement to record their rights and obligations with respect to the Information as are necessary to preserve the confidentiality of such Information.

NOW THEREFORE, the Parties hereby agree to the following:

AGREEMENT**1. DEFINITION OF INFORMATION AND SSI**

Materials and information including indicative and draft drawings or design specifications ("**Information**") may be released by LACMTA to Utility in connection with the Purpose. All or part of the Information may be designated as Security Sensitive Information ("**SSI**") and/or confidential information or may otherwise be exempt from disclosure to the general public or other unauthorized persons as provided under 49 CFR 1520.5(a) and/or California Public Records Act (Government Code sec. 7920.000 et seq.).

2. NON-DISCLOSURE/USE OF INFORMATION

- 2.1 The terms of this Section 2 are subject to Section 5 below.
- 2.2 Utility agrees to preserve the confidentiality of the Information, and shall not use it or permit it to be accessed or used, except for the Purpose as stated in this Agreement. Utility will take all reasonable and necessary steps to protect the Information and prevent disclosure of the Information to any unauthorized person. Any disclosure of the Information that is deemed necessary in connection with the Purpose shall be in accordance with the terms and conditions of this Agreement.
- 2.3 Utility shall protect the Information by using the same degree of care, but no less than a reasonable degree of care, that it uses to protect its own confidential information of a like nature to prevent its unauthorized use, dissemination or publication to any unauthorized person.
- 2.4 Utility shall manage, store, and use Information which is disclosed in a digital or electronic format in a secure platform (including password protection, encryption, and/or utilizing cyber-secured storage that prevents use and access by any persons not authorized to use/access such Information pursuant to the terms of this Agreement). Utility agrees that it will not copy, install or load any Information onto any platform that is connected to an internal or external system network, or to the internet, unless Utility has demonstrated to the satisfaction of LACMTA that the Information is protected with appropriate security protocols that ensure the security of the Information.

- 2.5 Utility shall not disclose or cause to be disclosed any Information to anyone, except to Utility's designated employees, affiliates, agents, representatives, contractors, subcontractors, advisors or consultants who ("**Authorized Personnel**"): (a) require direct access to the Information to assist Utility, or act on its behalf, in relation to the Purpose as stated in this Agreement; (b) are informed by Utility of the confidential nature of the Information and of the terms of this Agreement; and (c) have executed an acknowledgement of the terms of this Agreement in the form attached as Attachment A ("**Acknowledgement of Authorized Personnel**"). Upon request by LACMTA, Utility shall provide copies of each executed Acknowledgement of Authorized Personnel to LACMTA.
- 2.6 Utility shall be responsible for any act and/or omission of any Authorized Personnel in breach of this Agreement. If Utility becomes aware of any breach of the terms of this Agreement including, without limitation, that Information has been used or disclosed to a person other than the Authorized Personnel in violation of this Agreement, Utility shall: (a) give LACMTA notice of the use or disclosure within one business day of Utility's knowledge of the breach; (b) take all reasonable steps to recover the Information; and (c) obtain agreement by the person that received the Information that it will not disclose the Information to other person and will protect the Information from further disclosure.
- 2.7 If, upon receipt of the Information, Utility or any of its Authorized Personnel recognize that it/they (respectively) are competitors of LACMTA's consultant, contractor, or other third party provider that has developed the Information, Utility shall immediately give written notice to LACMTA of this fact and shall not open, or otherwise take any action that may permit the Information to be used by Utility or its Authorized Personnel before LACMTA has an opportunity to resolve any potential conflicts regarding use of the Information by Utility and/or Authorized Personnel (as applicable).
- 2.8 Utility shall be permitted to make copies of the Information solely as necessary to carry out the Purpose, which shall be protected in the same manner as the original Information and shall be subject to Section 3.2 and the other terms of this Agreement.

3. **OWNERSHIP AND RETURN/DESTRUCTION OF INFORMATION**

- 3.1 All Information disclosed by LACMTA under this Agreement is and shall remain the property of LACMTA and may be recalled by LACMTA at any time.
- 3.2 Subject to Section 5 below, upon receipt of a written request from LACMTA, or upon termination of this Agreement, Utility must: (a) promptly collect all copies of the Information in the possession or control of Utility and its Authorized Personnel, and deliver to LACMTA all of the Information, including all copies, reproductions, and facsimiles, within 10 days from receipt of a request to that effect; or (b) if specified in LACMTA's request, destroy the Information (or part of it) and provide LACMTA written certification of such destruction within 10 days from receipt of the request to that effect; provided Utility shall be entitled to keep one copy that may be stored in back up media or other electronic data storage systems, latent data and metadata. The return or destruction of any Information shall not release Utility from its obligations under this Agreement.
- 3.3 Utility shall not be required to return Information that is subject to a pending Legal Compulsion pursuant to applicable law as contemplated in Section 5.

