

UTILITY REIMBURSEMENT AGREEMENT

BETWEEN

LEVEL 3 COMMUNICATIONS, LLC

AND

THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

EFFECTIVE DATE

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This Agreement is entered into by and between Level 3 Communications, LLC (“Utility”) and the Los Angeles County Metropolitan Transportation Authority (“LACMTA”) (each individually “Party,” and collectively “Parties”).

RECITALS

- (A) LACMTA proposes to design, construct and operate facilities necessary and convenient for various public rail and busway transit systems within the County of Los Angeles, and the Parties intend this Agreement to apply to reimbursement of Utility for the Rearrangement (as the term is defined herein) of its facilities occasioned by certain LACMTA proposed Transit Projects where the Utility’s facilities are in conflict with such Transit Projects, including the following (in each case, as may be more fully described at www.Metro.net):
- East San Fernando Light Rail Transit Project;
 - projects within the LACMTA highway program, including but not limited to, the I-5 North County Enhancements Project;
 - Southeast Gateway Line
 - 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.
- (B) One or more of the proposed Transit Projects will require the Rearrangement of portions of Utility Facilities. The Parties wish to enter into this Agreement in order to agree upon the roles and responsibilities between the Parties in connection with such Rearrangements.
- (C) The Parties acknowledge that Utility possesses, via contractual agreements to which it succeeded or its own past contractual agreements, rights to various locations for the siting and use of its infrastructure facilities. To Utility’s knowledge, such various locations include, but may not be limited to, locations along the right-of-way to the G Line (Orange Line) Improvements Project. The Parties further acknowledge this Agreement shall not supersede said prior existing rights possessed by Utility. Therefore, if an LAMCTA Transit Project requires use of a site to which Utility possesses said prior existing rights, the Parties intend to negotiate in good faith to mutually reach a separate agreement for the rearrangement of Utility’s relevant facility/facilities.

In consideration of the mutual covenants of the Parties as set forth herein, the sufficiency of which are hereby acknowledged, 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, designing, and effecting of any Rearrangements of Utility Facilities that are necessary in order for LACMTA to construct, operate, maintain and use any of the Transit Projects.
- (b) The Parties acknowledge that LACMTA, at its sole discretion, may utilize various contracting methodologies to design, construct, operate and/or maintain the Transit Projects, including with respect to any Rearrangements of Utility Facilities. The Parties acknowledge that LACMTA's determination of a LACMTA Contract's scope of work 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 Transit 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) Utility acknowledges that LACMTA may at any time elect:
 - (i) not to proceed with any Transit Project expressly listed in the Recitals or otherwise referenced in this Agreement or notified to Utility;
 - (ii) to proceed with a Transit Project that is not expressly listed in the Recitals or otherwise referenced in this Agreement; or
 - (iii) to amend the scope of any Transit Project, each in its sole discretion.

- (f) 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,, except that:

- (i) any Rearrangements of Utility Facilities that have been approved and granted under a Work Order number issued 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 Transit 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 Transit Project or any other subject matter.

- (g) Utility acknowledges that as between LACMTA and Utility, LACMTA has sole discretion to determine whether, and which, utilities are required in order for LACMTA to comply with its obligations under Applicable Law in connection with a Subject Transit 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 written 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 Transit 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 Transit Project). A single individual may serve as a designated representative for more than one Subject Transit 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 Transit Project or particular aspects of a Transit Project for the purposes of providing a non-binding forum for LACMTA, the LACMTA Contractors and other attendees to monitor the progress of the Transit Project, to consider issues, or potential issues, and to present, understand and discuss proposed solutions with respect to the Transit 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 Transit 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 claims 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.

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.
- (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 or provide support 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 Transit 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 Transit 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 Transit 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 Transit Project.

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 mutually agreed upon work schedules, review periods and timelines identified in this Agreement and the applicable Work Order, and such failure is attributable to Utility's gross negligence or willful misconduct, then, to the extent such delay directly causes: (i) LACMTA to incur additional costs; or (ii) a delay to the Subject Transit 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 0 from payment(s) due to Utility.

- (b) 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 Transit 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 Transit 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 Transit 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 100 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 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 interfere with, disrupt or delay the design, construction, operation or maintenance of the applicable Transit 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, interfere with, disrupt or delay the design, construction, operation or maintenance of the applicable Transit 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 its Transit Project Schedule will not be directly delayed by the proposed Adjacent Work.
- (b) The terms of this Section 2.5 shall not apply in Emergency (as the term is defined herein) 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 Transit 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 Transit Project or Rearrangement.

