

MASTER COOPERATIVE AGREEMENT
FOR THE
METRO GOLD LINE – GLENDORA TO CLAREMONT (PHASE 2B)

BY AND BETWEEN

THE LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY

AND

THE METRO GOLD LINE
FOOTHILL EXTENSION CONSTRUCTION AUTHORITY

Effective Date: [_____, 2017]

Master Cooperative Agreement for the Metro Gold Line
Glendora to Claremont (Phase 2B)

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BY AND BETWEEN

THE LOS ANGELES COUNTY
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AND

THE METRO GOLD LINE
FOOTHILL EXTENSION CONSTRUCTION AUTHORITY

THIS MASTER COOPERATIVE AGREEMENT FOR THE METRO GOLD LINE – GLENDORA TO CLAREMONT, dated effective as of [____], 2017 (the “MCA” or “Agreement”) is made by and between the Metro Gold Line Foothill Extension Construction Authority, a public entity of the State of California (“Construction Authority”), and the Los Angeles County Metropolitan Transportation Authority, a public entity of the State of California (“LACMTA”). Construction Authority and LACMTA will be at times be collectively referred to herein as “Parties”.

RECITALS

WHEREAS, Construction Authority is a public entity created by the California State Legislature pursuant to Section 132400 *et seq* of the Public Utilities Code (“PUC”) for the purpose of completing the design and construction of the Los Angeles - Pasadena Foothill Extension Gold Line light rail project, extending from Union Station in the City of Los Angeles to Sierra Madre Villa Boulevard in the City of Pasadena and any mass transit guideway that may be planned east of Sierra Madre Villa Boulevard along the rail right-of-way extending to the City of Montclair;

WHEREAS, the Metro Gold Line from Union Station to Pasadena has been in operation since July, 2003 and the Metro Gold Line from Pasadena to Azusa has been in operation since March, 2016;

WHEREAS, Construction Authority is planning to design and build an extension of the Metro Gold Line from Glendora to Claremont (“Project” or “Phase 2B”);

WHEREAS, this Agreement may be amended to include an extension of the Metro Gold Line to the City of Montclair;

WHEREAS, Construction Authority desires that the Project extend into San Bernardino and terminate at the proposed Montclair station (the "Montclair Extension"). However, the Montclair Extension has not been approved by the LACMTA Board, has not been fully funded, and requires agreement by the applicable cities and agencies in San Bernardino County. At this time, Construction Authority is preparing plans that include the Claremont Station as the terminus as well as the Montclair Extension, which is being paid for by the City of Montclair. All issues concerning the funding for Phase 2B are covered in the Funding Agreement, as defined herein. The Parties expressly agree and acknowledge if the Montclair Extension is included as part of the Project, this MCA will be amended accordingly to include the Montclair Extension.

WHEREAS, LACMTA is a public entity created by the California Legislature pursuant to PUC Section 130050.2 *et seq.* for, among other things, the design, construction and operation of rail and bus transit systems and facilities in Los Angeles County;

WHEREAS, PUC Section 132450 *et. seq.* requires that LACMTA, upon completion of the Project by Construction Authority, operate the Project;

WHEREAS, PUC Section 132435 requires Construction Authority to enter into a memorandum of understanding with LACMTA that shall specifically address the ability of LACMTA to review any Significant Changes in the scope of the design or construction or both design and construction of the Project;

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

NOW THEREFORE, the Parties agree as follows:

ARTICLE 1 - SCOPE AND DEFINITIONS

1.0 Scope of Agreement

The foregoing recitals are incorporated into this Agreement by this reference. This Agreement specifies the procedures that Construction Authority and LACMTA will follow in implementing their respective roles and responsibilities in the Design, Construction, testing and Turnback of the Project. Both Construction Authority and LACMTA agree that each will cooperate and coordinate with the other in all activities covered by this Agreement.

1.1 Definitions

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

Advanced Conceptual Engineering (ACE) means conceptual engineering to support the Final EIR, in which the Design of the general track configurations and geometry, station and parking facility locations, traction power substation locations, property requirements, existing utility locations, and other associated Construction is defined to approximately 30% of Final Design.

Alignment Design/Build Contract means, in the case of multiple Design/Build Contracts for Phase 2B, the Design/Build Contract for the entire Phase, exclusive of any components that are the subject of other construction contracts. By way of example, for Phase 2B, the Alignment Design/Build Contract would cover all of Phase 2B, except for certain utility work.

Alignment Design/Build Contractor means the Design/Build Contractor awarded the Alignment Design/Build Contract.

Annual Work Plan has the meaning ascribed in Section 3.1.

Approval means written approval by the LACMTA Representative. Approval shall not, unless specifically indicated in writing by the LACMTA Representative, constitute a waiver of any LACMTA standard, code, or other requirement in this Agreement.

Baseline Documents shall mean the Conformed Contract Documents, and any Change Orders to the Conformed Contract Documents.

Betterment means, except as set forth in Section 6.1, a change requested by LACMTA or any third party that will improve the level of service and/or capacity, capability, appearance, efficiency or function over that which is provided by the Baseline Documents.

Certificate of Occupancy means the final project approval granted by the Phase 2B Fire, Life, Safety and Security Committee

Construction Authority - Has the meaning set forth in the Recitals to this Agreement.

Construction Authority Representative means the Chief Executive Officer of Construction Authority, or his/her authorized representative (as designated in a writing executed by the Chief Executive Officer). Construction Authority Representative has the power to conduct meetings and reviews, and approve actions as required by this Agreement.

Conformed Contract Documents means the final executed contract documents for Construction and/or Design, which includes, without limitation, all of the following documents: the adopted Final Environmental Impact Report, as amended or supplemented from time to time, the Advanced Conceptual Engineering, the performance specifications, LACMTA Design Criteria and Standards in effect prior to the date that proposals for the Alignment Design/Build Contract are due, and the Design/Build Contractor's proposal as amended by the Design/Build Contractor's best and final offer.

Construction means the work of removal, demolition, replacement, alteration, realignment, building, and fabrication of all new fixed facilities, and procurement and installation of systems and equipment, that are necessary to operate and maintain the Project in accordance with approved plans and specifications.

Costs means all allowable Direct Costs and Indirect Costs for work performed by LACMTA pursuant to Section 3.2 Performance of LACMTA Work, or work performed by Construction Authority pursuant to Section 6.0 Betterments Generally.

Current Scope of the Project means the Project as described in the Final Environmental Impact Report (EIR). A brief summary of the Project is provided in Exhibit A.

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

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

Design/Build Contract means the documents that are used by Construction Authority to contract with a contractor to Design, build, fabricate, install, and prepare for operations all or any portion of the Project (less the rail cars and other equipment provided by LACMTA), and to demonstrate the operability of

each Phase through a period of Pre-Revenue Operations. In the case of multiple construction contracts for the same Phase (as is currently contemplated for Phase 2B), only the Alignment Design/Build Contract will include requirements regarding demonstrating the operability of the Phase through a period of Pre-Revenue Operations. See Section 1.2 regarding the contemplated construction contracts.

Design/Build Contractor (DB Contractor) means the Design/Build Contractor(s) and/or team(s) of consultants and contractors that are awarded the Design/Build Contract(s) by Construction Authority.

Design/Build Procurement Documents means the entire package of documents to be sent to potential proposers that may be interested in submitting a proposal or award of a Design/Build Contract, including but not limited to: requests for qualifications; cooperative agreements with the cities, utilities and LACMTA; SBE/DVBE program; bonding requirements; change order & payment provisions; bidding and proposal requirements; environmental mitigation and requirements; scope of work; technical drawings and specifications; Design and Construction document reviews, procedures & approvals; quality control; safety program; and Construction procedures.

Design Review means the process of critical evaluation by Construction Authority and others as specified in this Agreement, and any additional review specified by Construction Authority, of plans and specifications that are developed by consultants and/or the Design/Build Contractor which are necessary for the Construction of the Project.

Detailed Schedule - Has the meaning set forth in Section 7.1.1.

Direct Costs means labor costs and costs of purchasing equipment and/or materials, without markup or overhead of any kind.

Dispute - Has the meaning set forth in Article 5.0.

Effective Date - shall mean the date set forth in the preamble to this Agreement.

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

Final Design means the technical engineering work required of the Design/Build Contractor to complete the engineering necessary to sign and seal drawings and specifications.

