JOSEPH MCDOUGALL, State Bar No. 197689
CITY ATTORNEY
JILL A. VANDER BORGHT, State Bar No. 240004
CHIEF. ASST. CITY ATTY.
*JVanderBorght@burbankca.gov*
275 E. Olive Avenue
Burbank, CA 91502
Tel.: (818) 238-5707
Fax: (818) 238-5724

ALESHIRE & WYNDER, LLP
PAM K. LEE, State Bar No. 246369
*plee@awattorneys.com*
STEPHEN R. ONSTOT, State Bar No. 139319
*sonstot@awattorneys.com*
JOHN E. BAUMAN, State Bar No. 315667
*jbauman@awattorneys.com*
SHUKAN A. PATEL, State Bar No. 347017
*spatel@awattorneys.com*
CODY S. PARKER, State Bar No. 359372
*cparker@awattorneys.com*
1 Park Plaza, Suite 1000
Irvine, California 92614
Tel: (949) 223-1170
Fax: (949) 223-1180

Attorneys for City of Burbank

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

CITY OF BURBANK, a municipal corporation,

Plaintiff,

v.

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, a public entity and DOES 1 through 10, inclusive,

Defendants.

Case No.

**CITY OF BURBANK'S COMPLAINT FOR INVERSE CONDEMNATION AND DECLARATORY & INJUNCTIVE RELIEF**

Plaintiff City of Burbank, a municipal corporation ("City" or "Burbank") by this Complaint hereby alleges as follows:

## INTRODUCTION

1. Defendant Los Angeles County Metropolitan Transportation Authority ("Metro") has planned and seeks to construct the North Hollywood to Pasadena Bus Rapid Transit Corridor Project ("Project"), which is a 19-mile bus rapid transit ("BRT") corridor that spans the communities of North Hollywood, Burbank, Glendale, Eagle Rock, and Pasadena.

2. The Project will traverse the City of Burbank's rights-of-way through, in part, Olive Avenue, a southwest-northeast street, and Glenoaks Boulevard, a northwest-southeast street, towards Glendale. Olive Avenue from Buena Vista Street to Lake Street consists of four lanes (two vehicular lanes in each direction), with curbside parking and sidewalks. The Project will have six bus stations located on City-owned streets/rights-of-way, with one platform stop in each direction, or 12 stops/platforms. A true and correct copy of the Project location map through the City of Burbank is attached hereto as **Exhibit A**.

3. The Project's proposed lane configurations in Burbank include, dedicated bus lanes on segments of Olive Avenue, Alameda Avenue, Buena Vista Street, and Glenoaks Boulevard. Metro's proposed scope for the Project will result in the total loss of 19,410 lineal feet (about 3.7 miles) of vehicular lanes on City Streets belonging to Burbank.

4. Metro attempts to seize Burbank's streets for its own public purpose, in service of its Project, to the exclusion of Burbank and all other non-transit, non-emergency vehicular traffic without providing Burbank with any compensation for the same. The Project will result in the complete taking of a portion of Burbank's property for another public use: dedicated traffic lanes that essentially only Metro is allowed to use for its buses. Neither Burbank, nor any public or private vehicle (other than a transit, emergency or Metro bus vehicle, or bicycles) may use any portion of those dedicated bus lanes along Olive Avenue.

5. Metro has not established that its Project serves a more necessary public

purpose warranting the taking of property owned by Burbank and used by its residents, businesses and visitors, for Metro's own use.

6. To prevent Metro's unconstitutional seizure of Burbank's property, Burbank brings this Complaint: (i) requiring Metro to file an eminent domain action before taking Burbank's property, and (ii) seeking damages for Metro's taking. Absent prompt judicial intervention, Metro's action will deprive Burbank of its property, significantly hamper Burbank's receipt of revenues from various revenue streams, and prevent Burbank from realizing its reasonable investment-backed expectations. Burbank will also be required to expend its own funds to maintain and repair the right-of-way Metro seeks to take in perpetuity which Burbank and members of the public will be excluded from accessing or using, unless this Court acts.

## PARTIES

7. Plaintiff City of Burbank is a municipal corporation and charter city existing and organized under the laws of the State of California and located within the County of Los Angeles. Burbank has legal and equitable title to the right-of-way and property at issue in this case, the relevant portions of Olive Avenue, Alameda Avenue, Buena Vista Street, and Glenoaks Boulevard.

8. Defendant Los Angeles County Metropolitan Transportation Authority (Metro) is a public agency and public corporation existing under the laws of the State of California. Metro is the lead agency responsible for designing, approving, and constructing the Project.

9. Burbank is informed and believed, and on that basis alleges, that Defendants Does 1 through 10, inclusive, are persons or entities whose true names and capacities are presently unknown to Burbank. Burbank will seek leave to amend this Complaint to allege their true names and capacities when ascertained. Burbank is informed and believes, and on that basis alleges, that each of the fictitiously named Defendants is responsible in some manner for the acts, omissions, occurrences, and liabilities alleged in the Complaint.

## JURISDICTION AND VENUE

10. This is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1331 in that Burbank seeks redress under 42 U.S.C. § 1983 for deprivation, under color of state law, of rights, privileges, and immunities secured by the United States Constitution.

11. Burbank's state law claims are so related to its federal law claims such that the state law claims form part of the same case or controversy. Accordingly, supplemental jurisdiction over those claims is appropriate under 28 U.S.C. § 1367.

12. Burbank's action for declaratory relief and injunctive relief is authorized under 20 U.S.C. §§ 2201, 2202, and 1343 and Fed. R. Civ. P. 57 and 65.

13. Venue in this Court is proper under 20 U.S.C. § 1391(b) because the Defendant is located in this judicial district. The events or omissions giving rise to the claims occurred primarily in this judicial district.

## FACTS

### A. Burbank's Streets/Rights-of-Way and the Project

14. Olive Avenue is a street that runs in both directions from southwest to northeast, and is mostly a four-lane street (with two vehicular lanes in each direction), plus a center turn lane and one parking lane in each direction from Hollywood Way until Glenoaks Boulevard where the BRT Project will run.

