

MEMORANDUM OF UNDERSTANDING (11-7-2017)

For the Construction of:
TAYLOR YARD BIKEWAY/PEDESTRIAN BRIDGE OVER LOS ANGELES RIVER

This Memorandum of Understanding ("MOU") is dated _____, and is by and between the Los Angeles County Metropolitan Transportation Authority ("LACMTA") and the City of Los Angeles ("City") for the construction of the Taylor Yard Bikeway/Pedestrian Bridge Over Los Angeles River ("Bridge").

WHEREAS, in July 1992, the City, the Los Angeles County Transportation Commission (LACTC) and the Southern California Regional Rail Authority entered into a memorandum of understanding to resolve disputes pertaining to the development of the Taylor Yard Commuter Rail Facility (the "1992 Settlement")

WHEREAS, LACTC, the predecessor agency to LACMTA, agreed in the 1992 Settlement to design, finance and construct a pedestrian access system, linking the communities to the east and west of Taylor Yard and providing access to rail service, including a pedestrian bridge across the Los Angeles River;

WHEREAS, LACMTA and the City entered into MOU P002077NC, dated April 2012 (the "2012 MOU"), which provided to the City's Department of Transportation funding of \$1,073,000 to complete the design of the Bridge, which was estimated to include preliminary conceptual design; environmental documentation; right-of-way agreements and environmental clearance; and final design and bid package preparation;

WHEREAS, the Bridge is a priority of the Mayor and the City Council, and is noted as project #171 in the 2007 Mayor and Council approved Los Angeles River Revitalization Master Plan;

WHEREAS, the City's Bureau of Engineering assumed Project Management for the Bridge on May 11, 2012.

WHEREAS, the Bureau of Engineering Project Management responsibilities are only partially covered by LACMTA and the rest is covered by City General Fund staff allocations.

WHEREAS, the City has contracted with a consultant for the design of the Bridge, using funds provided in the 2012 MOU, and the services were procured using the procedures of the Board of Public Works.

WHEREAS, the City has completed 50% design of the Bridge which has been approved by LACMTA.

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WHEREAS, the City is in the process of securing all required permits and rights of way required for the construction of the Bridge.

WHEREAS, Los Angeles Department of Water and Power (LADWP) has provided funding for design of a recycled water line that could travel under the bridge.

WHEREAS, the LACMTA Board of Directors, at its meeting on July 27, 2017 authorized funds to be used by City for the construction of the Bridge, subject to the terms and conditions contained in this MOU.

WHEREAS, the City's Board of Public Works and City Council, will recommend the authorization of the City Engineer to execute the MOU between the City and Metro.

WHEREAS, The City Council, at its meeting on [DATE] authorized the City to enter into this MOU and construct the Bridge.

NOW, THEREFORE, the parties hereby agree as follows:

The terms and conditions of this MOU consist of the following, and each is incorporated by reference herein as if fully set forth herein:

Part I - Specific Terms of the MOU

Part II - General Terms of the MOU

Attachment A - Scope of Work

Attachment A-1 - Approved 50% Bridge Design

Attachment B - Project Budget

Attachment C - Project Schedule

Attachment D - Reporting and Expenditure Guidelines

Attachment D1 - Quarterly Progress/Expenditure Report

In the event of a conflict, this MOU shall prevail over the previous MOUs and the Specific Terms of the MOU shall prevail over the General Terms of the MOU.

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IN WITNESS WHEREOF, the parties have caused this MOU to be executed by their duly authorized representatives as of the dates indicated below:

LACMTA:
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

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

APPROVED AS TO FORM:

MARY C. WICKHAM
County Counsel

By: _____ Date: _____
Deputy

CITY:
CITY OF LOS ANGELES

By: _____ Date: _____
Gary Lee Moore, PE, ENV SP
City Engineer

APPROVED AS TO FORM:

By: _____ Date: _____
Edward Jordan
Assistant City Attorney
General Counsel to Public Works

PART I
SPECIFIC TERMS OF THE MOU

1. The title of the project is Taylor Yard Bikeway/Pedestrian Bridge Over Los Angeles River ("Bridge"), as described in the Scope of Work, Attachment A and approved 50% Bridge Design, Attachment A-1. The City will be procuring a construction contract for the Bridge ("Bridge Contract") via a competitive solicitation. Prior to award of Bridge Contract, the Bridge Contract will be subject to review by LACMTA for compliance with this MOU. Prior to award of Bridge Contract, an updated Scope of Work and the 100% Design shall replace Attachment A and A-1, respectively, via written amendment to this MOU.

2. To the extent the Funds are available, LACMTA shall make available to the City funds in an amount not to exceed \$21,700,000 (the "Funds") for the construction budget of the Bridge, in accordance with the Project Budget (Attachment B). LACMTA Board of Directors' action of July 27, 2017 authorized use of the Funds not to exceed \$21,700,000 to the City for the Bridge. The Funds are programmed over 3 years: FY2019, FY2020, and FY2021. Prior to award of Bridge Contract, the updated Budget shall replace Attachment B, and the not to exceed amount will be updated by written amendment to this agreement, provided that it does not exceed the LACMTA Board approved \$21,700,000. If the solicitation process for the Bridge Contract results in a Project Budget that exceeds \$21,700,000, additional authorization by LACMTA Board of Directors will be required.

3. Funds shall be advanced every six months based upon biannual estimates of expenditures as detailed in Part II, Section 4 DISBURSEMENT OF FUNDS. The City must provide the appropriate supporting documentation with the Quarterly Progress/Expenditure Report. LACMTA will withhold five percent (5%) of eligible expenditures per invoice as retainage pending an audit of expenditures and completion of Scope of Work. The audit of expenditures will commence within six months of the final submitted invoice, pursuant to Part II Section 5 AUDIT REQUIREMENTS/PAYMENT ADJUSTMENTS. The City shall withhold the same 'five percent (5%)' retainage from their contractors so that expenditures match the disbursement amount.

4. The Bridge will be funded by LACMTA, subject to the terms of this MOU. Responsibilities for additional costs are as follows:

- a) The City is responsible for (i) additional costs that are the result of changes to the Scope of Work for the Bridge requested by the City, and/or (ii) additional costs that are the result of delays caused by the failure of the City to act in a timely manner. The City may not utilize any contingency funds identified in the Project Budget to pay for additional costs described in this paragraph.

- b) LACMTA will be responsible for (i) additional costs that are the result of changes to the Scope of Work that are a technical necessity, or legal requirement of an outside agency, in order to complete construction of the Bridge, subject to reasonable approval by LACMTA, (ii) additional costs that are a result of delays caused by unforeseen conditions, including, but not limited to, unanticipated environmental mitigation and/or permit compliance costs, costs for differing site conditions, and/or (iii) additional costs that result from errors and omissions in the design and engineering of the Bridge. LACMTA may utilize contingency funds identified in the Project Budget to pay for the additional costs described in this paragraph.

5. The City is responsible for the timely construction and completion of the Bridge as described in the Project Schedule, (Attachment C). The Project Schedule includes, project milestones and a set schedule, which the City must follow. Prior to award of the Bridge Contract, an updated Project Schedule shall replace Attachment C. Work shall be delivered in accordance with that schedule unless otherwise agreed to by the parties in writing. If the City is consistently behind schedule in meeting project milestones or in delivering the Bridge, then LACMTA will have the option to terminate this MOU for default as described in Part II, Section 9 DEFAULT, unless a schedule delay mutually agreed upon by MTA and the City, is in place.