2.6 Governmental and Lender Requirements

If a Subject Transit 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 60 days after Utility's receipt of 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 Transit Project 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 USA/SC ("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 Transit Project (as opposed to the Design Development phase) this 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 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 Transit 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 and Applicable Law; 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 Transit Project Right-of-Way, the applicable requirements in the most recent version of Metro's Rail Design Criteria or contract specifications for the Subject Transit 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 Rearrangements 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 the 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 Transit 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

At the procedural stage when Metro issues a Work Order Authorization, Utility shall identify and reach consensus with Metro regarding the specific utility standards that will apply to the design and construction of the Rearrangement(s) under the Work Order. Once agreed upon by the Parties, any deviations from said utility standards are prohibited without the express consent of both Parties.

- (a) Any changes or additions to the Utility Standards applicable to a Rearrangement:
 - (i) after notification under Section Error! Reference source not found. (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.
- (b) 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 Transit 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.

- (c) 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 an unanticipated 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 Transit Project, or increase the cost of Construction of the Rearrangement or construction of the Subject Transit 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) Although Metro as a State governmental agency established under the California Public Utilities Code is, generally, not subject to local government approval and permitting requirements, 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 that may be 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 Transit 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 Transit 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 Transit Project as referenced in Section 1.1(b) (Scope of Agreement) and the project schedule for the Subject Transit 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. Utility shall be responsible for all claims and stop notices or mechanic's liens filed by Utility 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 including, without limitation, to construction noise and vibration, air pollution controls, and potential archaeological, biological, and paleontological monitoring measures as applicable;
- (d) all other Construction requirements set out under the terms of this Agreement and any applicable Work Order; and
- (e) 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 Transit Project Right-of-Way, the applicable requirements in the most recent version of Metro's Rail Design Criteria and/or contract specifications for the Subject Transit Project (as applicable).

4.3 Rights-of-Way

- (a) The Parties will determine during Design Development whether replacement rights-of-way are needed for the relocation of Conflicting Facilities. Replacement rights of way, if needed, will 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. [Where Utility requires replacement rights-of-way within Transit Project Right-of-Way owned by LACMTA, LACMTA shall be responsible for providing such replacement rights-of-way.] If it is not reasonably possible for the Rearranged Utility Facilities to be located in existing public rights-of-way or in Transit Project Right-of-Way owned by LACMTA, appropriate private of rights of way will be identified and acquired by LACMTA; provided that the required rights-of-way shall be acquired so as not to impair LACMTA's schedule for the Subject Transit Project. Upon acceptance of the

applicable Replacement Facility, and where, if applicable, equivalent rights are granted to Utility, 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.

- (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, non-confidential 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 Transit 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) Except when there are already pre-existing license agreements between the Parties as to a right-of-way, without prejudice to Section 2.5 (Coordination of Utility Activities), each Party shall provide the other with a license to such Party's right-of-way located within or near the Transit 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 Transit 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).
- (e) 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 Construction of each Rearrangement. In such event:

- (a) Utility shall commence and diligently perform and shall ensure that any Applicable 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 Transit Project, including the schedule for Construction of Rearrangements of utility, cable, pipeline, and other facilities in the same segment or portion of the Subject Transit 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.

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 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 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 prior to 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 90 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 Materials and Archaeological Remains

- (a) As between Utility and LACMTA, LACMTA shall be responsible, at its sole cost and expense, for the investigation of potential hazardous materials or Archaeological Remains within the Transit Project Right-of-Way that would directly impact construction of the Subject Transit 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 each Transit Project.
- (c) Each Party shall provide the other Party with all information and documents relating to the existence of any hazardous material and/or Archaeological Remains within the Transit Project Right-of-Way 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)(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) (Hazardous Material and Archaeological Remains), 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 Remain, if necessary;
 - (iii) comply with all requirements of Governmental Entities and any directions of the LACMTA Representative in relation to the Archaeological Remains; and
 - (iv) continue to perform the Work, except to the extent otherwise: (A) 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 Transit Project Right-of-Way 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(d) (Acquisition of 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 Transit 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 Transit 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 Potential Notice of Betterment Form such that LACMTA can review the Betterments and determine whether they satisfy the requirements set out in Section 6.3(e) (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 Potential Notice of Betterment Form submitted for LACMTA's review and approval; and
- (b) if LACMTA identifies a Betterment included in Designs furnished by Utility or in comments provided by Utility on LACMTA-completed Designs, LACMTA will notify Utility during the Design review process and within 30 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 Potential Notice of Betterment Form for LACMTA's review and approval. If Utility fails to respond within 30 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 Potential Notice of Betterment 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 Potential Notice of Betterment Form, 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 Potential Notice of Betterment Form.
- (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 Transit Project;
- (b) cannot be performed within the constraints of Applicable Law, any Governmental Approvals and/or the project schedule for the Subject Transit 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.