15. Alameda Avenue is a street that runs in both directions from west to east, and is a four-lane street (with two vehicular lanes in each direction), plus a center turn lane and one parking lane in each direction from Olive Avenue to Buena Vista Street where the BRT Project will run.

16. Buena Vista Street is a street that runs in both directions from north to south, and is a four-lane street (with two vehicular lanes in each direction) plus a center turn lane and one parking lane in each direction from Alameda Avenue to Olive Avenue where the BRT Project will run.

17. Glenoaks Boulevard is a street that runs in both directions from

northwest to southeast. From Olive Avenue to Providencia Avenue, Glenoaks Boulevard is a four-lane street (two vehicular lanes in each direction), plus a center turn lane and one parking lane in each direction. From Providencia Avenue to Alameda Avenue, it widens to six lanes (three vehicular lanes in each direction), plus a raised 24-foot wide median and one parking lane in each direction.

18. When Burbank was incorporated officially in July 1911, it acquired the then-existing rights-of-way, including Olive Avenue, Alameda Avenue, Glenoaks Boulevard (at the time called 4th Street), and Buena Vista Street. These streets were surveyed and laid out by the Providencia Land, Water and Development Company, which had purchased the land of what is now Burbank (and approximately 9,200 acres) from Dr. David Burbank in 1887.

19. From the time of incorporation to the present, Burbank has had ownership, possession, and control of the relevant portions of Olive Avenue, Alameda Avenue, Glenoaks Boulevard, and Buena Vista Street. Burbank has and continues to maintain and repair said rights-of-way as public streets for all vehicular, pedestrian, and other modes of transport.

20. The proposed lane configurations of Metro's Project in Burbank include, in part, full-time (24-hour) dedicated bus lanes on the following general street segments:

(a) Olive Avenue in both directions between Hollywood Way and Alameda Avenue (approximately 2,001 feet);

(b) Alameda Avenue in the eastbound direction between Niagara Street and Naomi Street (approximately 1,124 feet);

(c) Buena Vista Street in northbound direction between Edison Road and Olive Avenue (approximately 459 feet);

(d) Olive Avenue in both directions between Buena Vista and Lake Street between San Fernando Boulevard and Glenoaks Boulevard (approximately 13,565 feet); and

(e) Glenoaks Boulevard between Providencia Avenue and the southern City Limits (approximately 2,261 feet)

21. The Project's total linear distance of full-time, dedicated bus lanes traversing Burbank's streets listed above in both directions is approximately 19,410 feet or approximately 3.7 miles.

22. The Project's bus lanes on Olive Avenue between Hollywood Way and Alameda Avenue, and between San Fernando Boulevard and Glenoaks Boulevard, will remove the curbside parking in each direction to provide full-time dedicated curb-running bus lanes. The Project's bus lanes on Olive Avenue between Buena Vista Street and Lake Street will remove a vehicular travel lane in each direction to provide full-time dedicated side-running bus lanes.

23. The Project's eastbound bus lane on Alameda Avenue between Niagara and Naomi will remove curbside parking in the eastbound direction to provide a full-time dedicated curb-running bus lane.

24. The Project's northbound bus lane on Buena Vista Street between Edison Road and Olive Avenue will remove curbside parking in the northbound direction to provide a full-time dedicated curb-running bus lane.

25. The Project's bus lanes on Glenoaks between Providencia and the southern City Limits will remove a travel lane in each direction nearest the raised median to provide full-time dedicated center-running bus lanes.

26. For every street segment and direction where a bus lane is planned, Metro's proposed scope of the Project will result in the removal of either one travel lane or one curb parking lane to be repurposed exclusively into a full-time dedicated bus lane. This would represent the removal of 19,410 lineal feet of street right-of-way approximately 11 feet wide belonging to the City of Burbank. The Project's total linear distance of dedicated lanes through the City in both directions is 19,410 (approximately 3.7 miles). This number is based on the latest Metro striping plan and excludes intersections where there is no full-time dedicated bus lane striping.

Including intersections between dedicated lane segments, increases the total to approximately 21,000 ft. or 4 miles. Virtually all of the full-time dedicated lanes are 11' in width. Every full-time dedicated lane takes right-of-way from the City which is currently otherwise available to all drivers, bicyclists, businesses, visitors, residents and users without restriction.

**B. Burbank and Metro enter into a Cooperative Agreement**

27. Metro began designing and planning the Project in January 2018.

28. In January 2024, Metro and Burbank entered into a Cooperative Agreement for the design and construction of the Project within the City's jurisdiction. At the time of execution of the Cooperative Agreement, the design of the bus lane configuration running through Burbank's streets/rights-of-way were not finalized and subject to the Parties' mutual agreement. A true and correct copy of the Cooperative Agreement is attached hereto as **Exhibit B**.

29. At all times prior to the execution of the Cooperative Agreement and continuing after its execution, Burbank's position has been that the Project would have mixed flow bus lanes – not full-time dedicated bus lanes – that allow for all vehicular travel in each direction on Olive Avenue from Buena Vista Street to Lake Street. Burbank does not dispute the full-time dedicated bus lanes along Glenoaks Boulevard near Alameda Avenue. This has been Burbank's position as early as late 2020 and early 2022 when Burbank submitted its comments to Metro prior to the Project's approval, when the bus lane configurations were not yet finalized and the environmental review was not yet completed. True and correct copies of Burbank's 2020 and 2022 comments to Metro are attached hereto as **Exhibits C-1 and C-2**.

30. Under the Cooperative Agreement, Burbank is required to approve, after its independent review, various permits related to the Project. This includes any encroachment permits or other approvals related to changing mixed-flow lanes to dedicated bus lanes (e.g., street re-striping, street signage, etc.). However, the timeframe and process for permitting and approval are required to be developed

through mutual cooperation and agreement on an annual work plan.

31. Further, the Cooperative Agreement requires Metro to submit relevant documents and plans in compliance with a mutually agreeable final design of the Project, and Burbank must review each submittal and provide its comments or objections to the design review prior to the commencement of any Project-related construction.

32. Prior to Metro's commencement of any Project-related construction in Burbank, Metro must, in accordance with the Cooperative Agreement, provide all its design submittals to Burbank for review and approval. If there is no approval by Burbank, the Cooperative Agreement requires the parties to negotiate in good faith for a resolution.