Final Environmental Impact Report (FEIR) means the Final Environmental Impact Report/Statement that analyzes and evaluates the environmental impacts of the Project and recommends measures to mitigate the potential adverse impacts, and includes any addendum, supplement, or subsequent EIR. Construction Authority certified the FEIR for Phase 2B in March 2013 and adopted a First Addendum in May 2014, a Second Addendum in December 2014, and a Third Addendum in March 2016.

Fire, Life, Safety and Security Committee (FLSSC) means the committee that oversees fire/life safety and security issues for compliance with fire/life safety design criteria, local fire codes and NFPA 130 standards, and oversight of security and policing issues. The Fire/Life Safety and Security Committee is comprised of representatives from the Authority, LACMTA, Fire and Police jurisdictions, and other affected agencies.

Funding Agreement means that certain Foothill Extension Phase 2B Funding Agreement Glendora to Claremont of substantially even date herewith, pursuant to which the Parties have agreed on the distribution by LACMTA to Construction Authority of that portion of the proceeds of the Transaction and Use Tax adopted by LACMTA on or about June 16, 2016 by Ordinance #16-01, which was then approved by the voters of Los Angeles County on November 8, 2016 as “Measure M” that has been allocated to the Project, along with other funds as set forth therein.

Governmental Authority means any government or political subdivision, whether Federal, State, or local, or any agency or instrument of any such government or political subdivision, or any Federal, State, or local court or arbitrator, other than LACMTA and Construction Authority.

Indirect Costs means all costs that are not Direct Costs, including but not limited to Construction Authority’s administration (such as overhead, salaries and benefits), legal, community outreach, insurance, program management, ROW acquisition and management, utilities, environmental, special programs, Construction, procurement, and financing.

Industry Review means the period of review by construction and engineering firms of final draft documents before they are released as part of the Design/Build Procurement Documents.

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

LACMTA - has the meaning set forth in the Preamble to this Agreement.

LACMTA Design Criteria and Standards - means that set of design criteria and standards that LACMTA has developed and relies upon to create a uniform basis

of design for all LACMTA transit projects. These criteria are intended as express requirements to direct designers and engineers, in the various disciplines, when working on LACMTA transit projects. LACMTA may provide written variance to these criteria to further enhance operational flexibility or for reasons based on good and sound engineering principles and judgments.

LACMTA Project Costs - has the meaning set forth in the Funding Agreement.

LACMTA Representative means its Chief Executive Officer, or his/her designated representative (as designated in a writing executed by the Chief Executive Officer). LACMTA Representative has the power to conduct reviews, assign LACMTA staff, and make Approvals as required by this Agreement.

Mainline means track designated for rail operations.

Party means LACMTA and/or Construction Authority, individually.

Phase II means Phase 2A and Phase 2B.

Phase 2A means the portion of Phase II from the interface with Phase 1 in Pasadena to the end of the tail tracks for the Azusa Citrus station.

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

Pre-Revenue Operations means a period of time described in Section 7.2.1 beginning at a point in time determined by LACMTA following Substantial Completion and Turnover, ending at ROD, allowing LACMTA staff to commission, test, and verify it can operate trains as designed and familiarize its staff with the Project.

Project – means Phase 2B.

Property Trust Agreement means that certain Los Angeles – Pasadena Metro Blue Line Governmental Purpose Property Trust Agreement between Construction Authority and LACMTA dated August 19, 1999.

Revenue Operations Date (ROD) means the date on which LACMTA commences operation of the Project.

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

Safety and Security Certification means the set of collective programs and processes intended to verify the safety and security readiness of the project to open to the public, as described in Section 7.3.

Significant Change means any change of mode or technology from the Baseline Documents, or any other substantive change that affects the connectivity and operation of the Project as part of the overall transit system operated by LACMTA, or any combination of those things. Design and Construction of the Project that is consistent with the Baseline Documents shall not be deemed to be a Significant Change and shall not require concurrence by LACMTA.

Solution Committee means a committee consisting of three LACMTA Board members, at least one of whom shall be from the San Gabriel Valley subregion, and two Construction Authority Board Members. The members shall be appointed in accordance with the procedures of their respective Boards. The Chief Executive Officers (CEOs) of both Parties are non-voting members of the Solution Committee.

Solution Process means the Dispute resolution process describe in Section 5.1.

Substantial Completion means the work is substantially complete in accordance with the Design/Build Contract.

Systems Integrated Testing (SIT-1) means the testing process prior to Substantial Completion, conducted by the Construction Authority and its Contractor, focusing on proper systems functionality.

Systems Integrated Testing – Phase 2 (SIT-2) means the testing process conducted by Metro that verifies the remote monitoring and control capability of the field equipment and the Metro head-end equipment at the Rail Operations Control facility.

Turnback means the process by which Construction Authority turns over the Project to the LACMTA, as more particularly described in Section 7.5.

Turnover means when the Construction Authority provides initial written documentation of Project readiness with Metro concurrence and turns over the operational control of the Project and the rail line to LACMTA to initiate the pre-revenue operations period in accordance with Section 7.2.1.

Trust means the Trust established pursuant to the Property Trust Agreement.

Working Day means Days, excluding Saturdays, Sundays, and the following thirteen (13) legal holidays: New Years Day, Martin Luther King Jr. Day, President's Day, Cesar Chavez Day, Memorial Day, Fourth of July, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve Day, and Christmas Day.

1.2 General Approach to Construction of Project

Construction Authority contemplates entering into two separate construction contracts for Phase 2B. The first construction contract is for certain utility work. The second construction contract is the Alignment Design/Build Contract. The DB Contractors shall Design and construct the Project per the Baseline Documents.

Construction Authority will design and construct the Project so that the Claremont Station can operate adequately and properly as the terminus and in full compliance with LACMTA's Design Criteria; provided, however, if the Construction Authority and LACMTA's Board includes the Montclair Extension as part of the Project, then Construction Authority will design and construct the Project so that the Montclair Station can operate adequately and properly as the terminus and in full compliance with LACMTA's Design Criteria.

1.3 LACMTA Participation Generally

LACMTA shall participate in the Project, and Construction Authority will provide the opportunity for LACMTA to participate, in the areas set forth below and as more particularly described in this Agreement. The purpose of such LACMTA participation shall be to ensure the Project will be compatible, functionally connected and operative with LACMTA's existing metro rail system. Subject to the procedures set forth in this Agreement, LACMTA's participation in the Project includes:

- inspection rights
- coordination meetings
- receipt of status reports
- Construction Authority reporting at LACMTA construction committee
- receipt of finance reports per the Funding Agreement
- participation in testing
- Design Review and comment
- review and Approval of Significant Changes
- review and Approval of certain third party agreements as set forth in Section 2.6.10
- participation in the Substantial Completion walk through, Safety and Security Certification and final acceptance process for the Project

ARTICLE 2 - DESIGN AND CONSTRUCTION OF THE PROJECT AND REVIEW AND APPROVAL OF SIGNIFICANT CHANGES BY LACMTA

2.0 Engineering and Construction Coordination

The review process described below in Sections 2.1 through 2.6 will constitute the Design Review process for LACMTA and Construction Authority. Notwithstanding the foregoing, LACMTA shall have the right to review and approve any Significant Change in any Design or Construction documents for the Project in accordance with, and subject to the provisions of, Section 2.5.

2.1 Review of Design/Build Procurement Documents

LACMTA to review and comment on the Industry Review drafts of the Design/Build Procurement Documents during Industry Review. LACMTA may review and comment on Significant Changes to the Industry Review drafts that are included in the Design/Build Procurement Documents that are issued, within 10 business days after the Design/Build Procurement Documents are issued, and within 7 Days after any addenda thereto are issued.

2.2 Selection Committees

LACMTA to actively participate as a voting member(s) on selection committees for all Design/Build Contractors for the Project.

2.3 Design Criteria and Standards

To insure that the final Project meets the requirements of the current Project scope and the expectations of Construction Authority and LACMTA, Construction Authority and its consultants and contractors will comply with LACMTA Design Criteria and Standards in effect prior to the date that proposals for the Alignment Design/Build Contract are due, except as waived in writing by LACMTA. LACMTA shall have the sole and exclusive right to grant waivers to LACMTA Design Criteria and Standards and no decision by LACMTA to waive or not waive LACMTA Design Criteria and Standards shall constitute a Betterment or change order that will result in a cost to LACMTA. LACMTA's Design Criteria and Standards in effect prior to the date that proposals for the Design/Build Contract are due will be contained in the mandatory requirements of the Design/Build Procurement Documents.