4. **MARKING OF INFORMATION**

Information shall be marked "Confidential" and/or "SSI". Notwithstanding the foregoing, failure to mark any Information as Confidential or SSI shall not exclude any Information from the protection of the terms and conditions in this Agreement.

5. **LEGAL COMPULSION; DUTY TO SEEK PROTECTION**

If Utility (including its Authorized Personnel) is served with a subpoena, administrative or court order, or other legal process ("**Legal Compulsion**") that requires Utility to produce or provide Information (or any part of it) supplied by LACMTA to Utility, Utility shall, unless prohibited by the terms of the Legal Compulsion, immediately provide LACMTA with a copy of the Legal Compulsion, so that LACMTA may seek a protective order or other appropriate remedy to excuse Utility from compliance therewith before the time specified for Utility's compliance. In the event that: (a) Utility must immediately comply with a court order or other Legal Compulsion; (b) a protective order or other remedy is not obtained by LACMTA; or (c) LACMTA notifies Utility in writing that it does not intend to seek a protective order or other remedy or expressly waives compliance with the terms of this Section 5 in writing, Utility will furnish only that portion of the Information which is legally required and will exercise its best efforts to obtain assurance that Information will be treated as confidential. Upon receipt of notice of a Legal Compulsion, LACMTA shall have the right to demand the return of any copies of the Information provided to Utility.

6. **NO LICENSE, RIGHTS TO INTELLECTUAL PROPERTY**

Nothing in this Agreement shall be construed as a permit or license, or a grant of any right by LACMTA to Utility to use the Information disclosed by LACMTA to Utility or its Authorized Personnel for any purpose other than the Purpose as specifically stated in this Agreement and in accordance with the terms and conditions of this Agreement. This Agreement will not be construed in any manner to be an obligation to enter into any subsequent arrangements. This Section 6 shall survive the termination or expiration of this Agreement.

7. **NO WARRANTY**

Information is provided "as-is" and LACMTA makes no representation or warranty of any kind, express or implied, with respect to the suitability, accuracy or non-infringement of third-party rights.

8. **NOTICE OF IMMUNITY UNDER THE DEFEND TRADE SECRETS ACT**

Utility warrants that it will provide each of its Authorized Personnel written notice that the Defend Trade Secrets Act, 18 U.S.C. § 1833(b) provides an immunity for the disclosure of a trade secret to report a suspected violation of law and/or in an anti-retaliation lawsuit, prior to granting them access to Information, as follows:

- (a) Immunity. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that is made: (i) (A) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (B) solely for the purpose of report or investigating a suspected violation of law; or (ii) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
- (b) Use of Trade Secret Information in Anti-Retaliation Lawsuit. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the individual's attorney and use the trade secret information in the court proceeding, if the individual: (i) files any document containing the trade secret under seal; and (ii) does not disclose the trade secret, except pursuant to court order.

9. **RESTRICTIONS ON RELEASE OF INFORMATION**

With regard to information that is disclosed, or information that is requested or demanded to be disclosed by LACMTA, to Utility, such Information may constitute public records that are exempt from general public release under the California Public Records Act (California Government Code sec. 7920.000 et seq.) and shall not be deemed releasable to any third party under the terms of this Agreement. Therefore, Utility shall

not release any such information to any third party, unless expressly authorized under the terms of this Agreement or otherwise written consent from LACMTA.

10. **REMEDIES**

Utility acknowledges that damages for improper disclosure of Information may be irreparable; therefore, LACMTA may enforce its rights under this Agreement by any and all available remedies, including, without limitation, equitable relief including a temporary restraining order, or preliminary or permanent injunction for any violation or threatened violation of this Agreement by Utility, any Authorized Personnel or any other person that has received or obtained access to the Information.