6.2 Reimbursements to Utility

- (a) Except with respect to Betterments and Rearrangements performed by Utility pursuant to a franchise agreement for a non-LACMTA project, and without prejudice to Section 3.5(c) (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(c) (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 Costs 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 Transit 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 Transit 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 substance" as that term is defined under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.), unless LACMTA or any LACMTA Contractor caused the environmental hazard through its actions.
- (d) Utility 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 substance" as that term is defined under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.), unless Utility or any Utility 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, and for Betterments. 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 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) Only 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" is defined as 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 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 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 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 Potential Notice of Betterment Form.

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 quarterly billing (in an electronic format where possible) within no more than 60 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 consultant) 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 Transit 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 quarterly 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 120 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 120 day period described in Section 7.1(a)(iii) (Procedures for Utility Billings to LACMTA), LACMTA may notify Utility in writing that the 120 day closing billing period has expired, and upon Utility's receipt of such Notice from LACMTA, Utility shall have 60 days to submit its final invoice. If Utility fails to submit an invoice within such 60-day period, then LACMTA shall have no further obligation for payment to Utility with regard to any amounts due or payable under the applicable closed out Work Order.

- (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 Transit 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 the 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 Transit 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 120 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.
- (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 non-privileged 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 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 to 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 (with legal counsel subject to reasonable concurrence from the indemnified Party), indemnify, and hold harmless the other Party and its respective officers, agents, representatives, and employees from and against all third party 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, except to the extent such liabilities, expenses, claims, losses, suits, or actions are proportionately caused by the negligence or willful misconduct of the indemnified Party, its officers, agents representatives, or employees.

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; \$1,000,000 in combined single limit (CSL) in auto liability; and \$5,000,000 excess/umbrella 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; \$1,000,000 in professional liability and \$5,000,000 excess/umbrella liability.
- (b) Each Party must:
- (i) give the other Party 20 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 20 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) If Utility is itself performing work for a Rearrangement, Utility may self-insure and 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 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 reasonable discretion, determines should be delayed as a result of such Dispute. LACMTA shall continue to pay sums due and payable and not in Dispute, during any such period of continued performance.
- (b) If a Party fails to continue its performance under this Agreement, then any additional costs which may be incurred by the other Party as a result of said failure to continue to so perform shall be borne by the non-performing party.

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 business 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) in the event that 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 90 days or such other time as may be agreed to by the parties in writing 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 additional out-of-pocket, actual costs.

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 U.S. 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:

Level 3 Communications (Brand name "Lumen Technologies")
1550 Marlborough Ave
Riverside, CA 92507
Attn: Bryan Church, Field OSPE

And Copy To:

Digital communication of notices to: relocations@lumen.com; bryan.church@lumen.com; and cc to: clem.helmstetter@lumen.com Reference Project # P-230066

With a copy for default notices only to:

Lumen Technologies (Level 3)
931 14th Street
Denver, CO 80202
Attn: Law Department

To LACMTA:

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

With a copy to:

Senior Executive Officer, Real Estate
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza, 22nd Floor
Los Angeles, CA 90012
Email: rockwellh@metro.net
Attn: Holly Rockwell

County Counsel
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza, 24th Floor
Los Angeles, CA 90012
Email: saferc@metro.net
Attn: Charles Safer, Assistant County Counsel

- (b) Any notice served personally shall be deemed delivered upon receipt, and any notice served by U.S. 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; provided,

however, said consent shall not be unreasonably withheld, conditioned, or delayed. 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, Transit 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 the period of the applicable statute of limitations.

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 Transit 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 Transit 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 Transit 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 Transit Project.

"Advanced Conceptual Engineering" or "ACE" means the phase of the Design process that advances the project 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%.

"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 Transit 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 Transit Project Right-of-Way.