6. Changes and Change Orders.

- a) "Change Orders" shall refer to changes to the Bridge Contract.
- b) Any Change Order in excess of \$100,000 shall be submitted to LACMTA for review and approval. The parties shall develop a specific approval schedule and process for timely approval, prior to award of the Bridge Contract.
- c) If a Change Order in excess of \$100,000 is considered an emergency, LACMTA will be contacted via email for the emergency basis of approval. The City will then provide all documentation per the final approval to LACMTA, within 30 days of the Change Order approval.
- d) "Material Changes" shall refer to any change or Change Order that (i) results in a Project Schedule that requires funding beyond the last year in which funds are programed (FY 2021), (ii) results in a Project Budget amount that is greater than \$21,700,000, (iii) changes the Scope of Work, or (iv) otherwise changes the terms of this MOU. Material Changes will require a written amendment to this MOU.

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- e) A Project Budget amount that is greater than the \$21,700,000 will require approval by the LACMTA Board of Directors.
- f) Change Orders that are less than \$100,000, and do not materially affect the terms of this MOU ("Non Material Changes"), can be made without LACMTA approval, but with formal notification to LACMTA for informational purposes, within ten (10) days of the Change Order.

7. The Bridge will be owned, operated and maintained by the City. LACMTA shall have no obligation to operate, or maintain the Bridge. The City shall be solely responsible for any costs associated with operating and maintaining the bridge.

8. The Department of Water and Power (DWP) will be responsible for funding the portion of the Bridge costs associated with the DWP facilities incorporated into the bridge. LACMTA will not be responsible for any costs associated with the DWP facilities, or the design or construction thereof.

9. The following costs are not a part of the Bridge Scope of Work and will be ineligible expenses for LACMTA funding under this agreement:

- a) Costs associated with a bicycle path connection along Kerr Road to San Fernando Boulevard are ineligible expenses.
- b) Costs associated with the DWP facilities are ineligible expenses, including the pro-rata share of hard and soft costs attributable to the DWP facilities.
- c) Costs expended in association with required permits, obtained under a prior MOU, are ineligible expenses. Costs expended in association with permit renewal or compliance during construction, or mitigation costs as part of construction or permit compliance, will be eligible expenses under this MOU.
- d) Costs expended in association with real estate or right of way acquisitions, are ineligible expenses, unless unforeseen real estate expenses are necessary to complete bridge construction, subject to approval by LACMTA.

10. LACMTA's fulfillment of its obligations under this MOU shall fulfill LACMTA's obligations under the 1992 Settlement.

11. LACMTA's Address:
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, CA 90012
Attention: Marie Sullivan
Mail Stop 99-23-4
sullivanma@metro.net
12. City's Address:
City of Los Angeles
1149 S. Broadway Street, Suite 830
Los Angeles, CA 90015
Attention: Nur Malhis
Mail Stop 507
nur.malhis@lacity.org

**PART II
GENERAL TERMS OF THE MOU**

1. TERM:

1.1 The term of this MOU shall commence on the Effective Date of this MOU and shall expire upon the occurrence of all of the following, unless terminated earlier as provided herein: (i) the agreed upon Scope of Work has been completed; (ii) all LACMTA audit and reporting requirements have been satisfied; and (iii) the final disbursement of the Funds has been made to City. All eligible Bridge expenses as defined in the Reporting and Expenditure Guidelines (Attachment D) incurred after the Effective Date shall be eligible expenses in accordance with the terms and conditions of this MOU. The parties understand and agree there are certain covenants and clauses of this MOU which specifically remain in effect after expiration or termination of this MOU.

1.2 Should LACMTA determine there are insufficient Funds available for the Bridge; LACMTA may terminate this MOU by giving written notice to City at least thirty (30) days in advance of the effective date of such termination, at which point, City must notify Contractor immediately to stop work. If this MOU is terminated pursuant to this section, LACMTA shall not be responsible for any costs incurred by City after the effective date of such termination, except for the following:

- i) costs to comply with all permit and environmental agency requirements already incurred at the time of termination, or resulting from the termination,
- ii) costs necessary to return any facilities constructed or modified by the Bridge's construction to a safe state,
- iii) costs already incurred by the Contractor at the time of termination, or
- iv) costs for Contractor's known claims already on record and approved by LACMTA at the time of termination, or resulting from the termination and approved by LACMTA.

Additionally, in such event of insufficient Funds, LACMTA will be responsible for eligible expenses incurred by the City prior to the date of termination. In the event of a termination due to lack of funds, LACMTA's obligation under the 1992 Settlement shall not have been satisfied.

2. INVOICE BY CITY:

2.1 Unless otherwise stated in this MOU, the Quarterly Progress/Expenditure Report, with supporting documentation of expenses and Bridge progress as described in Part II, Section 4 DISBURSEMENT OF FUNDS of this MOU, shall satisfy LACMTA invoicing requirements.

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2.2 Submit invoice with supporting documentation to:

ACCOUNTSPAYABLE@METRO.NET (preferable) or mail to:

Los Angeles County Metropolitan Transportation Authority
Accounts Payable
P. O. Box 512296
Los Angeles, CA 90051-0296

2.3 All invoice material must contain the following information:

Re: LACMTA Project ID# 2077NC and FA# 920000000F
Marie Sullivan; Mail Stop 99-23-4

3. USE OF FUNDS:

3.1 City shall utilize the Funds to complete the Bridge as described in the Scope of Work and Project Schedule.

3.2 City shall not use the Funds to substitute for any other funds or projects not specified in this MOU. Further, City shall not use the Funds for any expenses or activities beyond the approved Scope of Work.

*3.3 City must use the Funds in the most cost-effective manner. If City intends to use a consultant or contractor to implement all or part of the Bridge, LACMTA requires that such activities be procured in accordance with City's contracting procedures and consistent with State law. City will also use the Funds in the most cost-effective manner when the Funds are used to pay "in-house" staff time. This effective use of funds provision will be verified by LACMTA through on-going project monitoring and through any LACMTA interim and final audits.

*3.4 City's employees, officers, councilmembers, board member, agents, or consultants (a "City Party") are prohibited from participating in the selection, award, or administration of a third-party contract or sub-agreement supported by the Funds if a real or apparent conflict of interest would be involved. A conflict of interest would include, without limitation, an organizational conflict of interest or when any of the following parties has a financial or other interest in any entity selected for award: (a) a City Party (b) any member of a City Party's immediate family, (c) a partner of a City Party; (d) any organization that employs or intends to employ any of the above. This conflict of interest provision will be verified by LACMTA through on-going project monitoring and through any LACMTA interim and final audits.

3.5 City is obligated to continue using the Bridge consistent with the public transportation purposes for which the Bridge was intended. The Bridge

right-of-way and real property purchased to implement the Bridge shall remain dedicated to public transportation use. The obligations set forth in this section shall survive termination of this MOU.

3.6 If City desires to use the Funds to purchase or lease equipment including, without limitation, vehicles, office equipment, computer hardware or software, or other personal property ("Equipment") necessary to perform or provide the services set forth in the Scope of Work, City must obtain LACMTA's written consent prior to purchasing any Equipment. Equipment purchased without such prior written consent shall be deemed an ineligible expenditure of the Funds. Equipment acquired as part of the Bridge shall be dedicated to that Bridge use for their full economic life cycle, including any extensions of that life cycle achieved by reconstruction, rehabilitation, or enhancements.