11. **INDEMNITY**

Utility shall defend, indemnify and hold harmless LACMTA and its respective affiliates, officers, directors, members, shareholders, employees, agents, representatives, assigns, and successors from and against all liabilities, expenses (including reasonable attorneys' fees and costs), claims, losses, suits, and actions of any kind, and for damages of any nature arising from or in any way connected with (a) the use, misuse, receipt or disclosure of the Information; or (b) a breach by Utility or any of its Authorized Personnel, employees, agents, representatives, contractors, or subcontractors of any obligations arising pursuant to this Agreement.

12. **TERM AND TERMINATION; CONTINUING OBLIGATIONS**

12.1 The term of this Agreement shall commence on the Effective Date and shall terminate on the date falling [three] years after the Effective Date, unless earlier terminated or extended by mutual written agreement of the Parties (the "**Term**"). Each Party's rights and obligations under this Agreement, including without limitation with respect to trade secrets and confidentiality obligations, will survive the expiration or termination of this Agreement, and such rights and obligations shall endure perpetually.

12.2 Upon expiration or termination of this Agreement, Utility shall return and/or destroy Information in accordance with Section 3.2.

13. **GENERAL**

13.1 Notices. All notices concerning this Agreement shall be delivered in the manner prescribed in the UCA.

13.2 Amendments. This Agreement may not be modified or terminated orally or in any manner other than by an agreement in writing signed by the Parties or their respective successors in interest.

13.3 Severability. If: (a) any provision of this Agreement is held by a court of competent jurisdiction as to be invalid, void or unenforceable; and (b) the invalidity or unenforceability of such a provision does not deny a Party the material benefit of this Agreement, then the remainder of this Agreement which can be given effect without the invalid provision shall continue in full force and effect and shall in no way be impaired or invalidated.

13.4 No Agency. Nothing in this Agreement shall be construed to render either Party an agent, employee, representative, joint venturer or partner of the other Party.

13.5 No Assignment. A Party cannot assign, novate, or otherwise transfer any of its rights or obligations under this Agreement without the prior consent of the other Party.

13.6 Governing Law and Application. This Agreement will be governed and construed and enforced in accordance with the laws of the State of California. Any dispute arising in connection with this Agreement shall be submitted only to a state court of competent jurisdiction in the Central District of the Superior Court in the County of Los Angeles, to whose jurisdiction the Parties consent.


- 13.7 Costs and Expenses. Unless expressly stated otherwise, each Party shall bear its own costs and expenses (including, without limitation, any attorneys' fees and costs) incurred in complying with this Agreement.
- 13.8 Representation on Authority of Parties/Signatories. Each Party represents and warrants that the person signing this Agreement on its behalf is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such Party's obligations under this Agreement have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.
- 13.9 No Waiver. No failure or delay of a Party to exercise any of its rights under this Agreement or the waiver by a Party of any condition for its benefit shall constitute a waiver of any other or further right nor shall any single or partial exercise of any right preclude other or further exercise thereof or any other right. The waiver of any breach of this Agreement shall not be deemed to be waiver of any other or any subsequent breach.
- 13.10 Counterparts and Signatures. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement. Handwritten signatures to this Agreement transmitted by telecopy or electronic transmission (for example, through use of a Portable Document Format or "PDF" file) shall be valid and effective to bind the Party so signing. Each Party agrees to promptly deliver to the other Party an executed original of this Agreement with its actual signature, but a failure to do so shall not affect the enforceability of this Agreement, it being expressly agreed that each Party to this Agreement shall be bound by its own telecopied or electronically transmitted handwritten signature and shall accept the telecopied or electronically transmitted handwritten signature of the other Party to this Agreement.

[SIGNATURES ON NEXT PAGE]

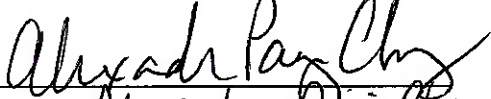
EXECUTION VERSION

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

UTILITY: TESORO SOCAL PIPELINE COMPANY LLC

By (Signature): 
Print Name: Evan Bencic
Print Title: Authorized Signatory
Date Signed: March 13, 2025

APPROVED AS TO FORM:

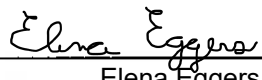
By: 
Print Name: Alexandra Parisi Chenevix
Print Title: Authorized Signatory
Date: March 22, 2025

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION:

Chief Program Management Officer:

By (Signature): _____
Print Name: _____
Print Title: _____
Date Signed: _____

APPROVED AS TO FORM:

By: 
Print Name: Elena Eggers
Print Title: Senior Deputy County Counsel
Date: April 2, 2025

Attachment A

Acknowledgement of Authorized Personnel

I, Evan Bencic (enter full name) ("Authorized Personnel"), am engaged as a Authorized Signatory (enter role e.g., employee, consultant, advisor) of Tesoro SoCal Pipeline Company LLC (the "Utility").