"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 Transit Project, be:

- (a) the 60% Design Documentation for the Rearrangement approved (or deemed approved) by Utility under the terms of this Agreement;
- (b) the scope, specifications and requirements that form the basis of the applicable request for proposal issued by LACMTA for the part of the Subject Transit Project scope of work that includes or necessitates the Rearrangement; or
- (c) such other level of Design Development agreed 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 Transit 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(a) (Utility Standards);
- (iii) measures to mitigate environmental impacts identified in the Subject Transit Project's final environmental impact report or statement and any supplemental environmental reports for the Subject Transit 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 Transit 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, which the Parties determine requires Rearrangement in order to construct, operate or maintain a Transit Project including as a result of:

- (a) a physical conflict between the Transit 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 Transit Project Facilities 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 related to a Rearrangement including the removal, demolition, replacement, restoration, alteration or realignment of Conflicting Facilities and the procurement, installation, inspection and testing of Replacement Facilities including temporary and permanent materials and equipment. "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 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 the City and Utility.

"Emergency" means an unexpected situation that poses an immediate danger to health, life, property, or environment and that requires immediate action. An example of an Emergency situation includes, but is not limited to, damage to a fiber optic cable which supports governmental services. "Emergencies" shall be construed synonymously.

"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.

"Facility" means real or personal property identified within the route of a Transit Project, such as structures and improvements located on public rights-of-way under the jurisdiction of the County, City, public or private Utility, or LACMTA including streets, highways, bridges, or alleys. Examples of facilities include: storm drains, sanitary sewers, landscaping, trees, traffic signals, street lights, parking meters, police and fire alarm systems, manholes, poles, anchors, ducts, cables, structures, utility boxes, communications facilities, cables, and fibers.

"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'.

"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) 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 Transit 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.

"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 Transit 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.

"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.

"Normal" Submittal" is defined in Section Error! Reference source not found. of Exhibit 1 (Submittal Review Procedure).

"Notice" means any communication under this Agreement including any notice, consent, approval, request, and demand.

"Package" means each package of Design Documentation submitted in accordance with this Agreement.

"Planning Phase" means, with respect to a Transit Project, the phase in which LACMTA carries out activities related to the planning and environmental clearance of the relevant Transit 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.

"Potential Notice of Betterment Form" means the form set out in Part C of Exhibit 3 (Forms).

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

"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 the work of relocation, removal, rearrangement, Abandonment or Protection-in-Place of a Conflicting Facility or a part of it, whether permanent or temporary, which LACMTA determines in its sole, reasonable discretion is necessary in order for a Transit Project to comply with Applicable Law or otherwise which LACMTA and Utility mutually agree is necessary in order to accommodate construction, operation, maintenance or use of a Transit Project. "Rearranged" will be construed accordingly.

"Reduced" Submittal is defined in Section Error! Reference source not found. of Exhibit 1 (Submittal Review Procedure).

"Remedial Action" is defined in Section 4.8(d) (Responsibility for Remedial or Protective Action).

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

"Service Life" means total useful life of a Utility Facility in years after it is first constructed and functional for the intended service or conveyance, except for any segment of the Utility's service, distribution, or transmission lines, regardless of the length of time involved.

"Service Life Credits" means the remaining unused portion of a Utility'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 Transit Project" when referenced generally, means a Transit Project involving or likely to involve a Rearrangement; or when referenced in connection with a particular Rearrangement, means the Transit Project which necessitates such Rearrangement; provided, however, that if LACMTA enters into more than

one LACMTA Contract for construction of a particular Transit Project, then where the context so requires, the term "Subject Transit Project" shall refer to that portion of such Transit Project which is being Constructed by a particular LACMTA Contractor and which necessitates such Rearrangement.

"Submittal Review Timetable" means the timetable for review of submittals set out in Section Error! Reference source not found. of Exhibit 1 (Submittal Review Procedure).

"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.

"Transit Projects" means the design, construction, operation and/or maintenance of light rail, heavy rail (including subway) Busway, tram, or other related systems proposed by LACMTA as public works or public transportation type projects to predominately move passengers in a large metropolitan city-county environment and includes:

- (a) the design and construction work undertaken by or at the direction of the LACMTA in order to create either a new system or to modify, alter, extend or maintain an existing Transit Project, whether or not such work is described in the Recitals;
- (b) the LACMTA proposed projects and systems described in the Recitals; and
- (c) Freeway High Occupancy Toll (HOT) lanes related projects (including Express Lanes/Fastrak, etc.) undertaken by or at the direction of LACMTA,

and **"Transit Project"** shall mean any one of such projects.