3.7 If equipment ceases to be used for the proper use as originally stated in the Scope of Work, City will be required to return to LACMTA the Funds used to purchase or lease such Equipment in proportion to the useful life remaining. The obligations set forth in this section shall survive termination of this MOU.

3.8 City understands that this MOU does not provide any rights for City to use LACMTA real property needed for the Bridge. If the Bridge requires use of LACMTA Property, City will need to enter into a separate MOU with LACMTA in accordance with LACMTA real property policies and procedures. Nothing in this MOU obligates LACMTA to provide City with any real estate right.

4. DISBURSEMENT OF FUNDS:

4.1 Upon award of Bridge Contract, City shall provide the schedule of values and construction schedule from the Bridge Contract to be reviewed and approved by LACMTA. City shall create cost projections every six months, based on the schedule of values and construction schedule. Disbursements shall be made every six months, upon receipt of a valid and LACMTA approved cost projection for the following six months, in accordance with the provisions of this MOU. Cost projections will be submitted to LACMTA every six months, beginning as soon as City has a cost projection and needs advance of funds, and on June 1 and December 1 thereafter. LACMTA shall disburse funds for the following six months within 30 days of receipt of a valid cost projection. Each cost projection should reflect any discrepancies between projected and actual expenditures from the previous disbursement period. Disbursements will be adjusted accordingly if there are unspent funds from the previous cost projection.

4.2 City shall submit the Quarterly Progress/Expenditure Report (Attachment D-1) within 30 days after the close of each quarter. Should City fail to submit such reports within 10 days of the due date and/or City submits incomplete reports, LACMTA will not process the subsequent disbursement until the completed, required reports are received, reviewed, and approved. The Quarterly Progress/Expenditure Report shall include all supporting documentation (such as contractor invoices, timesheets, receipts, etc.) with a clear justification and explanation of their relevance to the Bridge. If the City cannot submit official reports at the specified due date, they will submit draft reports and replace them with official reports, when they become available, but in no event later than at the end of the following quarter. If no activity has occurred during a particular quarter, City will still be required to submit the Quarterly Progress/Expenditure Report indicating no dollars were expended that quarter. Each six months, LACMTA will review the Quarterly Progress/Expenditure Report from the previous two quarters for compliance with the associated cost projection.

4.3 LACMTA will make all disbursements electronically unless an exception is requested in writing. Disbursements via Automated Clearing House (ACH) will be made at no cost to City. City must complete the ACH form and submit such form to LACMTA before disbursements can be made. ACH Request Forms can be found at http://www.metro.net/projects/call_projects/call_projects-reference-documents/.

4.4 City must provide detailed supporting documentation with its Quarterly Progress/Expenditure Report.

4.6 Expenses that are not reported in the Quarterly Progress/Expenditure Report within 90 days after City has paid the expense are not eligible expenses, unless prior notification of late invoices from the Contractor or Vendors are reported to LACMTA by City, and concurred in writing by LACMTA. However, in the event, a late invoice is submitted by the Contractor, and prior notification is not reported to LACMTA, reimbursement will be eligible if invoices are verified by City and accepted by LACMTA as a valid expense.

4.7 Any Funds expended by City prior to the Effective Date of this MOU shall not be eligible expenses, without the prior written consent of LACMTA.

5. AUDIT REQUIREMENTS/PAYMENT ADJUSTMENTS:

*5.1 LACMTA, and/or its designee, shall have the right to conduct audits of the Bridge, as deemed appropriate, such as financial and compliance audits; interim audits; pre-award audits, performance audits and final audits. LACMTA will commence a final audit within six months of receipt of an acceptable final invoice, provided the Bridge is ready for final audit (meaning all costs and charges have been paid by City and invoiced to LACMTA, and such costs, charges and invoices

are properly documented and summarized in the accounting records to enable an audit without further explanation or summarization including actual indirect rates for the period under review). Payment of retention amounts shall not occur until after LACMTA's final audit is completed. City agrees to establish and maintain proper accounting procedures and cash management records and documents in accordance with Generally Accepted Accounting Principles (GAAP). City shall reimburse LACMTA for any expenditure not in compliance with this MOU. City's eligible expenditures submitted to LACMTA for this Bridge shall be in compliance with the Reporting and Expenditure Guidelines (Attachment D) and 2 CFR Subtitle A, Chapter II, Part 200. The eligibility of costs for City's contractors, consultants and suppliers submitted to LACMTA through Recipient's Quarterly Progress Reports/Expenditures shall be in compliance with 2 CFR Subtitle A, Chapter II, Part 200 or, 48 CFR Part 31 (FAR), whichever is applicable. Any use of the Funds which is expressly prohibited under this MOU shall be an ineligible use of the Funds and may be disallowed by LACMTA audit. Findings of the LACMTA audit are subject to review and comment by City, prior to being finalized. When LACMTA audit findings require City to return monies to LACMTA, City shall return such monies within thirty (30) days after the final audit is sent to City. The parties do not release nor waive their rights to proceed in a court of competent jurisdiction to appeal or otherwise adjudicate finalized audit findings.

*5.2 City's records shall include, without limitation, accounting records, written policies and procedures, contract files, original estimates, correspondence, change order files (including documentation covering negotiated settlements), invoices, and any other supporting evidence deemed necessary by LACMTA to substantiate charges related to the Bridge (all collectively referred to as "records") shall be open to inspection and subject to audit and reproduction by LACMTA auditors or authorized representatives to the extent deemed necessary by LACMTA to adequately permit evaluation of expended costs. Such records subject to audit shall also include, without limitation, those records deemed necessary by LACMTA to evaluate and verify, direct and indirect costs, (including overhead allocations) as they may apply to costs associated with the Bridge. These records must be retained by City for three years following final payment under this MOU

*5.3 City shall cause all contractors to comply with the requirements of Part II, Sections 5.1 and 5.2 above. City shall cause all contractors to cooperate fully in furnishing or in making available to LACMTA all records deemed necessary by LACMTA auditors or authorized representatives related to the Bridge.

*5.4 LACMTA or any of its duly authorized representatives, upon reasonable written notice shall be afforded access to all of the records of City and its contractors related to the Bridge, and shall be allowed to interview any employee of City and its contractors through final payment to the extent reasonably practicable.

*5.5 LACMTA or any of its duly authorized representatives, upon reasonable written notice, shall have access to the offices of City and its contractors, shall have access to all necessary records, including reproduction at no charge to LACMTA, and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the terms and conditions of this MOU.

*5.7 When business travel associated with the Bridge requires use of a vehicle, the mileage incurred shall be eligible at the mileage rates set by the Internal Revenue Service, as indicated in the United States General Services Administration Federal Travel Regulation, Privately Owned Vehicle Reimbursement Rates.

*5.8 City shall certify monthly invoices by reviewing all contractor and subcontractor costs and maintaining internal control to ensure that all expenditures are allocable, eligible and reasonable and in accordance with 2 CFR Subtitle A, Chapter II, Part 200 or 48 CFR Part 31 (whichever is applicable) and the terms and conditions of this MOU.