All artwork and Project aesthetics (visual design elements) at Stations and along the Right-of-Way will remain the decision of Construction Authority, which will include the recommendation of each of the five cities along the Project, but shall not conflict with the LACMTA Design Criteria and Standards or applicable regulatory requirements. Beginning with the Advanced Conceptual Engineering review, LACMTA will be requested to provide comments on maintainability, security, and safety as it pertains to these items.

2.4 Review of the Design/Build Contractor Submittals

- A. LACMTA shall have 21 Days to review and comment on any Project Design submittal at each level, up to and including 100% Design submittals, as Design moves forward, including without limitation, structures, the alignment, stations, systems, art and aesthetics (but only to the extent that any such art and aesthetic Design issues may result in a material adverse financial impact to the permanent maintainability of the Project), communications, signage and parking facilities.
- B. The Construction Authority may deem LACMTA to have no comment on the Project Design submittal to have occurred only after LACMTA's review period has expired with no response and the Construction Authority provides (or has included in the transmittal of the document at issue) a written warning notice that clearly states that unless LACMTA responds within the original 21 Days, LACMTA will be deemed to have no comment.
- C. LACMTA's comments on any document are limited to ensuring consistency with the Baseline Documents, and that the Design complies with the Baseline Documents.
- D. If during the Design Review process LACMTA requests changes to the submittals and such changes result in a change order to the Baseline Documents, Construction Authority will not be obligated to make such change unless LACMTA agrees it shall be responsible for paying the cost of such change and any delay claim associated with the LACMTA requested change.
- E. In addition to LACMTA's right to approve Significant Changes pursuant to Section 2.5, Construction Authority shall not implement any alternative technical concepts or value engineering changes that are not a Significant Change without LACMTA's ability to comment on such change.
- F. The Construction Authority will provide electronic copies to LACMTA of all of the Design/Build Contractor's deliverables, and/or include LACMTA as an assigned user if Construction Authority uses a Project Management collaborative Internet access program for document review.
- G. LACTMA shall have 14 days to review and provide information in response to a formal "Request for Information" (RFI) from the Construction Authority.

2.5 Review and Approval of Significant Changes

Notwithstanding anything to the contrary in this Agreement, Construction Authority shall not make any Significant Change to the Project without the prior written Approval of

LACMTA, subject to the provisions of this Section and Section 5.1. LACMTA shall have the right to review and approve or reject any and all Significant Changes. In the event that LACMTA does not grant Approval of a Significant Change, LACMTA will give Construction Authority written notice of its disapproval, which shall result in a cessation of all Construction activity related to the Significant Change.

2.6 Work to be Performed by LACMTA

LACMTA will work cooperatively with Construction Authority in advancing the Design/Build method of project delivery for the Project. LACMTA will have the following major responsibilities in relation to the Design/Build program, in addition to LACMTA's rights under Section 2.5 to review and approve Significant Changes. These responsibilities are:

2.6.1 Participation in the Organizations and Process

LACMTA will formally designate a member of its senior staff as LACMTA's Representative, and inform the Construction Authority Representative upon making the designation. LACMTA's Representative will be the focal point of coordination and communication with Construction Authority's Representative. In addition, when requested by Construction Authority, LACMTA will designate individuals to participate in the working groups and technical subcommittees formed by Construction Authority to address the issues and subjects which arise as part of the Design Review process described in Sections 2.1 through 2.6 above.

2.6.2 Cooperatively Implement the Design Review Process

LACMTA will provide comments in a timely manner, and will work with Construction Authority to suggest ways to resolve various issues that arise. LACMTA's Representative will work closely with Construction Authority's Representative in the Design Review process as it relates to operations issues, systems compatibility, connectivity, and compliance with LACMTA Design Criteria and Standards as set forth herein.

2.6.3 Provide Technical Support

As requested, LACMTA will provide technical support to Construction Authority throughout the Design and Construction period of the Project. The support may take many forms. For example, LACMTA will work with Construction Authority to review and, where required by the Property Trust Agreement or the California Public Utilities Commission, approve applications prior to submission of applications to the California Public Utilities Commission. LACMTA will assist Construction Authority with obtaining permits where LACMTA is the only Party with standing to obtain such licenses or permits.

In addition, Construction Authority and LACMTA may mutually agree that LACMTA will perform the Design and/or Construction of one or more specific portions of the Project. Under such circumstances, Construction Authority shall develop the specific Scope of Work and authorize LACMTA to perform the activities according to the specified cost and schedule, as mutually agreed. LACMTA's schedule for completion, coordination requirements, review procedures, and related provisions all shall be included as attachments to the work authorization, which shall also include the estimated cost of completing the Design and/or Construction of the specific portion of the Project. LACMTA is under no obligation to proceed with any Work until LACMTA has received a Construction Authority approved Work Authorization.

2.6.4 Assist with Construction Inspection and Supervision

Upon request of the Construction Authority Representative, LACMTA will provide as-needed assistance to Construction Authority for the supervision and/or inspection of Construction by the Design/Build Contractor. Specifically, LACMTA will provide supervision of work performed on the Phase 2A system, including upgrades to LACMTA's Rail Operations Control. The Construction Authority and its Design/Build Contractor shall not perform any work on any portion of the existing operating Gold Line Right-of-Way without LACMTA's prior written Approval which will require authorized track allocation (if applicable) and LACMTA supplied supervision and/or inspection services, which shall be reimbursed as LACMTA Project Costs to extent permitted by the Funding Agreement.

In addition, LACMTA will conduct an inspection of the entire Project prior to commencing SIT-1 and/or SIT-2 and/or Pre-Revenue Operations. LACMTA will conduct a final inspection immediately prior to Revenue Operations. LACMTA will generate a punch list of all outstanding items in accordance with Section 7.4.

2.6.5 Support of Systems Integrated Testing and Start-Up

LACMTA will provide rail vehicles, operators, dispatchers, and other personnel and equipment necessary to support integrated testing and start-up of the Project as described in Article 7, and as mutually agreed upon by LACMTA and Construction Authority.

Construction Authority will provide Employees-in-charge (EIC), watchpersons and flaggers as set forth in all regulatory and / or LACMTA requirements to support SIT-1 and start-up of the Project as described in Article 7, and as mutually agreed upon by LACMTA and the Construction Authority.

During SIT-1 tests that involve the movement of light rail vehicles and at the commencement of Pre-Revenue Operations, LACMTA shall assume the duties of controlling train movements on, and access to, the Right-of-Way.

2.6.6 Meetings

- a. Construction Authority Project management team or their designees shall hold monthly meetings with LACMTA representatives.
- b. Construction Authority CEO or designee will report quarterly at LACMTA's monthly Construction Committee meeting.

2.6.7 Reports

The Parties acknowledge that the Funding Agreement sets forth Construction Authority's obligations regarding progress reports.

2.6.8 LACMTA inspection rights

LACMTA shall have rights to inspect the Project at any time, in accordance with this Section 2.6.8. LACMTA shall address all concerns and issues directly with the Construction Authority field staff and not with the Design/Build Contractor.

- a. LACMTA may participate in the Construction Authority's inspection program for all Project elements with proper coordination with the appropriate Construction Authority field staff.
- b. LACMTA may, at its election, reasonably participate in pre-Construction activities, including review of Construction Work Plans.
- c. Construction Authority shall notify LACMTA of all systems factory testing, local field tests, and integration tests. Construction Authority does not need to notify LACMTA of daily, ongoing material testing.

2.6.9 Integrated Project Office

- a. If requested by LACMTA, Construction Authority will provide LACMTA with one office with two desks, two lockable filing cabinets, a phone and a computer in Construction Authority's main office, and in the field office.
- b. Construction Authority has the right to remove any LACMTA person or persons assigned to work at the Integrated Project Office. Such right shall not be exercised unreasonably.

2.6.10 Third Party Agreements

LACMTA to review and approve any agreements with Caltrans, CPUC, SCRRA, BNSF, utility companies, or any other third parties, to the extent such Approval is required by Section 4.2.4 of the Property Trust Agreement. Additionally, unless

Construction Authority obtains LACMTA's prior written consent, Construction Authority shall not enter into any real estate agreement(s) that survive termination of the Property Trust Agreement which directly imposes any obligation or limitation upon LACMTA, as successor to Construction Authority, which has a material effect on LACMTA's operation of the Project. Nothing in this Section is intended to amend or modify PUC Section 132445.