"Transit Project Facility" means a Facility that is a component of or an appurtenance to a Transit Project including a station, the rail trackage infrastructure, a related maintenance facility, signaling and train control system.

"Transit Project Right-of-Way" means:

- (a) real property owned (or intended for acquisition) by LACMTA and used (or proposed to be used) for Transit Project purposes; and
- (b) those portions of public streets or rights-of-way on which are located (or proposed to be located) any Transit Project Facilities or which are otherwise used (or proposed to be used) by LACMTA for Transit Project purposes.

"Utility" is defined in the Preamble.

"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" 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 Transit 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 Transit 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 Transit 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 delay and "shall" when stated is to be considered mandatory; and

- (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".
- (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.

[AGREEMENT SIGNATURES APPEAR BELOW]

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

UTILITY: LEVEL 3 COMMUNICATIONS, LLC

Field Operations Manager:

APPROVED AS TO FORM:

By (Signature): *Pablo Mercado*
Pablo Mercado (Aug 5, 2024 10:18 / PDT)

By: *Michael Casey*
Michael Casey (Aug 5, 2024 10:42 PDT)

Print Name: Pablo Mercado

Print Name: Michael Casey

Print Title: SR MGR Field Ops

Print Title: MGR Construction Reimbursement

Date Signed: digital date above

Date: digital date above

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION:

Chief Program Management Officer:

APPROVED AS TO FORM:

By (Signature): _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Date Signed: _____

Date: _____

EXHIBIT 1

Submittal Review Procedure

1. DESIGN BY UTILITY

1.1 If LACMTA and Utility mutually agree that Utility or its contractor shall Design a particular Rearrangement, Utility shall Design each Rearrangement, as well as provide Design Support. Prior to commencing Design, Utility shall submit a Form 60 to estimate the Design and Design Support total effort. Utility shall proceed with Design of such Rearrangement in accordance with the following:

1.2 Utility shall diligently perform its Design work in conformance with the Design schedule for the Rearrangement that is mutually agreed upon by LACMTA and Utility, subject to Section 2.3.6. Utility shall coordinate with LACMTA as is necessary to develop plans satisfactory to both MTA and Utility for each Rearrangement, with appropriate traffic control plans, subject to the requirements of this Agreement. The schedule for Utility's completion of Design, coordination requirements, review procedures, and related provisions shall be included as attachments to the Work Order, which shall also include the not-to-exceed cost of completing the Design of the specific Rearrangements based upon the Form 60. Betterments shall be addressed in accordance with Article 5.

1.3 Utility shall prepare a complete set of Design plans, traffic control plans, and specifications for each Rearrangement, together with (a) Utility's itemized estimate of the total Cost of work, and (b) an estimate of the time needed to perform the required Rearrangement Construction. During Utility's Design process for each Rearrangement, LACMTA shall have the right to review and comment on the plans and specifications as well as on the Cost and time estimates. In order to facilitate such review, Utility shall submit to LACMTA its Design product for each Rearrangement at the completion of the Preliminary Engineering and Design Development phases; provided, however, that LACMTA shall provide any comments on such Design products to Utility within 30 days after receipt, and if LACMTA comments are not received by Utility within the thirty (30) day period, Utility's Design plans and specifications shall be deemed approved. All final Designs, including time and cost estimates, shall be subject to MTA's written approval. Unless otherwise expressly provided for herein, Utility may not change the plans and specifications prior to or during the progress of Construction, except with prior written concurrence of LACMTA, LACMTA's review and approval of any Design furnished by Utility shall be solely for purposes of assessing compatibility of the Rearranged Utility Facilities with the Subject Transit Project, coordination with LACMTA's work on the Subject Transit Project, and Cost issues. LACMTA has and undertakes no duty to review such Designs for their quality, suitability for the intended purpose or for the adequacy of Rearranged Utility Facilities (as designed) for the purposes for which they are intended to be used.

1.4 Utility shall be responsible for errors in and omissions from any Designs prepared or provided by Utility, its consultants or contractors.

1.5 Utility shall apply and obtain all necessary permits and approvals from all local jurisdictions in order to perform work.

1.6 The following scheduling provisions shall apply:

(a) Utility shall deliver the Final Design for each Rearrangement to LACMTA for its review and approval in accordance with the schedule established in the applicable Work Order authorizing such Design work.