5.9 City shall also certify final costs of the Bridge to ensure all costs are in compliance with 2 CFR Subtitle A, Chapter II, Part 200 or 48 FAR Part 31 (whichever is applicable) and the terms and conditions of this MOU.

5.10 Whenever possible, in exercising its audit rights under this MOU, LACMTA shall rely on City's own records and audit work to minimize direct audit of contractors, consultants, and suppliers.

5.11 LACMTA shall be given a copy of the final construction contract between the City of Los Angeles, Public Works and the Contractor, for review and approval.

5.12 LACMTA, or any of its duly authorized representatives, shall be invited to attend the regular scheduled construction meetings or specially called meetings related to change orders or schedule changes.

6. ONE TIME FUNDING:

6.1 This MOU does not imply nor obligate any future funding commitment on the part of LACMTA, beyond that agreed upon by the MOU.

7. SOURCES AND DISPOSITION OF FUNDS:

7.1 The obligation for LACMTA to disburse the Funds for the Bridge is subject to sufficient Funds being made available for the Bridge by the LACMTA Board of Directors.

7.2 If, at the time of final Quarterly Progress/Expenditure Report, it is determined that City has received Funds in excess of what City should have received for the Project, City shall return such overage to LACMTA within 30 days from final Quarterly Progress/Expenditure Report.

8. TIMELY USE OF FUNDS:

8.1 City must demonstrate timely use of the Funds by:

- a) executing this MOU within ninety (90) days of receiving formal transmittal of the MOU from LACMTA; and
- b) meeting the project milestones as agreed upon by the LACMTA and City in the MOU, the Scope of Work and Project Schedule;
- c) awarding the Bridge construction contract within two (2) years from the date of execution of this MOU; and
- d) submitting the Quarterly Progress/Expenditure Reports; and
- e) expending the Funds disbursed under this MOU for eligible costs within four (4) years of the first disbursement.

8.2 Quarterly Progress/Expenditure Reports will be used to evaluate compliance with the Project milestone due dates as identified in the MOU. If the Project does not meet the milestone due dates as agreed upon in the Project Schedule, attached as Attachment C, and otherwise in this MOU, LACMTA will issue a notice of non-compliance to City, and City will be required to develop a written recovery plan illustrating in detail City's actions to resolve the delay and to meet the Project completion date agreed upon in the MOU (the "Recovery Plan"). If the Recovery Plan is deemed viable by LACMTA staff, and meets the Project completion date agreed upon in the MOU, LACMTA may grant an administrative schedule update as long as the Funds are expended in compliance with (iv) above. If City fails to submit a Recovery Plan within 30 days of the notice of non-compliance from LACMTA, or the Recovery Plan is not sufficient to show the Bridge will be completed in a reasonable amount of time, as determined by LACMTA, City shall be in Default.

8.3 If City fails to meet any of the conditions in paragraph 8.1 or 8.2 above, City shall be in Default.

9. DEFAULT:

9.1 A Default under this MOU is defined as any one or more of the following: (i) City fails to comply with the terms and conditions contained herein; (ii) City is consistently behind schedule in meeting project milestones or in delivering the Project; or (iii) City fails to perform satisfactorily or makes a Material Change, as determined by LACMTA at its sole discretion, to the Scope of Work, the Project Budget, or the Bridge Schedule without LACMTA's prior written consent or approval as provided herein. If the Contractor is causing the City to be in Default, the City shall provide a recovery plan to Metro, per the guidelines in Section 8.2.

9.2 If City Defaults and does not cure the Default, LACMTA will have fulfilled its obligation under the 1992 Settlement.

10. REMEDIES:

10.1 In the event of a Default by City, LACMTA shall provide written notice of such Default to City with a 30-day period to cure the Default. In the event City fails to cure the Default, or commit to cure the Default and commence the same within such 30-day period to the satisfaction of LACMTA, LACMTA shall have the following remedies: (i) LACMTA may terminate this MOU; (ii) LACMTA may make no further disbursements of Funds to City; and/or (iii) LACMTA may recover from City any Funds disbursed to City as allowed by law or in equity.

10.2 Effective upon receipt of written notice of termination from LACMTA pursuant to Section 10.1, City shall not undertake any new work or obligation with respect to this MOU unless so directed by LACMTA in writing. Any Funds expended after termination shall be the sole responsibility of City.

10.3 The remedies described herein are non-exclusive. LACMTA shall have the right to enforce any and all rights and remedies herein or which may be now or hereafter available at law or in equity.

11. COMMUNICATIONS:

*11.1 City shall ensure that all Communication Materials contain recognition of LACMTA's contribution to the Bridge as more particularly set forth in "Funding Agreement Communications Materials Guidelines" available on line or from the LACMTA Project Manager. Please check with the LACMTA Project Manager for the web address. The Funding Agreement Communications Materials Guidelines may be changed from time to time during the course of this MOU. City shall be responsible for complying with the latest Funding MOU Communications Materials Guidelines during the term of this MOU, unless

otherwise specifically authorized in writing by the LACMTA Chief Communications Officer.

*11.2 For purposes of this MOU, "Communications Materials" include, but are not limited to, press events, public and external newsletters, printed materials, advertising, websites radio and public service announcements, electronic media, and construction site signage. A more detailed definition of "Communications Materials" is found in the Funding Agreement Communications Materials Guidelines.

*11.3 The LACMTA logo is a trademarked item that shall be reproduced and displayed in accordance with specific graphic guidelines. These guidelines and logo files including scalable vector files will be available through the LACMTA Project Manager.

*11.4 City shall ensure that any subcontractor, including, but not limited to, public relations, public affairs, and/or marketing firms hired to produce Project Communications Materials for public and external purposes will comply with the requirements contained in this Section.

11.5 The LACMTA Project Manager shall be responsible for monitoring City compliance with the terms and conditions of this Section. City failure to comply with the terms of this Section shall be deemed a default hereunder and LACMTA shall have all rights and remedies set forth herein.

12. OTHER TERMS AND CONDITIONS:

12.1 This MOU, along with its Attachments, constitutes the entire understanding between the parties, with respect to the subject matter herein. The MOU shall not be amended, nor any provisions or breach hereof waived, except in writing signed by the parties who agreed to the original MOU or the same level of authority.

*12.2 Neither LACMTA nor any subsidiary or their respective directors, officers, agents, or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or committed to be done by City under or in connection with any work performed by or service provided by City, its officers, agents, employees, contractors and subcontractors under this MOU or the design of the Bridge under the 2012 MOU. Except for the active negligence or willful misconduct of LACMTA, City shall fully indemnify, defend (with counsel approved by LACMTA) and hold LACMTA, and its subsidiaries and their respective directors, officers, agents and employees harmless from and against any suits and causes of actions, claims, losses, liability, damages, costs and expenses, including without limitation, 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, and any legal fees in any way arising out of acts or

omissions to act related to the Bridge or this MOU, without requirement that LACMTA first pay such claim. The obligations set forth in this section shall survive termination of this MOU.

12.3 Neither party hereto shall be considered in default in the performance of its obligation 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, and government acts beyond the 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 MOU.

*12.4 City shall comply with and insure that work performed under this MOU is done in compliance with Generally Accepted Accounting Principles (GAAP), all applicable provisions of federal, state, and local laws, statutes, ordinances, rules, regulations, and procedural requirements including Federal Acquisition Regulations (FAR), and the applicable requirements and regulations of LACMTA. City acknowledges responsibility for obtaining copies of and complying with the terms of the most recent federal, state, or local laws and regulations, and LACMTA requirements including any amendments thereto.