2.7 Construction Safety and Security Documents / Quality Control Documents

All Project Design and Construction documents that relate to the security of the operation of the Project as a part of the system shall be treated as security sensitive documents to protect LACMTA's and Construction Authority's interests. Construction Authority, the Design/Build Contractors, and any subcontractor, consultant, and subconsultants with access to such documents shall sign confidentiality/non-disclosure agreements. LACMTA shall provide Construction Authority with the written policy for incorporation into the Design/Build Contract.

2.8 Outreach/Communications

In order to ensure consistency of information, Construction Authority will provide Project and Construction related outreach and communication while LACMTA will provide outreach and communication regarding operational aspects, including ridership projections, opening/service start updates, bus/rail interface, safety, system maps, how to ride, Measure R/regional/system-wide information, Measure M/regional/system-wide information, related press releases, etc. The Parties will comply with the additional provisions set forth in the Funding Agreement..

LACMTA shall provide Construction Authority with its written Metro System Signage Standards and Design Criteria for incorporation into the Design/Build Contract prior to the release of the Request for Proposals in connection therewith. Signage will conform to such Metro System Signage Standards and Metro Rail Design Criteria.

2.9 Project Management Plan ("PMP")

Construction Authority shall provide LACMTA with copies of the PMP and any amendments thereto.

2.10 Buy America Provisions

The Project shall incorporate Buy American provisions, to the extent legally permissible.

ARTICLE 3 - LACMTA WORK AUTHORIZATION AND BILLINGS

3.0 Work Performed by LACMTA

Work to be performed by LACMTA under this Agreement will coincide, as closely as possible, with Construction Authority's Project schedule. LACMTA agrees to commit sufficient resources necessary to provide the level of service required to meet those schedules.

3.1 Annual Work Plan for LACMTA Staffing

LACMTA shall develop an annual work plan ("**Annual Work Plan**") for LACMTA's performance of its obligations pursuant to this Agreement. LACMTA shall develop, and LACMTA and Construction Authority shall determine mutually, LACMTA staffing level needs during LACMTA's annual budget cycle to ensure that there is a sufficient level of LACMTA assistance to meet the Construction Authority's Project needs for the upcoming fiscal year, while also ensuring that LACMTA staff are assigned to a particular task or tasks in a cost-effective manner. Staff need estimates will be tied to LACMTA's budget process. LACMTA shall deliver the proposed Annual Work Plan to Construction Authority on or before January 27 of each year. Construction Authority shall review and provide comments on the Annual Work Plan within thirty (30) Days after receipt of the draft Annual Work Plan from LACMTA. If Construction Authority believes its comments are not adequately addressed, the resulting Dispute shall be resolved in accordance with the Dispute resolution process in Section 5.2. However, in the event of a Dispute regarding the Annual Work Plan that is not resolved prior to LACMTA Board adoption of the LACMTA budget for the next fiscal year, LACMTA shall continue to perform work during the new fiscal year at a staffing and support level that does not exceed the amounts set forth in the Annual Work Plan for the prior fiscal year.

If LACMTA determines that it requires consultants and/or contractors to perform any of its obligations pursuant to this Agreement, it shall include engagement of such consultants and/or contractors, and the tasks they are anticipated to perform, in its proposed Annual Work Plan. If the Construction Authority requests LACMTA to provide additional services to the Project beyond what is contemplated in the Annual Work Plan and the LACMTA Project Costs, if necessary, Parties may mutually agree to amend the Annual Work Plan to incorporate the additional cost of the additional services.

Funding for the Annual Work Plan will be included as part of LACMTA Project Costs, in accordance with and as that term is defined in the Funding Agreement.

LACMTA shall provide Construction Authority its Labor Information Management System ("LIMS") report on a monthly basis.

3.2 Performance of LACMTA Work

LACMTA staff and its consultants and contractors may perform any work included in the approved Annual Work Plan. Consultants and contractors engaged by LACMTA to perform work covered by this Agreement shall comply with all applicable labor and other Laws, grants, and agreements. Consultant fees and profits shall be charged in accordance with LACMTA practice or existing contract limits.

ARTICLE 4 - INTENTIONALLY OMITTED

ARTICLE 5 - PARTNERING / DISPUTE RESOLUTION

5.0 Partnering / Disputes

The Parties shall engage in a partnering process as described in Section 5.3.

All Disputes that concern the Approval/disapproval of a Significant Change shall be resolved in accordance with the Solution Process set forth in Section 5.1. All Disputes between the Parties that do not concern the Approval/disapproval of a Significant Change shall be resolved by the process described in Section 5.2.

5.1 Solution Process

The following process, referred to in this Agreement as the Solution Process, shall be used for the review and Approval/disapproval of Significant Changes, and to resolve Disputes between the Parties regarding a Significant Change:

- a. Within 5 Working Days after Construction Authority determines there has been or will be a Significant Change, Construction Authority shall inform LACMTA by written notice and request Approval therefor. Within 5 Days after LACMTA has received such notice and request, LACMTA shall convey in writing to the Construction Authority its Approval/disapproval of the Significant Change, or indicate that LACMTA does not consider the change to be a Significant Change.
- b. At any time, subject to the limitations set forth in this Section 2.5, LACMTA may determine independently that there has been or will be a Significant Change. Within the 21-day review period for Design submittals pursuant to Section 2.4.A, or for changes not included in a Design submittal under review pursuant to Section 2.4.A, within 5 Working Days after discovering what LACMTA believes to be a Significant Change, LACMTA shall convey its determination in writing to Construction Authority, together with its Approval/disapproval of the Significant Change. Any change from the Baseline Documents that would otherwise be a Significant Change shall be deemed not to be a Significant Change for all purposes under this Agreement if the LACMTA Representative fails to identify the change as a Significant Change within the applicable time period specified in this paragraph "b".
- c. In the case of disagreement between LACMTA and Construction Authority as to whether a given change is a Significant Change, or in the case of an LACMTA disapproval of a Significant Change, Construction Authority may convey in writing to LACMTA within 3 Working Days of the receipt of LACMTA's written disapproval or of written notice that LACMTA has independently determined that a given change is a Significant Change, that it wishes to conduct resolution meetings. The date of Construction Authority's Notice shall be the "Construction Authority Notice Date." In that event, the parties shall conduct resolution

meetings, which will start no later than 3 Working Days from the Construction Authority Notice Date and continue until the first to occur of (i) Construction Authority is reasonably satisfied with the resolution, or (ii) 10 Days after Construction Authority receives LACMTA's written disapproval or written notice that LACMTA determines a given change to be a Significant Change.

d. If the Parties fail to reach a mutual solution, the matter shall be raised automatically to the CEO of each agency for resolution. If the Parties fail to reach a mutual solution within five Working Days after the matter is raised to the CEOs, Construction Authority shall be deemed to have accepted LACMTA's disapproval or determination that a given change is a Significant Change unless either CEO refers the matter to the Solution Committee within 3 Working Days thereafter.

e. The Solution Committee shall render a decision within 10 Days after a matter is forwarded to it for consideration.

f. If the Solution Committee finds that any portion of the work is a Significant Change and LACMTA's disapproval is upheld, then the Construction Authority shall be solely responsible for all costs necessary to remove, replace or correct any disapproved work that has been performed.

5.2 Resolution of Disputes not Covered by the Solution Process

Consistent with the partnering process set forth in Section 5.3, all Disputes, controversies, or claims arising between the Parties in connection with or relating to this Agreement that do not concern the Approval/disapproval of Significant Change, or are otherwise not subject to the Solution Process described in Section 5.1, shall be resolved amongst Construction Authority and LACMTA staff, if possible, and by the CEOs of both Parties if the staffs are unable to resolve the Dispute.

5.3 Partnering Process

This Section 5.3 sets forth a framework for voluntary partnering between the Parties in connection with the Project. The Parties are committed to a partnering process between them. The partnering process is intended to draw on the strengths of each organization to help identify and achieve reciprocal goals, including achieving completion of the Project on time, within budget and in accordance with its intended purpose. A primary consideration of partnering is the prompt and equitable resolution of issues affecting the conduct of the work on the Project and the rights and responsibilities of the respective parties. It is the intent of the Parties to engage in informal efforts to resolve all disputes related to the Project.