33. Between January 2025 and April 2026, Metro and Burbank collaborated on the design of the Project pursuant to the Cooperative Agreement. Throughout this period, Burbank continued to notify Metro that Burbank objected to a design with Olive Avenue to be constructed with a full-time dedicated bus lane between Buena Vista Street and Lake Street, thus depriving Burbank of its own right-of-way and existing vehicular lane in each direction.

34. Metro's plan set submittals included its plan for full-time dedicated bus lanes along Olive Avenue between Buena Vista Street and Lake Street, and Burbank repeatedly objected to such dedicated bus lanes on this segment, instead advocating for mixed-flow lanes. A true and correct copy of Burbank's May 18, 2026 letter objecting to Metro's proposed design plans is attached hereto as **Exhibit D**.

35. On August 31, 2026, the City agreed to issue approvals with notes and corrections for all bus station improvements, roadway and sidewalk improvements, ADA-related pedestrian improvements, utility relocations, street lighting, traffic signal upgrades, and landscaping as set forth in the 275-sheet plan set and the 98-sheet Traffic Control Plans submitted to the City on July 17, 2026, on or before September 1.

36. On September 24 and 29, 2026, the City rejected and marked as "Not-Approved" all signing and striping plans that implement dedicated bus lanes, or any specific traffic signal plans or signal timing that implement dedicated bus lanes. A true and correct copy of Burbank's September 29, 2026 letter rejecting Metro's proposed design plans is attached hereto as **Exhibit E**.

37. Notwithstanding Burbank's objections, Metro persists with its intent to seize two of Burbank's four lanes along Olive Ave to create two full-time dedicated bus lanes (one in either direction) and exclude Burbank and all other motor vehicle traffic from using those lanes, through its position in ongoing litigation in Case No. 26STCP01904.

**C. Tax Revenue Impacts of Metro's Lane Seizures**

38. The relevant portion of Olive Avenue between Buena Vista Street and Lake Street contains a variety of sales-tax generating businesses, including, but not limited to the following:

(a) Valvoline Instant Oil Change;

(b) Coast Annabelle Hotel & Olive's Bistro;

(c) LA Sports Cards;

(d) The Talleyrand Restaurant;

(e) Raising Canes;

(f) McDonalds;

(g) 7-Eleven store;

(h) Subway;

(i) Starbucks;

(j) Olive Auto Center;

(k) Nickelodeon Animation Studio;

(l) Community Chevrolet;

(m) Domino's Pizza;

(n) Frontier Wok; and

(l) Jiffy Lube

39. These businesses generate a sizeable amount of sales tax for Burbank. The sales tax revenue for the businesses listed in the preceding paragraph for the three quarters of Fiscal Year 2025 to 2026 is approximately $571,000, while total sales tax revenue from these businesses for Fiscal Year 2024 to 2025 was approximately $714,000.

40. The commercial and retail properties along that portion of Olive Avenue also pay their share of property taxes, a portion of which is remitted back to Burbank. Their revenue generation from retail sales will be reduced as a result of the Project, thereby affecting those businesses' distinct and reasonable investment-backed expectations.

41. An anticipated fifty (50%) percent reduction in lanes would have a deleterious impact on sales-tax generating businesses along Olive Ave. Their revenue generation from retail sales will be diminished due to the decrease in vehicular visibility, reduction in vehicular traffic traveling along Olive Avenue, and reduction in available parking. Such adverse sales tax impacts will cause a decrease in sales taxes being remitted to Burbank, among others.

42. Burbank has a reasonable expectation of generating consistent sales and property taxes from these businesses to support City services.

**D. Burbank's Continuing Obligation to Maintain and Keep in Good Repair Rights-of-Way/Streets**

43. As the sole owner and legal interest holder in the relevant portions of Olive Avenue, Alameda Avenue, Glenoaks Boulevard, and Buena Vista Street, Burbank is obligated, pursuant to the Streets & Highways Code and other applicable law, to maintain and keep in good repair all its rights-of-ways and streets, including its curbs, gutters, and sidewalks.

44. In fiscal year 2025-2026, Burbank allocated $4.9 million in street pavement and sidewalk rehabilitation, including the reconstruction of damaged curbs,

gutters, and pedestrian ramps. Burbank also allocated $3.9 million to traffic and transportation improvement projects for its arterial streets, traffic light synchronization, mobility improvements.

45. In addition to the foregoing capital improvement projects, Burbank further maintains its rights-of-ways and streets as part of its normal non-capital operations, which include asphalt patch repair, grind and overlay, street sweeping, weed abatement, and debris removal services.

46. Burbank also has a pavement management program that divides the City into 20 structural zones, analyzing and rotating road work through four zones each year. This program utilizes special revenue avenues like the Road Maintenance and Rehabilitation Fund (SB 1), which contributes approximately $2.65 million in road repairs annually, alongside local Measure M and Measure P tax dollars.

47. With the Project, Burbank and the public will be losing street right-of-way lanes that will be dedicated to the exclusive use of Metro's buses; however, Metro has made no offer or indication that it would relinquish Burbank's obligations to maintain the affected streets/rights-of-way or that Metro would compensate or reimburse Burbank for such maintenance and repair work. Thus, Burbank (and the public) will have no right of possession or use but all of the financial burden and obligation to maintain and repair said portions of streets/rights-of-way in perpetuity.

## FIRST CAUSE OF ACTION

**Deprivation of Fifth Amendment Rights under 42 U.S.C. § 1983 – Per Se Physical Taking (42 U.S.C. § 1983; U.S. Const. amend. V) Against Los Angeles Metropolitan Transportation Authority and Does 1 through 20**

48. Burbank restates, realleges, and incorporates by reference all previous and subsequently stated paragraphs as if fully set forth herein.

49. Burbank has the sole cognizable legal property interest in the relevant portions of Olive Avenue, Alameda Avenue, Glenoaks Boulevard, and Buena Vista Street streets/rights-of-way.

50. Metro persists in seeking to seize 4 miles of Burbank's streets for its Project and is acting under color of state law with regards to the purported seizure.