12.5 City agrees that those sections of this MOU marked with an asterisk shall be included in every contract entered into by City or its contractors relating to work performed under this MOU and LACMTA shall have the right to review and audit such contracts.

12.6 City shall not assign this MOU, or any part thereof, without prior approval of the LACMTA Chief Executive Officer or his designee, and any assignment without said consent shall be void and unenforceable at the option of LACMTA.

12.7 This MOU shall be governed by California law. If any provision of this MOU is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

12.8 The covenants and MOUs of this MOU shall inure to the benefit of, and shall be binding upon, each of the parties and their respective successors and assigns.

12.9 City will advise LACMTA prior to any key Project staffing changes including changes in Project Manager, Project Engineer, and Construction Manager.

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12.10 City in the performance of the work described in this MOU is not a contractor nor an agent or employee of LACMTA. City attests to no organizational or personal conflicts of interest and agrees to notify LACMTA immediately in the event that a conflict, or the appearance thereof, arises. City shall not represent itself as an agent or employee of LACMTA and shall have no powers to bind LACMTA in contract or otherwise.

12.11 The parties may amend this MOU, as needed, subject to mutual written consent.

ATTACHMENT A – SCOPE OF WORK

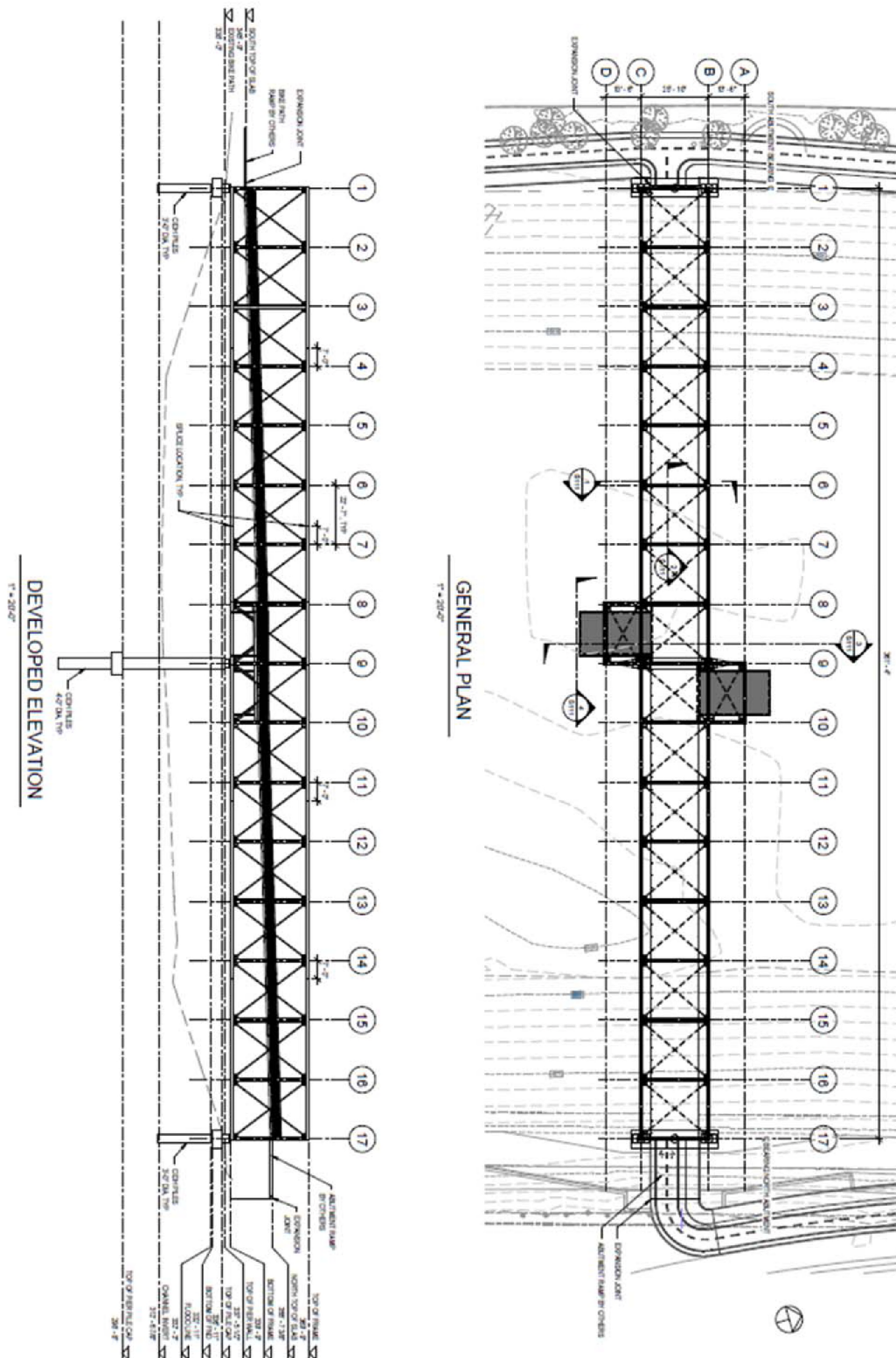
The Taylor Yard Bikeway/Pedestrian Bridge over the Los Angeles River Project (“Bridge”) is located within the City of Los Angeles (“City”), which will connect the communities of Elysian Valley on the west and Cypress Park on the east of the LA River. The Bridge will be for bicycle and pedestrian use, and will also support emergency vehicles. On the west side of the LA River, the Bridge will connect with the existing bikeway along the river.

The Bridge features a steel-framed structure, approximately 400 feet long, which will be supported on abutments and a concrete pier in the central portion of the LA River channel. The abutment to the east will be along the Los Angeles River maintenance road, and the abutment on the west side will be along the existing bikeway. Both abutments will be adjacent to the top of the channel slopes. The Bridge structure itself will be approximately 30 feet high by 27 feet wide and the width of the actual pedestrian and bikeway path will be approximately 18 feet.