Any costs associated with this partnering will be agreed to by both Parties and will be shared equally, except that each Party will be responsible for the salaries, travel and other costs of its own attendees.

Within 30 days following issuance of a notice to proceed under the Design/Build Contract, the Parties will meet together to create a charter of shared values and goals and agree on an initial schedule for quarterly partnering meetings and/or, if the Parties desire to conduct workshops, on a schedule for one or more partnering workshops. The establishment of a partnering charter will not change the legal relationship of the Parties nor relieve either party from any of the terms of written agreements between them.

ARTICLE 6 - PAYMENTS FOR BETTERMENTS

6.0 Betterments Generally

6.0.1 If during the Design Review process LACMTA requests changes to the submittals and such changes result in a Betterment, Construction Authority will not be obligated to make such change unless LACMTA agrees it shall be responsible for paying with non-Project funds the cost of such change and any delay claim attributable to the LACMTA Betterment.

6.0.2 If at any time during the term of the Project, Non-LACMTA third-parties request the inclusion of Betterments into the Project, the Construction Authority shall forward such request to LACMTA, which shall have the right to review and comment on the proposed Betterments to ensure it conforms to the LACMTA's Design Criteria and Standards and will not interfere with the safe operation of the completed Project. The Construction Authority shall be responsible for negotiating the cost and method of payment for any approved third-party Betterments.

6.1 Non-Betterment Items

However, the following shall not be considered as Betterments:

- An upgrade which the Parties agree should be completed at no cost to LACMTA;
- Construction in accordance with LACMTA Design Criteria and Standards in effect prior to the date that proposals for the Design/Build Contract are due, State and Federal Regulations or CPUC requirements; or
- Measures to mitigate environmental impacts identified in the Current Scope of the Project and Final Environmental Impact Report and any supplements thereto.

6.2 Payments for Betterments

Construction Authority shall be paid by LACMTA for work performed under this Agreement for any Betterments requested by LACMTA as set forth in the Funding Agreement. The amount of the payments for Betterments, if any, shall be estimated by Construction Authority based on LACMTA's request(s).

After LACMTA has reviewed the estimated cost of a LACMTA requested Betterment, LACMTA's Representative shall inform Construction Authority's Representative of any of the proposed LACMTA Betterments LACMTA wants included in the Project. LACMTA shall provide non-Project funds to pay for Betterments under the circumstances set forth in the Funding Agreement. Construction Authority agrees to incorporate any Betterments requested and paid for by LACMTA, including payment by LACMTA of the costs of any delay. Should LACMTA request inclusion of a Betterment during the time period between 85% drawings and Final Design, Construction Authority shall cause the Design/Build Contractor to provide Construction Authority and LACMTA

with an analysis of all anticipated impacts to the Project Schedule associated with such a change.

LACMTA shall pay one half of the cost of each Betterment to Construction Authority in advance, prior to commencement of Construction of the Betterment. The remainder shall be paid to Construction Authority within thirty (30) Days after completion of the Betterment.

Construction Authority shall earn no profit or overhead fee, based on the cost of the Betterments requested by LACMTA. LACMTA shall fully compensate Construction Authority for the Direct Costs and Indirect Costs of the Betterments. However, given the administrative effort required to track, compile, and audit the Costs for Construction Authority personnel and the Construction Authority's consultants, the LACMTA and Construction Authority have the option to agree, in advance, on a flat compensation of 10% of the Cost of all Betterments, in lieu of payment of the actual administrative costs incurred in completing the Betterment(s).

ARTICLE 7 - TESTING AND START-UP

7.0 General

For purposes of this Article 7, the terms Design/Build Contractor and Design/Build Contract shall refer to the Alignment Design/Build Contractor and the Alignment Design/Build Contract, respectively, if there is more than one Design/Build Contractor and Design/Build Contract for the Project.

7.1 Contractual Testing

The roles and responsibilities for testing are as follows:

7.1.1 Design/Build Contractor

Construction Authority shall require in the Design/Build Contract that the Design/Build Contractor be responsible for successfully completing four types of Tests as follows:

- Factory Tests
- Construction Tests
- Systems Integration Tests (SIT-1 and SIT-2)
- System Performance Tests

Design/Build Contractor's tests will be based on LACMTA test standards and procedures (to the extent they are reasonable as determined by standard industry practice), to be provided by LACMTA for incorporation into the Design/Build Contract, and requires coordination with LACMTA.

Construction Authority will require the Design/Build Contractor to provide a proposed, detailed schedule for the SIT-1 testing ("**Detailed Schedule**") no later than 24 months before Substantial Completion. The Detailed Schedule will also include projected LACMTA light rail vehicle requirements, as necessary.

The Design/Build Contractor will be responsible for providing training to LACMTA staff in the areas of system familiarization and configuration, equipment operation and equipment maintenance and be available for meetings during testing and Start Up as required and deemed necessary by LACMTA. A proposed schedule for training, along with content, will be provided to the Construction Authority and LACMTA no later than 15 months prior to Substantial Completion .

The Design/Build Contractor establishes and maintains all track allocation and safety requirements and regulations in accordance with LACMTA standards and applicable CPUC regulations beginning with initial activation of the traction power system and vehicle movement, continuing until Turnover. The Design/Build Contractor shall provide support personnel as needed for SIT-2.

7.1.2 Construction Authority

Construction Authority is responsible for overseeing the Design/Build Contractor throughout Design, Construction and testing, and for ensuring adherence to LACMTA test standards. Construction Authority shall monitor testing performed by the Design/Build Contractor, and shall make available to LACMTA all testing schedules, procedures, and results.

7.1.3 LACMTA

LACMTA shall be provided the opportunity to monitor any testing of components and systems related to train operations and maintenance of trains and property.

LACMTA shall make available up to six (6) light rail vehicles in the consists/configurations required by the Design/Build Contractor for Project testing purposes. A written request to the LACMTA Rail Start-up Manager shall be made by the Construction Authority at least four (4) weeks in advance of the initial vehicle commitment date. In addition, the Construction Authority shall make detailed vehicle requests at least one (1) week in advance of the intended test date. LACMTA will be responsible for testing of all LACMTA Furnished/Required Equipment and systems within the Rail Operations Control. LACMTA will also be responsible for emergency drills and Pre-Revenue Operations.

Control of the track allocation and safety requirements/regulations are transitioned from the Design/Build Contractor to LACMTA at Turnover.

7.2 Turnover

7.2.1 Turnover will be the date after all of the following has occurred:

- a. LACMTA identified critical signage has been accepted/signed-off by LACMTA;
- b. Construction Authority has submitted the draft Safety and Security Certification Report;
- c. LACMTA has determined that no items affecting train movement remain on the punch list;
- d. Completion of SIT-1;
- e. LACMTA has accepted/signed-off on all test reports;
- f. Construction Authority has completed all vendor systems training;
- g. Construction Authority has delivered the special tools necessary for Pre-Revenue Operations;
- h. Construction Authority has delivered the spare parts necessary for Pre-Revenue Operations;
- i. Construction Authority has delivered the O&M manuals (other than parking facilities);
- j. CPUC has provided preliminary approval of all crossings; and
- k. Construction Authority has placed current books of plans for traction electrification, signals and communications in the appropriate bungalows, cases and rooms.

7.3 Schedule of Submittals for LACMTA Approval

7.3.1 At least forty (40) days prior to ROD, in addition to all the Turnover items set forth in Section 7.2.1, Construction Authority shall submit to LACMTA the following items which will require acceptance/sign-off by LACMTA:

- a. Elevator state certification
- b. Certificate of Occupancy (CofO)
- c. Safety and Security Certification final report
- d. Parking facilities training
- e. Delivery of parking facilities O&M manuals

7.3.2 No later than ten (10) days prior to ROD, in addition to all the Turnover items set forth in Section 7.2.1 and all the items required in Section 7.3.1 above, Construction Authority shall submit to LACMTA the following items which will require acceptance/sign-off by LACMTA:

- a. CPUC approval of Safety and Security Certification final report
- b. Delivery of all spare parts
- c. ADA compliance

7.4 Pre-Revenue Operations

7.4.1 Pre-Revenue Operations Period

LACMTA is responsible for Pre-Revenue Operations which shall begin at Turnover. The stress testing and Pre-Revenue Operations period provides LACMTA the opportunity to test operating systems for revenue services, operate trains and familiarize its operating staff with the Project for a period of three months, or as it mutually determined by the Parties.