51. Metro intends on physically seizing and permanently occupying these lanes owned by Burbank as part of its Project, via the full-time dedicated bus lanes through those portions of the streets/rights-of-way, and such seizure/occupation is to the exclusion of Burbank and others, constituting a physical taking of real property.

52. Metro's seizure/occupation of the dedicated portions of relevant streets are permanent, fixed, and continuous, as the Project has been established and expected to last in perpetuity.

53. Metro has not established its right to take Burbank's property or that such physical taking is for a more necessary public use.

54. Metro has failed to and refuses to initiate formal eminent domain proceedings and has not offered or paid just compensation to Burbank for the anticipated seizure/occupancy.

55. Burbank will be further damaged with the financial burden and obligation to expend funds to maintain and repair the relevant portions of streets/rights-of-way physically taken by Metro for its exclusive use while diminishing the City's benefit from the use of its own property. Such ongoing maintenance and repair work is done – in no small part – to ensure that Burbank's streets remain safe and accessible for all roadway users, including automobile drivers and patrons directly accessing all adjoining businesses.

## SECOND CAUSE OF ACTION

**Deprivation of Fifth Amendment Rights under 42 U.S.C. § 1983 – Regulatory Taking (*Penn Central*); U.S. Const. amend. V**
**Against Los Angeles Metropolitan Transportation Authority and Does 1 through 20**

56. Burbank restates, realleges, and incorporates by reference all previous and subsequently stated paragraphs as if fully set forth herein.

57. Burbank has the sole cognizable legal property interest in the relevant

portions of Olive Avenue, Alameda Avenue, Glenoaks Boulevard, and Buena Vista Street streets/rights-of-way.

58. Metro persists in seeking to seize 4 miles of Burbank's streets along its corridors for its Project and is acting under color of state law with regards to the proposed seizure.

59. The proposed seizure imposes a substantial financial loss on Burbank since it will no longer have possession or use of the lanes for itself or the non-transit riding public and will suffer a loss of value and reduction in sales and property taxes from businesses located along Olive Avenue.

60. Burbank currently has a distinct, reasonable investment-backed expectation of receiving sales and property taxes at predictable level from businesses located along the relevant corridors. The Project's taking will diminish that expectation.

61. Furthermore, Burbank has expended significant time and financial resources on maintaining and repairing the streets/rights-of-way in question. For example, in fiscal year 2025, Burbank spent approximately $210,000 in service of maintaining and/or repairing the infrastructure along that stretch of Olive Avenue between Buena Vista Street and Lake Street.

62. Such ongoing maintenance and repair work is done – in no small part – to ensure that Burbank's streets remain safe and accessible for drivers and potential customers looking to avail themselves of the sales-tax and TOT generating businesses along this stretch of Olive Avenue. The City's continued efforts to maintain the streets in good repair, including along the stretches of Olive Avenue, Alameda Avenue, Glenoaks Boulevard, and Buena Vista Street being proposed for the Project, are required as part of the City's duty to ensure the public's health and safety while traversing along those streets/rights-of-way.

63. With the reduction in lanes on the relevant Burbank streets, Burbank's reasonable expectation of receiving sales and property taxes at a predictable level

from businesses along the Project corridor will be frustrated.

64. The character of Metro's seizure is a forced burden on Burbank that singles out Burbank's property to bear the economic weight of the purported public benefit associated with the Project without proper distribution across the community.

65. Metro has failed to and refuses to initiate formal eminent domain proceedings and has not paid just compensation to Burbank for the anticipated seizure.

66. As a direct and proximate cause of Metro's seizure, Burbank will suffer a permanent loss of lanes that it owns and a significant reduction in sales tax and TOT from this area amounting to an unconstitutional taking without just compensation.

## THIRD CAUSE OF ACTION

**Inverse Condemnation for Taking in Violation of Cal. Const. Art. I, § 19**
**(Cal. Const. Art. I, § 19)**
**Against Los Angeles Metropolitan Transportation Authority and Does 1 through 20**

67. Burbank restates, realleges, and incorporates by reference all previous and subsequently stated paragraphs as if fully set forth herein.

68. Burbank has the sole cognizable legal property interest in the relevant portions of Olive Avenue, Alameda Avenue, Glenoaks Boulevard, and Buena Vista Street streets/rights-of-way.

69. Metro persists in seeking to seize 4 miles of Burbank's streets for its Project and is acting under color of state law with regards to the purported seizure.

70. Metro intends on physically seizing and permanently occupying existing vehicular and parking lanes owned by Burbank on the relevant portions of Glenoaks Avenue, Alameda Avenue, Olive Avenue and Buena Vista Street as part of its Project, via the full-time dedicated bus lanes through those portions of the streets/rights-of-way, and such seizure/occupation is to the exclusion of Burbank and others, constituting a physical taking of real property.

71. Metro's seizure/occupation of the relevant portions of Burbank streets are permanent, fixed, and continuous, as the Project has been established and expected

to last in perpetuity.

72. Metro has not established its right to take Burbank's property, that such physical taking is for a public purpose, and that it is for more necessary public use.

73. Metro has failed to and refuses to initiate formal eminent domain proceedings and has not offered or paid just compensation to Burbank for the anticipated seizure/occupancy.

74. Burbank will be further damaged with the financial burden and obligation to expend funds to maintain and repair the relevant portions of streets/rights-of-way physically taken by Metro for its exclusive use while receiving diminished benefit from its own property. Such ongoing maintenance and repair work is done – in no small part – to ensure that Burbank's streets remain safe and accessible for City drivers, automobile drivers and driving customers of local businesses.

## FOURTH CAUSE OF ACTION

### Declaratory Relief Against Los Angeles Metropolitan Transportation Authority and Does 1 through 20

75. Burbank restates, realleges, and incorporates by reference all previous and subsequently stated paragraphs as if fully set forth herein.

76. Since Metro persists in attempting to seize Burbank's property in violation of the Fifth Amendment, Burbank hereby seeks declaratory relief from this Court that any such taking only be done through a properly noticed and determined eminent domain action.