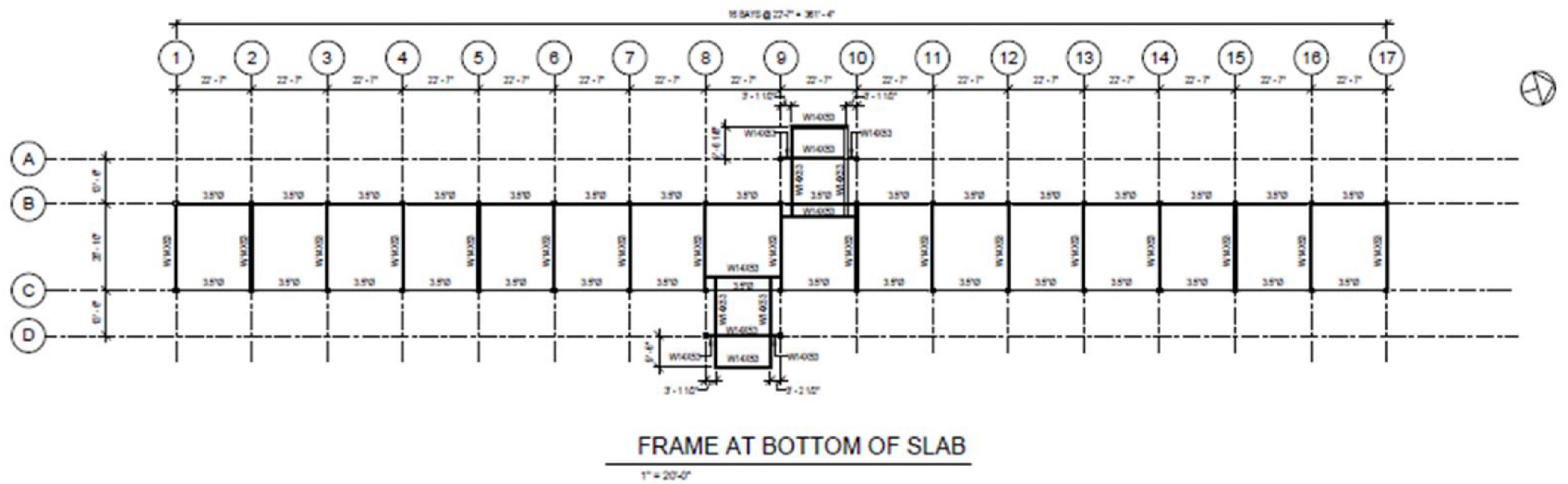
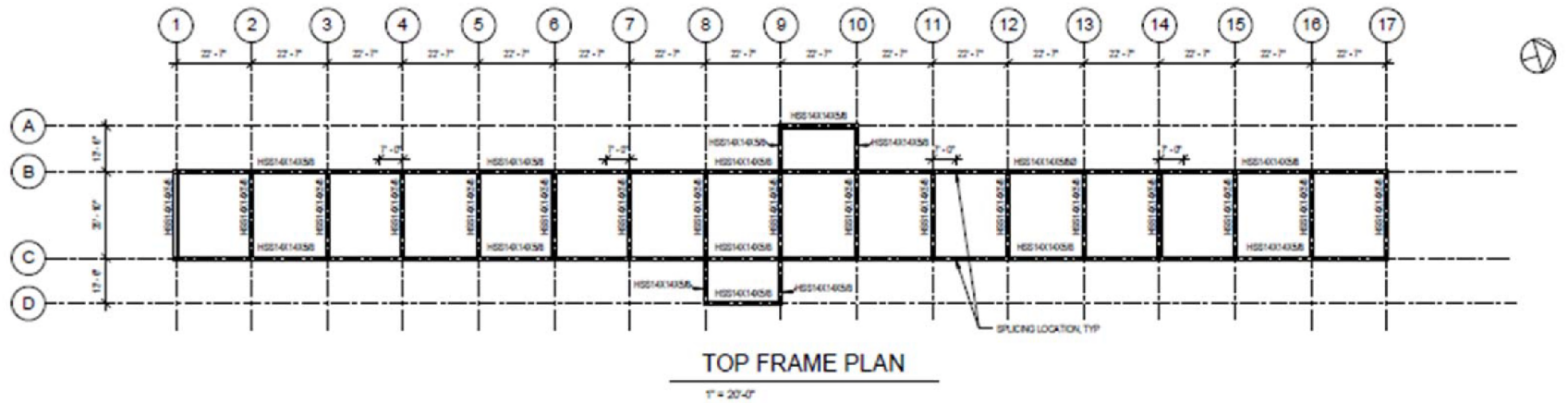
The Bridge landing on the west side will land on the G2 parcel, recently purchased by the City from the previous owner, Union Pacific Regional Railroad. On this parcel runs a tail track owned by Metrolink which will require an at-grade crossing. At this time, Metrolink is working to fund a design for a relocation of the tail track, as a result of the sale of the G2 parcel. The Bridge will occupy land within jurisdictions governed by the City, the Army Corps of Engineers, and the Los Angeles County Flood Control District.