7.4.2 Design/Build Contractor

During Pre-Revenue Operations, the Design/Build Contractor's activities include completing punch list items and performance of system and landscape maintenance. The Design/Build Contractor must comply with all applicable regulations and LACMTA's rail safety rules for access to ROW, as applicable. LACMTA must provide such rail safety rules for incorporation into the Design/Build Contract.

7.4.3 Construction Authority

Eight weeks prior to the expected date of Substantial Completion and prior to Turnover and commencement of Pre-Revenue Operations, Construction Authority will issue a letter to LACMTA requesting a "Pre-Revenue Readiness Meeting" to determine Project readiness for Turnover and to enter Pre-Revenue Operations. These meetings shall occur a minimum of six weeks prior to the scheduled pre-revenue date and occur as frequently as deemed necessary by all parties. The Design/Build Contractor shall actively participate in this meeting and implement any identified tasks required for Turnover and Pre-Revenue Operations.

7.4.4 LACMTA

After Turnover and during the Pre-Revenue Operations period, LACMTA shall be responsible for all train operations and activity on and immediately adjacent to the Mainline. The Design/Build Contractor, Construction Authority, or third party access to the Mainline must comply with LACMTA's track access and Wayside Worker Protection requirements including training, procedures, and operating rules. LACMTA shall provide the Design/Build Contractor reasonable access to the Mainline to perform maintenance. Should the Design/Build Contractor require access to the Mainline to complete punchlist items or perform other work, LACMTA shall provide reasonable access during periods that minimize disruption to pre-revenue train movements, such as weekends and overnight periods.

7.4.5 Revenue Readiness Meetings

Construction Authority, the Alignment Contractor, and LACMTA shall hold weekly revenue readiness meetings after Turnover and during the Pre-Revenue Operations period.

7.4.6 Fire, Life, Safety and Security Committee (FLSSC)

LACMTA shall participate in the activities of the FLSSC. Construction Authority is responsible to complete construction and testing activities to support emergency drills to be commenced by LACMTA before Turnover and the start of Pre-revenue Operations. The objective of the Parties is that the emergency drills be completed before Turnover and the start of Pre-Revenue Operations if possible, but if that is not possible, the drills may continue after Turnover into the Pre-Revenue Operations Period.

7.5 Safety and Security Certification

7.5.1 General

The Safety and Security Certification shall be completed in accordance with this Section 7.3 and the requirements of the CPUC.

7.5.2 Design/Build Contractor

The Design/Build Contractor, with LACMTA's cooperation, shall be responsible for implementation of the CPUC approved safety and security certification plan (SSCP) during the Design and Construction of the Project. As defined in the SSCP, the Design/Build Contractor shall implement a comprehensive safety certification program.

At the end of the SSCP process and as a condition to Substantial Completion, a Safety Certification report (SCR) shall be prepared by the Design/Build Contractor and submitted to the Construction Authority for review and approval. The SCR shall describe the process, responsibilities, documentation, and procedures used for certification and provide the supporting documentation.

7.5.3 Construction Authority

Once the Design/Build Contractor has successfully implemented the SSCP and completed the Safety Certification of the Project, Construction Authority shall transmit a letter to LACMTA stating that, based upon CPUC's Safety Certification of the Project, Construction Authority has determined that the Facility and system elements of the Project are safe. This letter shall be transmitted at least 21 days prior to Revenue Operations Date.

7.5.4 LACMTA

LACMTA shall participate in the oversight of the safety and security certification process. LACMTA shall have the right to review certification activities including testing, inspections, document reviews, individual certification, etc. leading to safety certification of the Project.

7.6 LACMTA Addition of Punch List Items

For the Alignment Design/Build Contract, LACMTA may add punch list items in accordance with the terms of the Contract up until Substantial Completion, at which point no punch list items can be added. This is contingent upon Contractor having no Design or Construction work remaining, other than punch list work.

7.7 Turnback of the Project

7.7.1 Turnback Process

Turnback is the process through which the Construction Authority and its Design/Build Contractor complete various activities and turn over the Project to LACMTA. The Construction Authority shall complete the following activities in order to complete its obligations for Turnback:

- a. Construction Authority has reviewed the actions of the Design/Build Contractor(s) to determine that the construction is complete in accordance with its own Project requirements.
- b. Construction Authority has participated in the CPUC certification and approval process.
- c. Construction Authority has verified to the LACMTA that all non-permitted liens have been cleared as required under the Property Trust Agreement.
- d. Construction Authority has determined that the Project Is ready for Turnback and will certify that to LACMTA.

Upon the completion of items “a”, “b”, “c”, and “d” above, Construction Authority shall issue to LACMTA its Certification of Turnback, in the form attached hereto as Exhibit C. Upon issuance of the Certification of Turnback, LACMTA will initiate its review of the status of the “System Performance Demonstration” (SPD) and Certificates of Occupancy and upon a determination that all of these matters (“a”, “b”, “c”, and “d”, the SPD, and the Certificates of Occupancy) have been successfully completed, shall issue its acknowledgement of Turnback in the form

attached hereto as Exhibit E. Following receipt of such acknowledgement from the LACMTA, which will not be unreasonably withheld, Construction Authority shall have no further responsibilities or liability for Phase 2B, except as set forth in the Property Trust Agreement or at law. The Parties agree that, regardless of LACMTA acknowledgement of Turnback per this Agreement, "Completion of Phase II of the Project" (as applicable to Phase 2B to Claremont), as that term is defined in the Property Trust Agreement, does not occur until the applicable requirements of the Property Trust Agreement have been satisfied and does not apply to the portion of ROW east of the Claremont station that may be needed for a future extension to the City of Montclair.

7.7.2 Design/Build Contractor System Performance Demonstration

Following the ROD, the Design/Build Contractor shall be responsible for successfully completing the "System Performance Demonstration" (SPD), which shall be developed in conjunction with LACMTA's Rail Operations staff. The SPD must verify that the Project supports 30 consecutive Days of dispatch reliability and dependability during revenue service as defined below. Per the Design/Build Contract, SPD shall commence seven Days after the ROD.

Dispatch Reliability is defined for the Project as the probability that a train will run within 3 minutes of arrival schedule at terminal stations. 99.95% on time performance is required under these criteria.

Dependability is defined for the Project as the probability that a train will run within 20 minutes of arrival schedule at terminal stations. 99.99% on time performance is required under these criteria.

Delays incurred from incidents not related to the Project Systems performance, such as some law enforcement activities or a vehicle mechanical issue, will not count against System Performance percentage requirements.

7.7.3 Construction Authority Transfer of Project Assets

Per the process described in the Property Trust Agreement, Construction Authority shall transfer those Phase II Project Assets directly relating to Phase 2B and not needed for further Construction Authority activities within 150 Days after ROD for Phase 2B.

Per the process described in the Property Trust Agreement, LACMTA shall accept the transfer of Phase II Project Assets directly relating to Phase 2B and not needed for further Construction Authority activities within 180 Days after ROD for Phase 2B.

7.7.4 LACMTA Support of Design/Build Contractor SPD Program

LACMTA shall assist in the oversight of the SPD (as described above) that occurs during revenue operations and under the direction of LACMTA's Operations staff, as well as providing input regarding the other conditions to final acceptance under the Design/Build Contract. As a result, LACMTA will compile the daily operational statistics to verify the Design/Build Contractor's "on time performance" for SPD and will coordinate its review of the SPD with the Construction Authority who will have the right to review and monitor the daily computations to verify their accurateness. On time performance will be measured as defined above for SPD. Additionally, only late or annulled trains attributable to the Design/Build Contractor's facility and system elements shall be used in the calculation for on time performance.

LACMTA shall provide, subject to the terms of the Annual Work Plan, its fullest support to the Design/Build Contractor allowing and assisting the Design/Build Contractor to conduct the SPD and any other activities leading to final acceptance under the Design/Build Contract.

ARTICLE 8 - WARRANTIES, INDEMNIFICATION, AND INSURANCE

8.0 Generally

8.1 Warranties

8.1.1 Warranties to Benefit LACMTA

All warranties, whether derived from the Design/Build Contracts or from major equipment purchased by Construction Authority outside of the Design/Build Contracts (if any), whether express or implied in those contracts, shall run to the benefit of LACMTA.