(b) As soon as reasonably practicable, Utility shall submit to LACMTA any modified Design necessitated by LACMTA's review and comments pursuant to Section 1.3, but not later than thirty (30) days, or such later date as the Parties may mutually agree, after Utility's receipt of LACMTA's comments.

1.7 Following any modification by LACMTA of Construction plans for the Subject Transit Project, Utility shall have a reasonable amount of time, as the Parties may mutually agree, in which to complete redesign of its Rearrangements. Each Party shall reasonably exercise its right to approve the timing for submittals of a revised Design, considering LACMTA's schedule for the Subject Transit Project, Utility's workload for carrying out its public utility duties, the type of Utility Facilities involved, the extent of the modification of the Construction plans for the Subject Transit Project, and the extent of the resulting changes necessary to the Rearrangement Design.

2. DESIGN PERFORMED BY LACMTA

2.1 If LACMTA and Utility mutually agree that LACMTA shall Design a specific Rearrangement, LACMTA shall issue Work Orders for Utility to review plans and specifications as required, and the following procedures shall govern:

2.2 Coordination of Design and the development of the Design plans and specifications shall be accomplished through the LACMTA Representative who shall confer from time to time with the Utility Representative, except to the extent that responsibility for same has been delegated to LACMTA's Contractors in accordance with Article 3.1.

2.3 LACMTA or its Contractor shall submit to Utility plans and specifications for each Rearrangement: at the Preliminary Engineering, Design Development and Final Design stages for Utility review/approval or comment consistent with the requirements of this Agreement; provided that the schedule for such submittals and responses shall conform to the following requirements:

(a) Within ten (10) business days after receipt of up to 3 Design submittals (the "Review for Completeness Period"),

(i) Utility shall inform LACMTA whether the submittal is sufficiently complete for Utility review purposes, and

(ii) if not sufficiently complete, Utility shall so notify LACMTA, or shall return the submittal to MTA together with a written identification of those portions that are not sufficiently complete and a description of the missing information listing the deficiencies.

(b) The provisions of this Section 2.3 also will apply to any re-submittal of a Design. by LACMTA, whether in response to a Utility notice or return of an incomplete submittal, or in response to substantive Utility comments.

2.4 Utility's approval of the Final Design for any Rearrangement will not be withheld if the submittal is consistent with (a) the most recent previous submittal, modified as appropriate to respond to Utility comments on such submittal and to reflect any subsequent changes agreed to by Utility and LACMTA, or (b) earlier submittals which have been approved by Utility. However, Utility shall have the right to make new comments on any material changes from previous submittals. Approval shall run parallel with the Review of Completeness Period.

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 Contractors) 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. Such inspection services shall be authorized by LACMTA under a Work Order issued in accordance with Section 2.2 (Work Orders) of this Agreement and shall be considered a Cost hereunder. 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 the Utility Standards.

EXHIBIT 3

Forms

Part A: Form 60 (Modified for URA)

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	

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.)				

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 (URA)) 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 applicable Transit Project]

This Non-Disclosure and Confidentiality Agreement ("**Agreement**") is made effective as _____, 20__ (the "**Effective Date**") by and between Level 3 Communications, LLC, and the Los Angeles County Metropolitan Transportation Authority ("**LACMTA**"), (each a "**Party**" and collectively the "**Parties**").

RECITALS

- (A) The Parties have entered into a Utility Reimbursement Agreement between Utility and LACMTA dated _____, 20__ (the "**URA**") 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 transit projects.
- (B) LACMTA may share certain Information relating to [insert name of relevant Transit Project] with Utility for the limited purpose of carrying out its obligations as described in the URA (the "**Purpose**"). As contemplated by the URA, 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 confidential information or may be exempt from disclosure to the public or other unauthorized persons as provided under 49 CFR 1520.5(a) and/or California Government Code sec. 6254.

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, 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. 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 disclosed by LACMTA, such Information may constitute public records that are exempt from release under the California Public Records Act (California Government Code sec. 6250 et seq.) and shall not be deemed releasable to any third party under the terms of this Agreement. Therefore, Utility shall not release any LACMTA Information to any third party not covered by the terms of this Agreement.

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 URA.