ATTACHMENT A-1 – Approved 50% Bridge Design

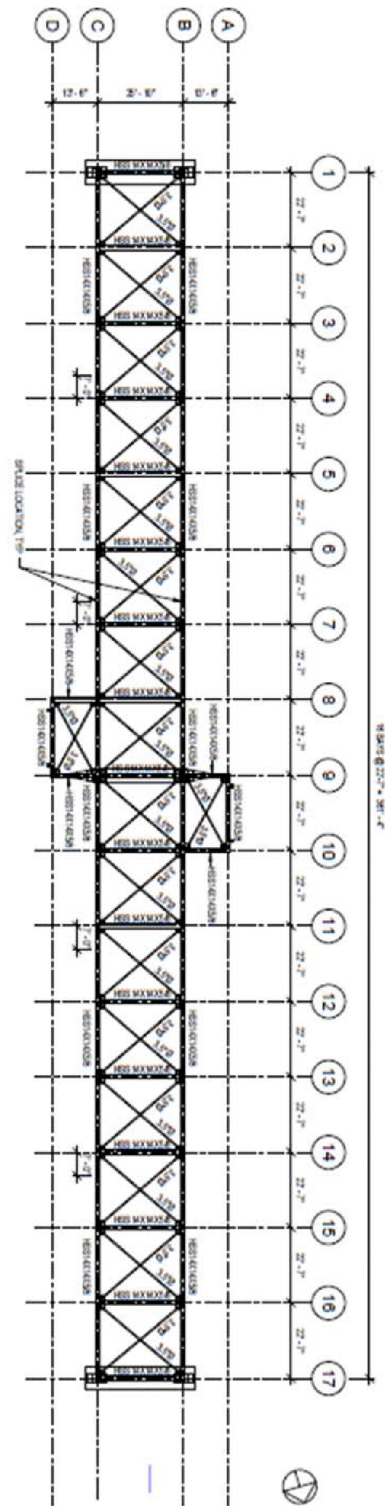




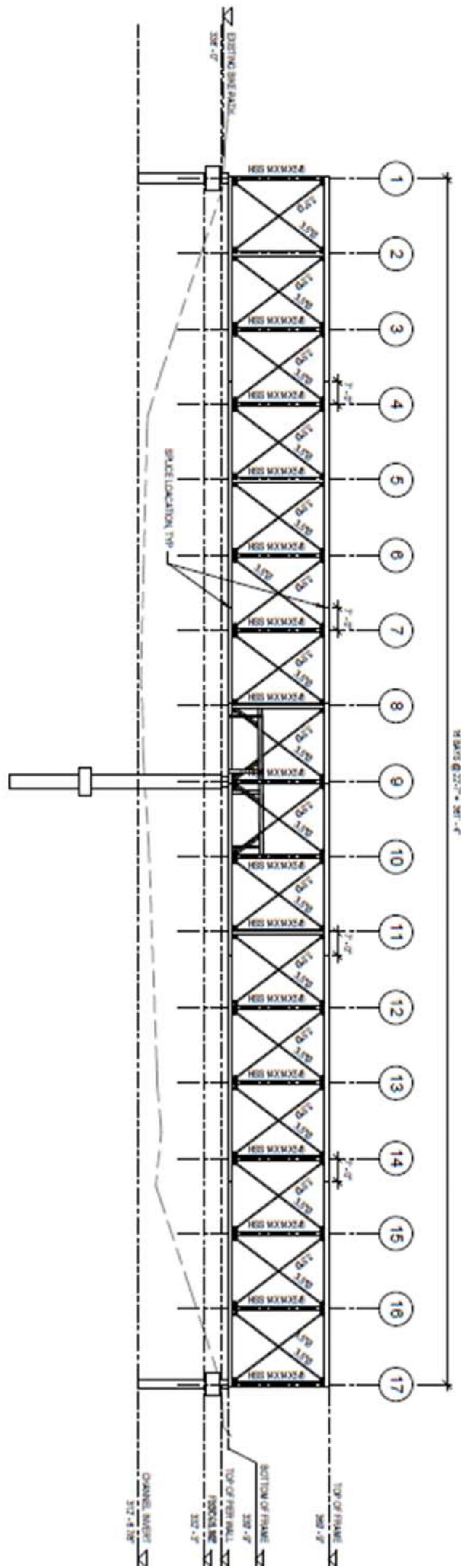
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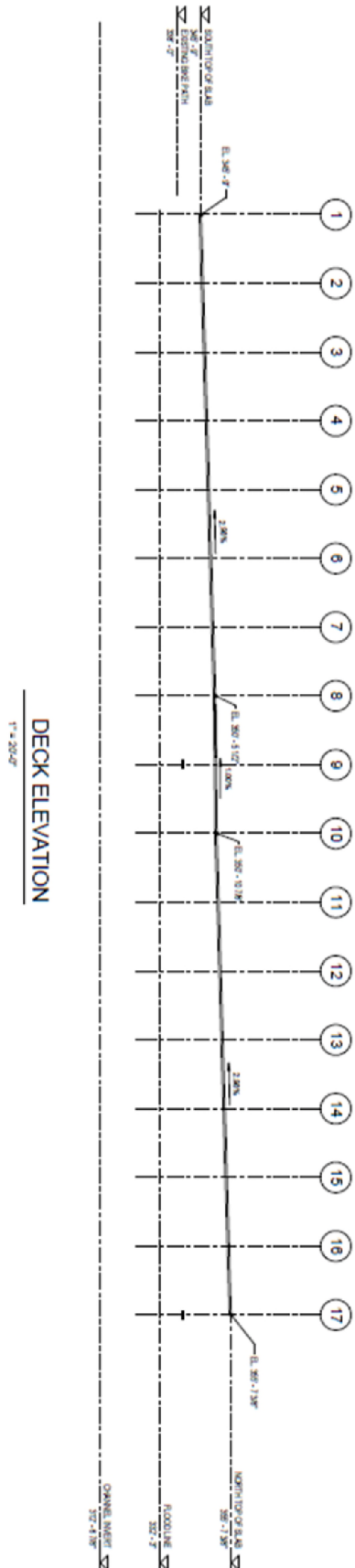
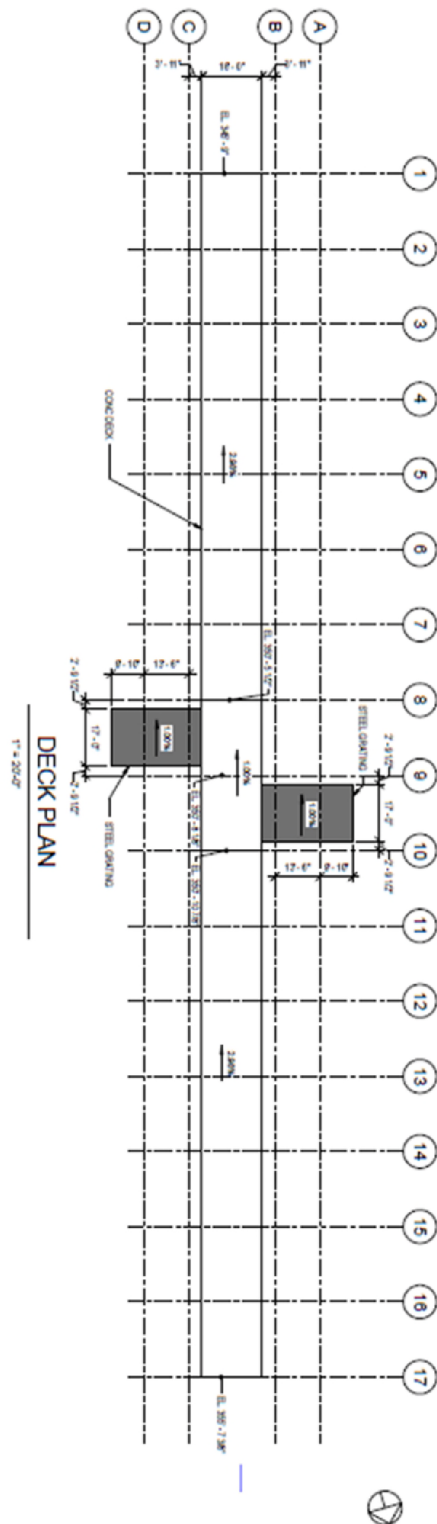
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BOTTOM FRAME PLAN



VERTICAL FRAMING ARRANGEMENT



ATTACHMENT B – Project Budget

Item	Cost	Comments
Construction		
Construction Cost	\$16,000,000	General Conditions, General Requirements, Allowances, Mobilization, Bridge Super and Substructure, Pedestrian Approach and Bike Path, Lighting, Drainage, Erosion Control, Landscaping, Irrigation, Signing and Striping
Construction Contingency	\$3,200,000	20% of Construction Cost
Total Construction Cost	\$19,200,000	
Construction Engineering/Administration		
Project Management / Construction Management Costs	\$1,100,000	Approximately 15% of Total Construction Costs
Bureau of Contract Administration/ Inspection and Testing Costs	\$1,000,000	
Consultant Costs	\$270,000	
Mitigation and Monitoring Costs	\$100,000	
Other Direct Costs	\$30,000	
Total Construction Engineering/Administration Costs	\$2,500,000	
TOTAL CONSTRUCTION BUDGET	\$21,700,000	

ATTACHMENT C – Project Schedule

Milestone /Season	Start	Finish	Duration	Activities
Award Contract	08/31/2018		Milestone	
Construction Start	10/01/2018		Milestone	Issue Notice to Proceed
Wet Season (2018)*	10/01/2018	04/14/2019	7 months	Mobilization, Clearing and Grubbing, Contractor Submittals
Dry Season (2019)	04/15/2019	10/15/2019	6 months	Construct Substructure for Bridge
Wet Season (2019)*	10/16/2019	04/14/2020	6 months	Offsite Erection of Bridge Frame, Submittals
Dry Season (2020)	04/15/2020	10/15/2020	6 months	Construct Superstructure of Bridge
Wet Season (2020)	10/16/2020	03/15/2021	5 months	Construct Bikeway Approach Ramps, Landscaping, Lighting, Final Items
Punch List	03/16/2021	05/15/2021	2 months	
Total			32 months	
<i>Notes:</i>				
*Contractor cannot work in the LA River Channel during wet season				