8.1.2 Warranty Period

The warranty period commences at ROD and continues for one (1) year after ROD, provided, however, for major equipment, if the factory warranty (which should conform to industry standards) is longer than the warranty term set forth above, the factory warranty shall be provided and will control for such major equipment. The factory warranties shall be a proposal and contract requirement clearly identifying the equipment warranties that shall extend beyond the period stated above. The Construction Authority shall solicit a proposal for an additional year of warranty. Landscaping shall have an establishment period of the later of one year after Substantial Completion or when planted. The Authority shall cause any plants that do not survive the establishment period to be replaced.

8.1.3 Warranty Process

At the end of each year the warranty is in effect, the Parties shall walk through and create punch list of warranty items. LACMTA shall manage the warranty process. The Construction Authority and Design/Build Contractor shall reasonably cooperate with LACMTA in the warranty resolution process.

8.2 Insurance

8.2.1 Insurance Requirements

The Design/Build Contracts shall comply with Section 4.2.3(e) and Schedule "F" of the Property Trust Agreement regarding insurance, except that LACMTA hereby approves implementation of a Contractor Controlled Insurance Program ("CCIP") for Phase 2B. The insurance language for the CCIP shall be reviewed by LACMTA's Risk Management Department. Any suggested changes shall be submitted to the Construction Authority.

8.2.2 Insurance Documents

Construction Authority shall deliver, or cause to be delivered, to LACMTA copies of all insurance certificates and bond documents from Construction Authority, Contractors and Consultants, naming LACMTA as an additional named insured.

8.2.3 Trustee Insurance

Construction Authority shall provide LACMTA with copies of all updated Trustee insurance documents and policies required by Section 5.1.11 and Schedule G in the Property Trust Agreement.

8.3 Indemnification

8.3.1 Design/Build Contracts

The Design/Build Contracts shall comply with Section 4.2.3(a) of the Property Trust Agreement.

8.3.2 Construction Authority Indemnification of LACMTA

To the fullest extent permitted by law, Construction Authority shall indemnify, defend and hold LACMTA, and its officers, agents and employees harmless from and against any liability and expenses, including without limitation, defense costs, any costs or liability on account of bodily injury, death or personal injury of any person or for damage to or loss of property, any environmental obligation, any legal fees and any claims for damages of any nature whatsoever, arising out of Construction Authority's actions pursuant to this Agreement and attributable to the fault of Construction Authority, except to the extent caused by the sole active (but not passive) negligence or willful misconduct of LACMTA. Following a determination of the percentage of fault and or liability by agreement between the Parties or a court of competent jurisdiction, Construction Authority will indemnify LACMTA for the percentage of liability determined.

8.3.3 LACMTA Indemnification of Construction Authority

To the fullest extent permitted by law, LACMTA shall indemnify, defend and hold Construction Authority and its officers, agents and employees harmless from and against any liability and expenses, including without limitation, defense costs, any costs or liability on account of bodily injury, death or personal injury of any person or for damage to or loss of property, any environmental obligation, any legal fees and any claims for damages of any nature whatsoever, arising out of LACMTA's actions pursuant to this Agreement and attributable to the fault of LACMTA, except to the extent caused by the sole active (but not passive) negligence or willful misconduct of Construction Authority. Following a determination of the percentage of fault and or liability by agreement between the Parties or a court of competent jurisdiction, LACMTA will indemnify Construction Authority for the percentage of liability determined.

ARTICLE 9 - LACMTA Furnished/Required Equipment

9.0 LACMTA Furnished/Required Equipment

9.1 Equipment

To ensure uniformity of major equipment and to ensure compatibility with the existing rail system, LACMTA requires Construction Authority to use LACMTA Furnished/Required Equipment, which includes without limitation:

The purchase of 21 vehicles for use on Phase 2B including a portion of LACMTA oversight and consultant costs, spare parts, tools & special equipment, and carbuilder non-recurring costs.

Ticket Vending Machines/Stand Alone Validators/Fare Gates

Mobile & Portable radios

Other equipment as determined during the course of Design and Construction as mutually agreed to by the Parties.

9.2 NOT USED

9.3 NOT USED

9.4 Procurement Staffing

LACMTA staff time directed to procure LACMTA Furnished/Required Equipment shall be included as part of the Annual Work Plan.

ARTICLE 10 - MISCELLANEOUS PROVISIONS

10.0 Counterparts

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

10.1 Survival Rights

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

10.2 Severability

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

10.3 Force Majeure

Neither Party hereto shall be considered in default in the performance of its obligations hereunder to the extent that the performance of any such obligation is prevented or delayed by unforeseen causes including acts of God, acts of a public enemy, lawsuit seeking to restrain, enjoin, challenge or delay Construction of the Project and government acts beyond the reasonable control and without fault or negligence of the affected Party. Each Party hereto shall give notice promptly to the other of the nature and extent of any such circumstances claimed to delay, hinder, or prevent performance of any obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of time reasonable in light of the enforced delay.

10.4 Notification or Notices

Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if personally delivered, transmitted by facsimile (with mechanical confirmation of transmission), or deposited in the United States mail, registered or certified, postage prepaid, addressed to the Parties' addresses set forth below. Notices given in the manner provided in this Section 10.4 shall be deemed effective on the third Day following deposit in the mail or on the day of transmission or

delivery if given by facsimile or by hand. Notices must be addressed to the Parties hereto at the following addresses, unless the same shall have been changed by notice in accordance herewith:

If to LACMTA:

Los Angeles County Metropolitan Transportation Construction Authority
One Gateway Plaza
Los Angeles, California 90012
Attn: Phillip A. Washington, Chief Executive Officer
Fax: (213) 922-7447

With a Copy to:

Los Angeles County Metropolitan Transportation Construction Authority
Office of the County Counsel
One Gateway Plaza, 24th Floor
Los Angeles, California 90012
Attn: Teddy Low, Deputy County Counsel
Fax: (213) 922-2531

If to Construction Authority:

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

With a Copy to:

Nossaman LLP
777 S. Figueroa St.
Los Angeles, CA 90017
Attn: Alfred E. Smith, II, General Counsel
Fax: (213) 612-7801

10.5 Statutory References

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

10.6 Construction

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

10.7 Section Headings

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

10.8 Governing Law

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

10.9 Pronouns and Plurals

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

10.10 Time of the Essence

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

10.11 Further Actions

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

10.12 Third-Party Beneficiaries

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

10.13 Exhibits

The Exhibits attached to this Agreement are incorporated herein and shall be part of this Agreement for all purposes.

10.14 Approvals

All approvals required by either Party pursuant to this Agreement shall not unreasonable be withheld.

10.15 Entire Agreement

This Agreement constitutes the entire agreement of the Parties with respect to, and supersedes all prior written and oral agreements, understandings, and negotiations with respect to the subject matter hereof. Notwithstanding the preceding sentence, this Agreement does not supersede the Property Trust Agreement or the Funding Agreement.

10.16 Authority of Parties

Each of the Parties hereby represents and warrants that it has full legal Construction Authority and is duly empowered to enter into this Agreement, and has taken all actions necessary to authorize the execution and delivery of this Agreement. Each Party further agrees that this Agreement complies with PUC Section 132400 et seq. and represents and warrants that the execution, delivery and performance by it of this Agreement does not and will not:

- (a) require any consent or approval not heretofore obtained of any person or judicial or administrative body;
- (b) violate any order, writ, judgment, injunction, decree, determination or award having applicability to such Party: or
- (c) result in a breach of or constitute a default under, cause or permit the acceleration of any obligation owed under, or require any consent under, any indenture or any agreement, contract, lease, or instrument to which such Party is bound or affected.

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

10.17 Binding Obligation

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

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

LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION CONSTRUCTION AUTHORITY

By: _____ Date: _____
Phillip A. Washington
Chief Executive Officer

APPROVED AS TO FORM:
Mary C. Wickham
County Counsel

By: _____
Deputy

METRO GOLD LINE FOOTHILL EXTENSION
CONSTRUCTION AUTHORITY

By: _____ Date: _____
Habib F. Balian
Chief Executive Officer

APPROVED AS TO FORM:
Nossaman LLP

By: _____
Alfred E. Smith, II
General Counsel

Exhibit A

DESCRIPTION OF THE PROJECT

The Phase 2B project will provide a light rail transit (LRT) system linking the cities of Azusa, Glendora, San Dimas, La Verne, Pomona, and Claremont, and will involve relocation and reconfiguration of existing freight and Metrolink commuter rail track. The Project includes approximately 11.7 miles of double light rail main track; tail tracks beyond the Claremont platform; new bridges; improvements to existing culverts; retaining walls and sound walls; embankment improvements; drainage and storm water improvements; five at-grade passenger stations; five parking structures; intermodal interfaces; traction electrification system comprised of traction power supply substations (TPSS) and overhead contact system (OCS); grade crossings and adjacent roadway/traffic signal improvements; station equipment; wayside equipment; communications systems; approximately 10.4 miles of freight rail track and associated siding relocations and improvements; light rail train control/signaling system; freight track signaling system; approximately 1.3 miles of Metrolink track relocation and signaling, including Positive Train Control (PTC); a new Claremont Metrolink platform on the Metrolink Corridor; landscaping; and all related appurtenances, accessories, subsystems, documentation, procedures, spare parts, manuals, and special tools.