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]

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

UTILITY: LEVEL 3 COMMUNICATIONS, LLC

Chief Executive/Operations Officer:

APPROVED AS TO FORM:

By (Signature): Gary L. Nelson
Gary L. Nelson (Aug 5, 2024 17:29 MDT)

By: Michael Casey
Michael Casey (Aug 5, 2024 10:42 PDT)

Print Name: Gary Nelson

Print Name: Michael Casey

Print Title: DIR West Coast Ops (Ops Officer)

Print Title: MGR Construction Reimbursement

Date Signed: digital date above

Date: digital date above

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION:

Chief Program Management Officer:

APPROVED AS TO FORM:

By (Signature): _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Date Signed: _____

Date: _____

Attachment A

Acknowledgement of Authorized Personnel

I, _____ (enter full name) ("**Authorized Personnel**"), am engaged as a _____ (enter role e.g. employee, consultant, advisor) of [●] (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: _____

Title: _____

Date: _____

Part C: LACMTA "NOTICE OF POTENTIAL BETTERMENT" FORM

Word file of the latest version of this form is available upon request from LACMTA's assigned Third Party Administration (TPA) Representative.

Alternatively, a written memorandum on Utility's letterhead may be submitted to the TPA Representative with the following required information:

1. **Scope:** Describe in detail with reference to applicable sections of this Utility Reimbursement Agreement, Utility Standards, and Applicable Law including any relevant codes.

Note the following common reasons for denial:

- (a) Scope is not per agreed Utility Standard or a legal requirement.
 - (b) Scope added after establishment of Basis of Design.
 - (c) Scope is not endorsed by LACMTA as a Transit Project requirement.
 - (d) Scope is not identified in the EIR or amendments
2. **Detailed Justification:** Why does Utility believe the scope is not a Betterment? Cite specific prior cases, exceptions under Applicable Law including any relevant codes, project-specific reasons, etc.
3. **Cost Estimate:** Use Form 60 to provide a detailed cost breakdown as proposed for the Betterment in question.
4. **Where Utility Agrees Scope is a Betterment and Provides Separate Funding:** the source of funds must be specified, Utility approved financial documents supporting validity and timing of funds must be provided, and a determination regarding whether Utility will commit to provide adequate front funding for cash-flow must be made.
5. **Signatures:** The form shall provide a signature block with two signatures from Utility Representatives, agreeing to the information provided.
6. **LACMTA Signatures:** The form signature block area shall provide for LACMTA to countersign with two LACMTA Representative signatures with checkboxes indicating whether the Betterment proposal is denied or approved.

EXHIBIT 4

Federal and Other Requirements

This Agreement, as to certain Transit Projects as notified by LACMTA under Section 2.6 (Governmental and Lender Requirements) of this Agreement, may be subject to a financial assistance agreement with the U.S. Department of Transportation, Federal Transit Administration, and as such is subject to 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 Transit 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 Transit Project to inspect, audit and copy, during normal business hours and upon reasonable notice, all non-privileged or non-confidential cost and other relevant records relating to performance by Utility, its contractors and subcontractors under any Work Order issued to Utility for a Subject Transit 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).

Each Party shall bear its own costs and expenses in connection with undertaking any audit, and in responding thereto.

1.2 Examination of a document or record on one occasion shall not preclude further examination of such document or record on subsequent occasions. By providing any of its records for examination pursuant to this Exhibit 4, Utility represents and warrants that such records are accurate. 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. In the case of such contractors, consultants, subcontractors and suppliers, any records subject to the above requirements shall include, without limitation, any relevant records as to which a tax privilege might otherwise be asserted.

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.

6. **PRIOR APPROVAL**

This Agreement may be 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 Transit Projects subject to this Agreement to comply, with all Applicable Law relating to non-discrimination whether imposed by federal, state or local authority.

8. **BUY AMERICA**

If Utility performs any Construction work under a Work Order, Utility must comply with 49 U.S.C. 5323(j) and 49 CFR Part 661 et seq., which provide that federal funds may not be obligated unless steel, iron, and manufactured products 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. If Utility performs any Construction work under a Work Order, Utility shall incorporate the Buy America conditions set out in this Section 8 in every contract or purchase order entered into with a Utility Contractor in respect of such Construction work and shall enforce such conditions.

RELO P-230066

Final Audit Report

2024-08-05

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-  Signer pablo.mercado@lumen.com entered name at signing as Pablo Mercado
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-  Signer gary.nelson4@lumen.com entered name at signing as Gary L. Nelson
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 Document e-signed by Gary L. Nelson (gary.nelson4@lumen.com)
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 Agreement completed.
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