ATTACHMENT D – REPORTING & EXPENDITURE GUIDELINES

REPORTING GUIDELINES

- 1) Quarterly Progress/Expenditure Report (Attachment D1) is required for all projects. The City shall be subject to and comply with all applicable requirements of the funding agency regarding project-reporting requirements. In addition, City will submit a quarterly report to the LACMTA at ACCOUNTSPAYABLE@METRO.NET or by mail to Los Angeles County Metropolitan Transportation Authority, Accounts Payable, P. O. Box 512296, Los Angeles, California 90051-0296. Please note that letters or other forms of documentation may not be substituted for this form.
- 2) The Quarterly Progress/Expenditure Report covers all activities related to the project and lists all costs incurred. It is essential that City provide complete and adequate response to all the questions. The expenses listed must be supported by appropriate documentation with a clear explanation of the purpose and relevance of each expense to the project.
- 3) In cases where there are no activities to report, or problems causing delays, clear explanation, including actions to remedy the situation, must be provided.
- 4) City is required to track and report on the project schedule. LACMTA will monitor the timely use of funds and delivery of projects. Project delay, if any, must be reported each quarter. Projects not delivered in a timely manner may be subject to the Default clause.
- 5) The Quarterly Progress/Expenditure Report is due to the LACMTA as soon as possible after the close of each quarter, but no later than the following dates for each fiscal year:

Quarter	Report Due Date
July –September	October 30
October- December	January 31
January - March	April 30
April - June	July 31

- 6) Upon completion of the Project a final report that includes project's final evaluation must be submitted.

EXPENDITURE GUIDELINES

- 1) Any activity or expense charged above and beyond the approved Scope-of-Work (Attachment C) is considered ineligible and will not be eligible unless prior written authorization has been granted by the LACMTA Chief Executive Officer or his/her designee.
- 2) Administrative cost is the ongoing expense incurred by the City for the duration of the project and for the direct benefit of the project as specified in the Scope-of-Work (Attachment C). Examples of administrative costs are personnel, office supplies, and equipment. As a condition for eligibility, all costs must be necessary for maintaining, monitoring, coordinating, reporting and budgeting of the project. Additionally, expenses must be reasonable and appropriate to the activities related to the project.
- 3) LACMTA is not responsible for, any costs incurred by the City prior to the Effective Date of the FA, unless written authorization has been granted by the LACMTA Chief Executive Officer or her/her designee.

DEFINITIONS

- 1) Eligible Cost: To be eligible, costs must be reasonable, recognized as ordinary and necessary, consistent with established practices of the organization, and consistent with industry standard of pay for work classification.
- 2) Excessive Cost: Any expense deemed “excessive” by LACMTA staff would be adjusted to reflect a “reasonable and customary” level. For detail definition of “reasonable cost”, please refer to the Federal Register OMB Circulars A-87 Cost Principals for State and Local Governments; and A-122 Cost Principals for Nonprofit Organizations.
- 3) Ineligible Expenditures: Any activity or expense charged above and beyond the approved Scope-of-Work is considered ineligible.

ATTACHMENT D1 –
FORM OF QUARTERLY PROGRESS EXPENDITURE REPORT

LACMTA FA ATTACHMENT D-1

QUARTERLY PROGRESS / EXPENSE REPORT

City To Complete	
Invoice #	
Invoice Date	
FA#	920000000 F
Quarterly Report #	

CITY IS REQUESTED TO EMAIL THIS REPORT TO

ACCOUNTSPAYABLE@METRO.NET

or submit by mail to:

Los Angeles County Metropolitan Transportation Authority

Accounts Payable

P. O. Box 512296

Los Angeles, California 90051-0296

after the close of each quarter, but no later than November 30, February 28,

May 31 and August 31. Please note that letters or other forms

of documentation may **not** be substituted for this form. Refer to the

Reporting and Expenditure Guidelines (Attachment D) for further information.

SECTION 1: QUARTERLY EXPENSE REPORT

Please itemize grant-related charges for this Quarter on Page 5 of this report and **include totals in this Section.**

		City Staff Time \$	Construction Contract \$	Total \$
Project Quarter Expenditure				
This Quarter Expenditure				
Retention Amount				
Net Invoice Amount (Less Retention)				

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Project-to-Date Expenditure				
Funds Expended to Date (Include this Quarter)				
Total Project Budget				
% of Project Budget Expended to Date				
Balance Remaining				

SECTION 2: GENERAL INFORMATION

PROJECT TITLE: _____
 - - - - -

FA #: _____

QUARTERLY REPORT SUBMITTED FOR:

Fiscal Year : ☐ 2018-2019 ☐ 2019-2020 ☐ 2020-2021

Quarter : ☐ Q1: Jul - Sep ☐ Q2: Oct - Dec
 ☐ Q3: Jan - Mar ☐ Q4: Apr - Jun

DATE SUBMITTED: _____

LACMTA Project Manager	Name:	
	Phone Number:	
	E-mail:	

Project Sponsor Contact / Project	Contact Name:	
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Manager

Job Title:	
Department:	
City / Agency:	
Mailing Address:	
Phone Number:	
E-mail:	

SECTION 3 : QUARTERLY PROGRESS REPORT

1. DELIVERABLES & MILESTONES

List all deliverables and milestones as stated in the MOU, with start and end dates. Calculate the total project duration. **DO NOT CHANGE THE ORIGINAL MOU MILESTONE START AND END DATES SHOWN IN THE 2ND AND 3RD COLUMNS BELOW.**

Grantees must make every effort to accurately portray milestone dates in the original FA Scope of Work, since this will provide the basis for calculating any project delay. If milestone start and/or end dates change from those stated in the MOU indicate the new dates under Actual Schedule below and re-calculate the project duration. However, this does not change the original milestones in the MOU.

MOU Milestones	Original MOU Schedule in Scope of Work		Actual Schedule	
	Start Date	End Date	Start Date	End Date
Construction Bid & Award				
Ground Breaking Event				
Construction				
Ribbon Cutting Event				
Total Project Duration (Months)				

2. PROJECT COMPLETION

A. Based on the comparison of the original and actual project milestone schedules above, project is (select only one) :

☐

On schedule per original MOU schedule

☐

Less than 12 months behind original schedule

☐ Between 12-24 months behind original schedule

☐ More than 24 months behind original schedule

C. Was a construction contract or capital purchase executed within 9 months after completion of MOU

☐ Yes

☐ No

☐ Not Applicable

3. TASKS / MILESTONES ACCOMPLISHED

List tasks or milestones accomplished and progress made this quarter.

4. PROJECT DELAY

If project is delayed, describe reasons for delay (this quarter). Pay particular attention to schedule delays. If delay is for the same reason as mentioned in previous quarters, please indicate by writing "Same as Previous Quarter".

5. ACTION ITEMS TO RESOLVE DELAY

If the project is delayed (as described in #4), include action items that have been, or will be, undertaken to resolve the delay.

SECTION 4: ITEMIZED LISTING OF EXPENSES AND CHARGES THIS QUARTER

All expenses and charges must be itemized and listed below. Each item listed must be verifiable by an invoice and/or other proper documentation. The total amounts shown here must be equal to this quarter's expenditures listed on page 1 of this report. All expenses and charges must be reflective of the approved budget and rates as shown in the MOU. Use additional pages if needed.

ITEM		INVOICE #		EXPENSES / CHARGES	
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					

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13					
TOTAL					

Notes:

1. All receipts, invoices, and time sheets, attached and included with this Expense Report must be listed and shown under the Invoice Number column of the Itemized Listing (above).

I certify that I am the responsible Project Manager or fiscal officer and representative of _____ and that to the best of my knowledge and belief the information stated in this report is true and correct.

Signature

Date

Name

Title