77. There is an actual controversy between Burbank and Metro as to whether Metro can persist in this action, and that controversy is sufficiently definite and concrete. Metro claims it has legal authority to seize (i) Olive Avenue (between Hollywood Way and Alameda Avenue, Buena Vista Street and Lake Street, and San Fernando Boulevard and Glenoaks Boulevard), (ii) Alameda Avenue (between Niagara Street and Naomi Street), (iii) Buena Vista Street (between Edison Road and

Olive Avenue), and (iv) Glenoaks Boulevard (between Providencia Avenue and the southern City limits), by taking one vehicular lane in each direction (two total) without Burbank's agreement or acquiescence, without compensating Burbank for the taking, and without filing for any eminent domain cause of action prior to its taking. Burbank claims that Metro and Burbank must come to an agreement on taking one vehicular lane in each direction along the aforementioned stretches of rights-of-way and using them as full-time dedicated Metro bus lanes to the exclusion of all. Burbank further claims that Metro must compensate Burbank for the taking, and that Metro must take the aforementioned stretches of rights-of-way formally by eminent domain.

78. This Court has subject matter jurisdiction over this question because it implicates rights under Fifth Amendment to the United States Constitution over which this Court has federal question jurisdiction.

79. Without such declaratory relief, Burbank will have no adequate remedy at law to prevent this forced seizure or obtain the compensation that is due to Burbank.

## FIFTH CAUSE OF ACTION

### Injunctive Relief
### Against Los Angeles Metropolitan Transportation Authority and Does 1 through 20

80. Burbank restates, realleges, and incorporates by reference all previous and subsequently stated paragraphs as if fully set forth herein.

81. Since Metro persists in attempting to seize Burbank's property in violation of the Fifth Amendment, Burbank hereby seeks injunctive relief to prevent Metro from unilaterally seizing Burbank's property without Metro filing an eminent domain action.

82. Without such injunctive relief, Burbank will have no adequate remedy at law to prevent this forced seizure or to obtain compensation that is due to Burbank.

## PRAYER FOR RELIEF

**THEREFORE**, Plaintiff prays for judgment as follows:

1. For recovery of damages against Defendants in the amount to be proven

at trial, but not less than $4,500,000.

2. For an award of costs, expenses, and reasonable attorneys' fees against Defendants; and

3. For declaratory relief that Metro must file an eminent domain action before seizing Burbank's property to preserve Burbank's Fifth Amendment rights.

4. For injunctive relief preventing Metro from unilaterally seizing Burbank's property without filing an eminent domain action and violating Burbank's Fifth Amendment rights.

5. For such other further relief as the Court deems just and proper.

DATED: October 28, 2026 ALESHIRE & WYNDER, LLP

By: _____
PAM K. LEE
Attorneys for City of Burbank

EXHIBIT A

**Project Alignment – Detailed Burbank View**

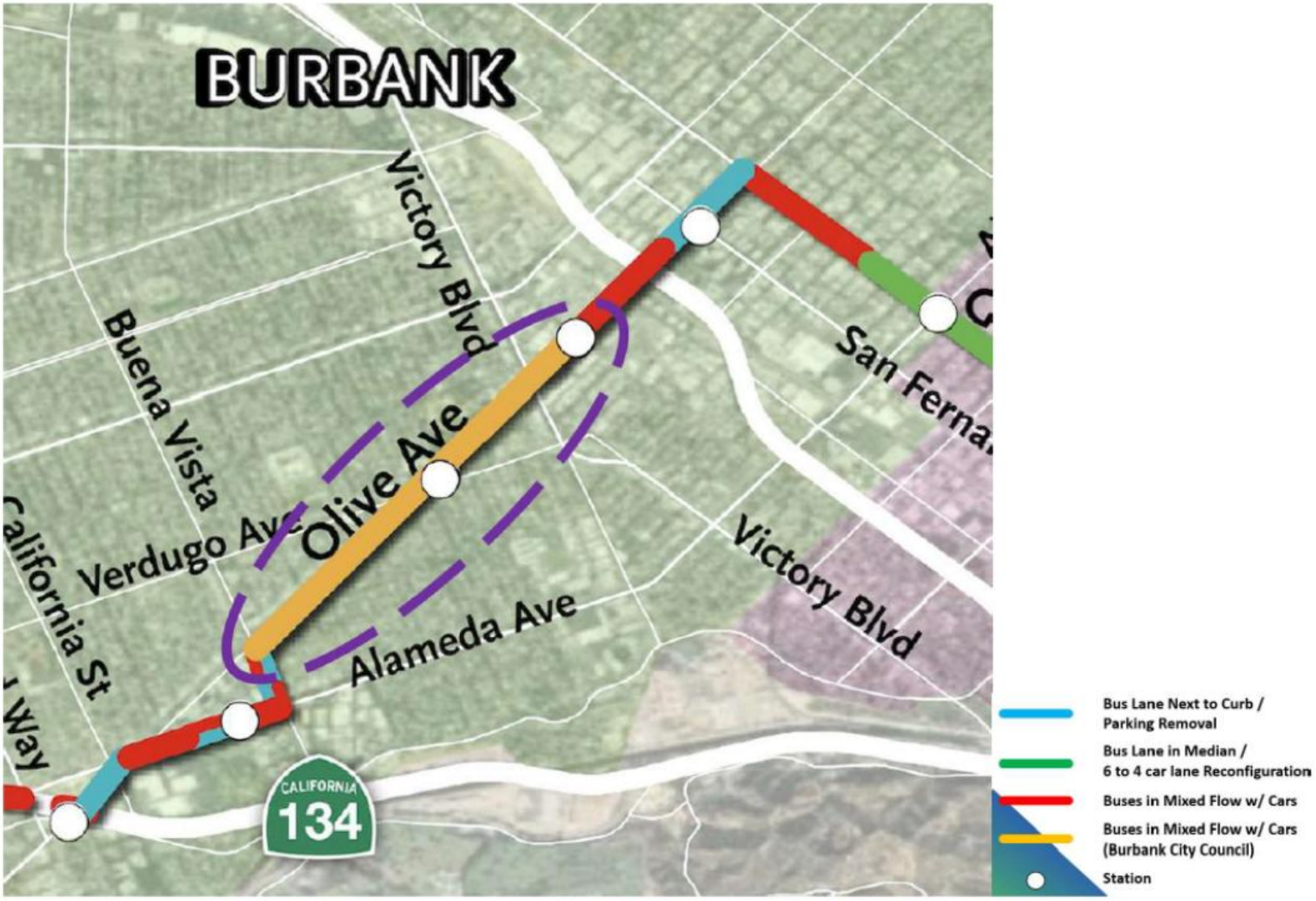


EXHIBIT B

EXECUTION VERSION

# COOPERATIVE AGREEMENT FOR THE DESIGN AND CONSTRUCTION OF THE NORTH HOLLYWOOD TO PASADENA BUS RAPID TRANSIT CORRIDOR PROJECT