Light rail vehicles (LRV), universal fare system (UFS) equipment, the radio system for the LRT system, the rail operations control (ROC) facility, and the light rail supervisory control and data acquisition (SCADA) system will be provided by Metro.

A general overview of the Project alignment is provided below:

Foothill Gold Line Pasadena to Azusa Tail Track to Gladstone Avenue Segment

This segment of the alignment is approximately 4.4 miles, runs mainly at-grade, and includes eight at-grade crossings at Barranca Avenue, Foothill Boulevard/Grand Avenue (freight only), Vermont Avenue, Glendora Avenue, Pasadena Avenue, Glenwood Avenue, Elwood Avenue, Loraine Avenue, grade separations at Foothill Boulevard/Grand Avenue (LRT only), SR66, Lone Hill Avenue, and multiple channel crossings. This segment of the alignment contains an existing freight track which will be relocated and remain active during the entire construction of the Project.

This segment of the Project has one center platform station in Glendora between Vermont Avenue and Glendora Avenue. The Glendora parking structure will contain a minimum of 420 stalls with a vehicular connection to Vermont Avenue, as well as pedestrian connections to Vermont Avenue, Glendora Avenue, and the LRT Platform. The Glendora station will have a pedestrian connection from the parking facility to the platform via a pedestrian undercrossing.

Gladstone Avenue to White Avenue Segment

This segment of the alignment is approximately 3.9 miles, runs mainly at-grade, and includes 11 at-grade crossings at Gladstone Avenue, Eucla Avenue, Bonita Avenue/Cataract Avenue, Monte Vista Avenue, San Dimas Avenue, Walnut Avenue, San Dimas Canyon Road, Wheeler Avenue, A Street, D Street, E Street, and multiple channel crossings, as well as the undercrossing at SR-57.

This segment contains an existing freight track that will be relocated and remain active during the entire Project.

This segment of the Project has one center platform passenger station in San Dimas (east of San Dimas Avenue) and one center platform passenger station in La Verne (east of E Street). The San Dimas parking structure will contain a minimum of 450 stalls with a vehicular connection to Arrow Highway. The La Verne parking structure will contain a minimum of 600 stalls with a vehicular connection to Arrow Highway. Both the San Dimas station and the La Verne station will have a pedestrian connection from the parking facility to the platform via a pedestrian undercrossing.

White Avenue to Freight/Metrolink Tie-in Segment

This segment of the alignment is approximately 1.9 miles, runs mainly at-grade, and includes two at-grade crossings at White Avenue and Fulton Avenue, two grade separations at Garey Avenue and Towne Avenue, as well as a channel crossing. This segment of the alignment contains an existing single track freight alignment and existing sidings that will be relocated and remain active during the entire Project. The Metrolink commuter rail tracks are immediately to the south of the LRT tracks in this segment and will not be disturbed with the exception of improvements to the grade crossing warning systems.

This segment of the Project has one center platform station in Pomona (west of Garey Avenue). The Pomona parking structure will include a minimum of 850 spaces with a vehicular connection to a new access road located north of the parking structure. The parking structure shall be connected to the LRT station via a pedestrian overcrossing.

Freight/Metrolink Tie-in to Claremont

This segment of the alignment is approximately 1.5 miles, runs mainly at-grade, and includes four at-grade crossings at Cambridge Avenue, Indian Hill Boulevard, College Avenue, and Claremont Boulevard, as well as a channel crossing. This segment of the alignment contains an existing dual track freight/Metrolink commuter rail alignment that will be relocated and remain active during the entire construction of the Project.

This segment of the Project has one center platform LRT station in Claremont (west of College Avenue). The Claremont station will have an at-grade pedestrian connection from both ends of the platform. The Claremont parking facility will consist of a structure located east of College Avenue and north of the LRT tracks as well as a parking lot, and

will include a minimum of 1260 spaces. In addition, a new Metrolink platform will be constructed approximately 800 feet west of College Avenue with a pedestrian undercrossing that connects to the Claremont parking structure to the north and the recreational area to the south.

Exhibit B

[INTENTIONALLY OMITTED]

Exhibit C

**CERTIFICATION OF TURNBACK
FOR PHASE 2B OF THE FOOTHILL EXTENSION PROJECT**

This Certification of Turnback ("Certificate") is issued by the Metro Gold Line Foothill Extension Construction Authority ("Construction Authority") to the Los Angeles County Transportation Authority ("LACMTA") for the purpose of completing Phase 2B of the Foothill Extension Project ("Project").

RECITALS:

1. WHEREAS, pursuant to Section 7.5.1 of the Master Cooperative Agreement for the Metro Gold Line - Glendora to Claremont, executed between the parties on or about [____], 2017 ("MCA"), Construction Authority has agreed to certify that the Project is completed and ready for Turnback to the LACMTA; and
2. WHEREAS, Construction Authority has determined that the Project has been completed and is ready for Turnback to the LACMTA;

CERTIFICATION OF TURNBACK

NOW, THEREFORE, incorporating, and in consideration of, the foregoing Recitals, Construction Authority hereby issues the following Certification of Turnback to the LAMCTA, as follows:

1. **Effective Date of Certification.**

This Certificate shall have an effective date of _____, 20__.

2. **Construction Authority's Determination of Project Completion**

The Construction Authority hereby certifies to LACMTA that all requirements of Section 7.5.1 of the MCA have been satisfied, and the Project is ready for Turnback to LACMTA.

IN WITNESS WHEREOF, the Board of Directors of the Construction Authority has caused this Certification to be duly executed and delivered as of the above date.

**METRO GOLD LINE FOOTHILL EXTENSION
CONSTRUCTION AUTHORITY**

Approved as to Form:
Nossaman LLP

By: _____
Habib F. Balian
Chief Executive Officer

By: _____
Alfred E. Smith, II
General Counsel

Exhibit D

ACKNOWLEDGEMENT OF TURNBACK OF PHASE IIA OF THE GOLD LINE LIGHT RAIL PROJECT

This Certificate of Acknowledgement (“Certificate”) is issued by the Los Angeles County Metropolitan Transportation Authority (“LACMTA”) to the Metro Gold Line Foothill Extension Construction Authority (“Construction Authority”).

RECITALS:

1. WHEREAS, pursuant to the Master Cooperative Agreement for the Metro Gold Line - Glendora to Claremont executed between the parties on or about [____], 2017 (the “MCA”), LACMTA agreed to receive and acknowledge the Turnback of the Project so long as Construction Authority certified that the Project was ready for Turnback, in accordance with Section 7.5.1 of the MCA;
2. WHEREAS, Construction Authority has delivered to LACMTA its Certification of Turnback;

CERTIFICATE OF ACKNOWLEDGEMENT

NOW, THEREFORE, incorporating, and in consideration of, the foregoing Recitals, LACMTA hereby issues the following Certificate of Acknowledgement to the Construction Authority, as follows:

1. **Effective Date of Certificate.**

This Certificate shall have an effective date of _____, 20__.

2. **LACMTA Acknowledgement of Turnback of the Project**

The LACMTA has reviewed the status of the Project and hereby acknowledges:

- a. the receipt and transfer of the Project, subject to the requirements of the Property Trust Agreement;
- b. that Construction Authority has fulfilled all of its obligations under the MCA.

IN WITNESS WHEREOF, the LACMTA has caused this Certificate to be duly executed and delivered as of the above date.

**LOS ANGELES COUNTY METROPOLITAN
TRANSPORTATION AUTHORITY**

By: _____
Phillip A. Washington
Chief Executive Officer

Approved as to Form:

[_____] _____
County Counsel

By: _____
Deputy