I have been provided with and have read the Non-Disclosure and Confidentiality Agreement between Utility and the Los Angeles County Metropolitan Transportation Authority dated _____, _____ (the "NDA").

I understand that as an Authorized Personnel, I am being provided with access to the Information for the Purpose described in the NDA, as such terms are defined in the NDA and acknowledge that I am required to comply with the terms and conditions contained in the NDA.

Signature: 

Print Name: Evan Bencic

Title: Authorized Signatory

Date: March 13, 2025

Part C: Form of Utility Betterment Request

Date: _____

To: The Los Angeles County Metropolitan Transportation Authority (LACMTA)

From: [●] (Utility)

Subject Scope/ Scope Element: _____

Project: [●] (Project)

Pursuant to the master utility cooperative agreement (UCA) between Utility and LACMTA with respect to the Project, this shall serve as a formal Notice the following design and/or construction scope is requested to be delivered as a Betterment as defined within the UCA.

Scope of requested Betterment:

The determination of the Betterment is based on the UCA and the following justification:

Estimated rough order of magnitude cost: _____

Utility requests LACMTA's response to this Utility Betterment Request as set out below.

[●] (Utility)

By: _____

Name: _____

Title: _____

Date: _____

LACMTA has reviewed the above Utility Betterment Request and:

1. rejects the requested Betterment in accordance with the UCA on the basis that the Betterment is:
 - ☐ incompatible with the Project;
 - ☐ cannot be performed within the constraints of Applicable Law, any applicable Governmental Approvals, the final EIS/EIR and/or the Project Schedule; or
 - ☐ requested after establishment of the Basis of Design for the Project.
2. approves the Betterment in accordance with the UCA subject to the following changes or terms as negotiated with the Utility (if none, enter "none"): An estimated cost is listed below:

Design Costs: \$ _____ Construction Costs: \$ _____

EXECUTION VERSION

LACMTA requests that Utility counter-sign below to confirm its agreement to any changes or additional terms described above and the estimated cost.

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

By: _____

Name: _____

Title: _____

Date: _____

Utility accepts the amendments or additional terms agreed and listed above and the design and construction cost estimates for the Betterment. Utility acknowledges and agrees that in accordance with the terms of the UCA, Utility shall be solely responsible for all Costs related to the Betterment (whether or not such Costs exceed the estimates for the Betterment provided by LACMTA).

☒ (Utility)

By: _____

Name: _____

Title: _____

Date: _____

Part D – LACMTA Notice of Potential Betterment**NOTICE OF POTENTIAL BETTERMENT**

Date: _____

To: [●] (Utility)

From: The Los Angeles County Metropolitan Transportation Authority (LACMTA)

Subject Scope/ Scope Element: _____

Project: [●] (Project)

Pursuant to the master utility cooperative agreement (UCA) between Utility and LACMTA, this shall serve as a formal Notice the following Utility Submittal, comment or request with respect to the Design Documentation and/or Construction plans or work for the Project has been identified as a potential Betterment as defined within the UCA.

Scope of Utility Submittal, comment or request identified as a potential Betterment (including reference number or other identification of the relevant Utility Submittal, comment or request):

Utility comment or request has been identified as a potential Betterment based on the Agreement and the following justification:

- ☐ if implemented, Utility submittal, comment or request would comprise an upgrade, change or addition to a Utility Facility (or a part of a Utility Facility) that provides for greater capacity, capability, durability, appearance, efficiency or function or other betterments of that Utility Facility over that which was provided by the Utility Facility prior to the Project and none of the exclusions listed in the UCA apply; or
- ☐ If implemented, Utility Submittal, comment or request would comprise a change in or supplement to, the Utility Facility Standards applicable to that work after the establishment of the Basis of Design and none of the exclusions listed in the UCA apply.