**BETWEEN**

**THE CITY OF BURBANK**

**AND**

**THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY**

1/24/2025 ~~2024~~
PC

**EFFECTIVE DATE**

**EXECUTION VERSION**

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**EXECUTION VERSION**

This Agreement is entered into by and between the City of Burbank (the **"City"**), and the Los Angeles County Metropolitan Transportation Authority (**"LACMTA"**).

**RECITALS**

(A) LACMTA proposes to develop and open a new bus rapid transit line known as the North Hollywood to Pasadena Transit Corridor Project (as more fully defined in Article 11 (*Definitions and Interpretation*), the **"NoHo to Pasadena Project"**). The Final Environmental Impact Report was certified and the NoHo to Pasadena Project was approved, by the LACMTA Board of Directors on April 28, 2022 (https://www.dropbox.com/sh/jt5s5l784pml8cf/AAAK4TgdarNwfM1iBAmF7xWXa?dl=0).

(B) The NoHo to Pasadena Project will serve various cities and communities including the City and the City intends, by this Agreement, to facilitate the development and implementation of the NoHo to Pasadena Project and in particular the City Portion of the NoHo to Pasadena Project.

(C) This Agreement does not address, and is not intended to address any terms and conditions with respect to any first/last mile projects. Any terms and conditions with respect to any first/last mile projects will be discussed, negotiated and agreed by LACMTA and the City under a separate agreement. Further, this Agreement does not address, and is not intended to address any terms and conditions with respect to LACMTA Board's Land Bank Pilot Partnership with Los Angeles County Motion (June 2022 and any other relevant dates). Any City participation in, and the terms and conditions with respect to any City participation in, any such programs and initiatives would be discussed, negotiated and agreed to by responsible parties under a separate agreement. The City disclaims any liability arising out of or related to the Land Bank Pilot Partnership Motion (June 2022) under this Agreement.

(D) LACMTA and the City wish to enter into this Agreement in order to identify the rights and obligations between them in connection with the development and implementation of the NoHo to Pasadena Project.

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

**ARTICLE 1. SCOPE AND DURATION**

1.1 **Scope of Agreement**

(a) The City acknowledges the NoHo to Pasadena Project is a high priority public works project and will provide LACMTA with expedited review and approval procedures in connection with design, design reviews, permitting, and other authority to be exercised by the City relating to the NoHo to Pasadena Project in accordance with the terms of this Agreement.

(b) The Parties have entered into this Agreement to:

(i) acknowledge the intended scope, schedule and site for the NoHo to Pasadena Project as set out in EXHIBIT 1 (*Project Description*), EXHIBIT 2 (*Project Phases and Project Schedule*) and EXHIBIT 3 (*Project Site*) respectively; and

(ii) define the applicable procedures, manage the interfaces and regulate the roles and responsibilities and allocation of costs between LACMTA and the City, in respect of the design, construction, operation, and maintenance of the NoHo to Pasadena Project as it relates to the City Portion and any Rearrangements.

(c) LACMTA may procure the Design, Construction, operation, and maintenance of the NoHo to Pasadena Project, including the City Portion, under multiple procurements and contract packages and may self-perform parts of the design, construction, operation, and maintenance of the NoHo to Pasadena Project, including the City Portion. As at the date of this Agreement, LACMTA:

(i) has procured the development of the Design for the NoHo to Pasadena Project to approved-for-construction status by a LACMTA Contractor under one contractual package; and

(ii) is procuring the performance of Design reviews, preconstruction services, and Construction work under a construction manager/general contractor agreement.

(d) The City acknowledges and agrees that LACMTA may: (i) engage LACMTA Contractor(s) to carry out Design, Construction, operation and/or maintenance work with respect to the City Portion including the Design and/or Construction of Rearrangements; and (ii) in each LACMTA Contract, require the applicable LACMTA Contractor to comply with certain of LACMTA's obligations under this Agreement provided that nothing in this Agreement will create any contractual relationship between the City and any LACMTA Contractor and in accordance with Section 10.11 (*Limitation on Third Party Beneficiaries*), nothing contained in this Agreement is intended or will be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the City toward, any LACMTA Contractor.

(e) The City acknowledges and agrees that LACMTA may change the contracting and procurement strategy and plan for the NoHo to Pasadena Project, including the City Portion, described in Section 1.1(c) in its sole discretion. The City further acknowledges that as at the date of this Agreement, the NoHo to Pasadena Project is in the early stages of the Design Phase and LACMTA may elect: (i) not to proceed with the NoHo to Pasadena Project; or (ii) to amend the scope of the NoHo to Pasadena Project as set out in EXHIBIT 1 (*Project Description*), each in its sole discretion subject to the FEIR and any required board approvals.

(f) LACMTA shall promptly notify the City of any changes to its contracting and procurement strategy or to the scope of the NoHo to Pasadena Project made in accordance with Section 1.1(e) that has or is reasonably likely to have an impact on the scope, schedule or roles and responsibilities for the City Portion or the provisions and procedures set out under this Agreement. The Parties shall use good faith efforts to agree any amendments or supplements to this Agreement necessary to be made as a result of any such change notified by LACMTA to the City. If agreement cannot be reached, the matter will be escalated by the Parties for resolution in accordance with the issue resolution ladder set out in EXHIBIT 4 (*Roles and Responsibilities*).

(g) The terms and conditions of this Agreement shall be applicable to the rights and obligations of a City-owned utility company with respect to the NoHo to Pasadena Project and LACMTA acknowledges and agrees to coordinate with any City-owned utility with regard to the NoHo to Pasadena Project.

1.2 **Duration of Agreement**

This Agreement (and all of the rights and obligations under this Agreement) will come into effect on the Effective Date and continue until the first day on which passenger service on the NoHo to Pasadena Project commences, unless terminated earlier in accordance with the provisions of this Agreement or extended in accordance with Article 6 (*Operation and Maintenance*) (the **"Term"**).

## ARTICLE 2. GENERAL OBLIGATIONS

2.1 **Governance**

(a) The roles and responsibilities of the City and LACMTA are set out in EXHIBIT 4 (*Roles and Responsibilities*). The Parties agree to use good faith efforts to resolve any issues that arise under this Agreement. Issues that arise under this Agreement that cannot be resolved at the working-level will be escalated by the Parties for resolution in accordance with the issue resolution ladder set out in EXHIBIT 4 (*Roles and Responsibilities*).

(b) The City and LACMTA shall each designate an individual or individuals who will be authorized to make decisions and bind the Parties on matters relating to this Agreement (the **"City Representative"** and **"LACMTA Representative"**, respectively). EXHIBIT 4 (*Roles and Responsibilities*) provides initial designations. Either Party may change its designated representative by providing seven days' prior Notice to the other Party.

(c) Where a meeting of multiple cities involved in the NoHo to Pasadena Project may be helpful to discuss issues, or potential issues, and/or solutions that may impact multiple cities or to give an update on the overall status or progress on the NoHo to Pasadena Project, LACMTA may invite the City to attend meetings together with other cities impacted by the NoHo to Pasadena Project. On LACMTA's written request, the City shall endeavor to secure the attendance (in person or via videoconference or teleconference) of the City Representative (or a delegate) at any such meeting held with respect to the City Portion during normal business hours and upon reasonable notice.

(d) LACMTA may convene Project Meetings in relation to the NoHo to Pasadena Project or particular aspects of the NoHo to Pasadena Project for the purposes of providing a non-binding forum for LACMTA, the LACMTA Contractors and other attendees to monitor the progress of the NoHo to Pasadena Project, to consider issues, or potential issues, and to present, understand and discuss proposed solutions with respect to the NoHo to Pasadena Project. On LACMTA's written request, the City shall endeavor to secure the attendance (in person or via videoconference or teleconference) of the City Representative (or a delegate) at any Project Meeting held with respect to the City Portion during normal business hours and upon reasonable notice. Any Project Meeting attended by the City Representative (or a delegate) is consultative and advisory only and nothing which occurs during any such Project Meeting and no information that is presented during any such Project Meeting will:

(i) affect the rights or obligations of either Party under this Agreement;

(ii) entitle a Party to make any claim against the other;

(iii) relieve a Party from, or alter or affect, a Party's liabilities or responsibilities whether under this Agreement or otherwise according to Applicable Law;

(iv) prejudice a Party's rights against the other Party whether under this Agreement or otherwise according to Applicable Law; or

(v) be construed as a direction by a Party to do or not do anything.

2.2 **Annual Work Plan**

(a) At the beginning of each LACMTA Fiscal Year, the Parties will review the Project Schedule and the 'life of project' resourcing needs to facilitate the efficient, timely, and safe delivery of each Subject Transportation Project through its Design Phase and Construction Phase and will commence the Annual Work Plan process for the next LACMTA Fiscal Year. LACMTA and the City will cooperate to develop an agreed Annual Work Plan for each LACMTA Fiscal Year during the Term, in accordance with the following provisions:

(i) not later than July 31 (or in the case of the first partial LACMTA Fiscal Year during the Term, no later than 30 days after the date of this Agreement), LACMTA shall provide the City with information with respect to anticipated Work Orders, including a list of each item of work or scope of activities or services that LACMTA anticipates to request or require from the City during the next LACMTA Fiscal Year, and the estimated start and finish dates for the item of work or scope of activities or services that LACMTA anticipates to request or require from the City;

(ii) within 60 days after the City's receipt of the required information from LACMTA pursuant to Section 2.2(a)(i), the City shall submit a preliminary annual work plan to LACMTA for the next LACMTA Fiscal Year, which will include an estimate of the Costs under the anticipated Work Orders for which the City shall require reimbursement;

(iii) promptly and in any event within 30 days' after LACMTA receives the preliminary annual work plan from the City pursuant to Section 2.2(a)(ii), the City and LACMTA will meet to review the preliminary work plan and negotiate in good faith such issues as are necessary in order to finalize and agree the annual work plan for the next LACMTA Fiscal Year; and

(iv) not later than May 1 of the then current LACMTA Fiscal Year, LACMTA shall notify the City of the agreed annual work plan for the next LACMTA Fiscal Year (each such agreed annual work plan, an **"Annual Work Plan"**).

(b) Section 2.3(e) (*Work Orders*) shall apply notwithstanding that the Parties may agree an Annual Work Plan setting out the schedule of anticipated Work Orders.

2.3 **Work Orders**

(a) If the City is required to perform work and/or provide support and/or services under the provisions of this Agreement or LACMTA requests that the City perform work and/or provide support and/or services under the provisions of this Agreement, the City shall submit a Form 60 to LACMTA to estimate the total effort and Costs for which the City shall require reimbursement with respect to that scope of work.

(b) If LACMTA approves a Form 60 submitted to it by the City with respect to a scope of work under Section 2.3(a) without requiring any changes or additions, LACMTA will issue a Work Order to the City for such scope of work and following receipt of that Work Order, the City must promptly commence the work authorized under that Work Order.

(c) Each Work Order issued by LACMTA to the City in accordance with this Agreement shall specify the work authorized to be performed and any materials or equipment to be acquired, the amount of money that the City will be reimbursed for the authorized work as agreed under the applicable Form 60, and a schedule, including the estimated starting and finishing dates for the authorized work.