Details: _____

LACMTA requests Utility's response to this LACMTA Notice of Potential Betterment as set out below. In accordance with ARTICLE 5 (Betterments) of the UCA, if Utility fails to respond within five Days of this LACMTA Notice of Potential Betterment, the relevant Utility Submittal, comment or request will be deemed to be withdrawn provided that such deemed withdrawal shall be without prejudice to the Utility's right to submit the Betterment under a subsequent Utility Betterment Request under ARTICLE 5 (Betterments) of the UCA.

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

By: _____

Name: _____

Title: _____

Date: _____

Utility has reviewed the above LACMTA Notice of Potential Betterment and:

- ☐ withdraws the relevant Utility Submittal, comment or request referenced in the above LACMTA Notice of Potential Betterment; or
- ☐ submits the Utility Submittal comment or request referenced in the above LACMTA Notice of Potential Betterment as a Utility request for a Betterment in accordance with ARTICLE 5 (*Betterments*) of the UCA and for this purpose encloses a completed Utility Betterment Request.

☒ (Utility)

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT 4

Federal and Other Requirements

This Agreement, as to certain Subject Transportation Projects as notified by LACMTA under Section 2.6 (Governmental and Lender Requirements) of this Agreement, may be subject to the requirements of the U.S. Department of Transportation, Federal Transit Administration, other Governmental Entities, and/or financial institutions providing grants, funding or financing, including the following terms and conditions and such other terms and conditions notified by LACMTA under Section 2.6 (Governmental and Lender Requirements) of this Agreement as to such Subject Transportation Projects only:

1. AUDIT AND INSPECTION

1.1 Utility shall comply with all financial record keeping, reporting and such other requirements as may be imposed as a condition to or requirement of funding obtained by LACMTA from third parties (provided that LACMTA gives reasonable notice of such requirements to Utility). Utility shall permit the authorized representatives of LACMTA, the U.S. Department of Transportation, the Comptroller General of the United States, any other government agency, and/or financial institution providing funding or oversight on a Subject Transportation Project to inspect, audit and copy, during normal business hours and upon reasonable notice, all cost and other relevant records relating to performance by Utility, its contractors and subcontractors under any Work Order issued to Utility for a Subject Transportation Project or Rearrangements, from the date of this Agreement through and until not less than three years after the date of termination or expiration of this Agreement, except:

- (a) in the event of litigation or settlement of claims arising from performance of this Agreement, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto; and
- (b) such later date as is required by the rules and regulations of any such government agency or financial institution (provided LACMTA gives reasonable notice of such later date to Utility).

1.2 Examination of a document or record on one occasion shall not preclude further examination of such document or record on subsequent occasions. Utility further agrees to permit the Federal Transit Administration and its contractors' access to sites of performance under this Agreement as may be reasonably required.

2. INTEREST OF MEMBERS OF CONGRESS

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

3. PROHIBITED INTERESTS

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

4. **EQUAL EMPLOYMENT OPPORTUNITY**

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

5. **DISADVANTAGED BUSINESS ENTERPRISE**

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

6. **PRIOR APPROVAL**

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

7. **NON-DISCRIMINATION**

Without limiting any other provision of this Exhibit 4, Utility agrees to comply, and to cause all of its Utility Contractors who work on Transportation Projects subject to this Agreement to comply, with all Applicable Laws relating to non-discrimination whether imposed by federal, state or local authority.

8. **BUILD AMERICA, BUY AMERICA ACT**

This Section 8 applies to federally funded rolling stock purchase and construction contracts over \$150,000 and to contracts over \$150,000 for materials and supplies for steel, iron, manufactured products, and construction materials.

If Utility performs any Construction work under a Work Order, Utility must comply with 49 U.S.C. 5323(j), 49 C.F.R. Part 661, and the Build America, Buy America Act (Sections 70901-52 of the Infrastructure Investment and Jobs Act, Public Law 117-58), which provide that federal funds may not be obligated unless steel, iron, manufactured products, and construction materials used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver.

LACMTA and/or the FTA may investigate compliance with this Section 8. If an investigation is initiated, Utility shall, or Utility shall ensure the applicable Utility Contractor shall, document its compliance, in accordance with 49 C.F.R. 661.15, and cooperate with the investigation. Utility shall incorporate the Build America, Buy America conditions set forth in this Section 8 in every contract or purchase order with a Utility Contractor performing any Construction work under a Work Order and shall enforce such conditions.