(d) If LACMTA requests changes or additions (including any additional or supplemental provisions) to a Form 60 submitted to it by the City with respect to a scope of work under Section 2.3(a) prior to issuing a Work Order, the Parties shall negotiate in good faith such changes or additions. Upon agreement of any such changes or additions (and any necessary City council approval for such changes or additions), LACMTA will issue a Work Order to the City for the applicable scope of work, with the agreed changes or additions and following receipt of that Work Order, the City must promptly and without delay (and in any case within 10 days of issuance by LACMTA) accept any agreed changes or additions to the applicable Form 60 by counter-signing the Work Order or otherwise by written acceptance by the City Representative, in each case followed by prompt commencement of the work authorized under that Work Order. Nothing in this Section 2.3(d) shall prohibit LACMTA from approving a Form 60 under Section 2.3(b) in part and authorizing the City to commence the approved part of the scope of work in accordance with that Form 60.

(e) The City shall not be authorized to do any work and shall not be paid, credited or reimbursed for costs or expenses associated with any work performed in connection with a Rearrangement or the City Portion or otherwise under the provisions of this Agreement, that is not expressly authorized by a Work Order, as may be amended pursuant to Section 2.3(f).

(f) Except in the case of a change required due to an emergency (which notification may be given orally and any emergency work commenced before being confirmed in writing to LACMTA within three days), the City may submit proposed changes to a Work Order in writing to LACMTA for approval, such approval to not be unreasonably withheld or delayed. If approved, the City may perform the work in accordance with the authorized change.

(g) LACMTA may terminate any Work Order at any time at its sole discretion, provided that the City will be entitled to reimbursement in accordance with this Agreement for Costs, if any, already incurred. To the extent the City (or City Contractor) has commenced Construction in the Public Rights-of-Way pursuant to a Work Order agreed under this Section 2.3 that is subsequently terminated by LACMTA, LACMTA shall reimburse the City for Costs properly incurred pursuant to a Work Order agreed under this Section 2.3 or otherwise under Section 8.1 (*Indemnity*) of this Agreement to perform clean-up and restoration activities to return the site to the condition prior to commencement of Construction.

The restorative activities shall be consistent with the City Standards in effect at the time the restoration work is performed.

(h) The City shall promptly notify LACMTA if at any time it anticipates:

(i) exceeding 75% of the total estimated Costs under any Work Order within the next 60 days;

(ii) that the total Costs under any Work Order will be in excess of 10% greater than previously estimated Costs; or

(iii) that the estimated finishing date will be later than the date stated in the Work Order,

and shall request an amendment to such Work Order pursuant to Section 2.3(f).

(i) LACMTA shall reimburse the City for services and activities performed in accordance with EXHIBIT 9 (*Inspection and Acceptance Procedure*). LACMTA shall not unreasonably withhold issuance of a Work Order authorizing the City to perform inspection, acceptance, and closeout activities with respect to the NoHo to Pasadena Project required in accordance with EXHIBIT 9 (*Inspection and Acceptance Procedure*).

2.4 **Project Schedule**

(a) The City agrees to cooperate and coordinate with LACMTA in accordance with the provisions of this Agreement in order for LACMTA to achieve the Project Schedule and subject to LACMTA agreeing to the reimbursement of the cost of the applicable resources in accordance with Section 2.3 (*Work Orders*) and 7.1 (*Reimbursements to the City*), to allocate sufficient staff and other resources necessary to provide the level of service required to meet the scope of work and work schedules, review periods and timelines identified in this Agreement and any Work Orders. If the City determines that, notwithstanding its compliance with its obligations under this Section 2.4(a), additional personnel or other resources (including through the use of City Contractors) are required to mitigate the risk of delay in performing the scope of work within the defined schedule, the City may submit a proposed change to a Work Order in accordance with Section 2.3(f) (*Work Orders*).

(b) To the extent the City fails to carry out any work or obligations for which it is responsible under the provisions of this Agreement and/or any Work Order in accordance with the work schedules, review periods and timelines identified in this Agreement and the applicable Work Order (in each case, as may be extended under Section 2.4(d)), and such failure is attributable to the City, then, solely to the extent such delay directly causes: (i) LACMTA to incur additional costs; or (ii) a delay to the NoHo to Pasadena Project, the City must reimburse LACMTA for all actual and documented costs and expenses incurred by LACMTA or arising out of such delay. The City shall pay such costs to LACMTA within 90 days of receiving an invoice from LACMTA. If the Parties agree, LACMTA may deduct the amount due from the City to LACMTA pursuant to this Section 2.4(b) from payment(s) due to the City.

(c) Without limiting any other rights under this Section 2.4, if the City fails to carry out any work or obligations for which it is responsible under the provisions of this Agreement in accordance with the work schedules, review periods and timelines identified in this Agreement and the applicable Work Order (in each case, as may be extended under Section 2.4(d)), LACMTA (or a LACMTA Contractor) will issue a Notice to the City referencing the relevant work or obligation (including any anticipated delay and cost impacts to the NoHo to Pasadena Project) and requesting the City's immediate attention (or, if the Project Schedule allows without causing LACMTA to incur additional costs or a delay to the NoHo to Pasadena Project, providing an extension of time) and if the delay remains unresolved, LACMTA shall escalate the delay utilizing the issue resolution ladder set out in EXHIBIT 4 (*Roles and Responsibilities*). Where the delayed obligation relates to Design or Construction work that the City has agreed to perform under the terms of this Agreement or where LACMTA reasonably determines that the City will be unable to timely complete any Design or Construction work that the City has agreed to perform under the terms of this Agreement, LACMTA may by Notice to the City suspend the affected element of the City's work and LACMTA may perform the remaining work. If

LACMTA takes over work in accordance with this Section 2.4(c), the City shall cooperate and assist LACMTA in accordance with the provisions of this Agreement.

(d) To the extent:

(i) a failure by LACMTA to perform its work and obligations in accordance with the work schedules, review periods and timelines identified in this Agreement and/or any Work Order; or

(ii) the rejection by LACMTA of a reasonable request by the City for additional resources under Section 2.4(a),

results in a delay to the performance of the City's work under a Work Order, the City will be entitled to an equivalent extension to the affected deadline and any other relief expressly contemplated under the provisions of the applicable Work Order (including, where the City is performing Design or Construction work, any costs associated with such delay).

2.5 **Permits**

(a) Under Applicable Law, LACMTA is not subject to certain local ordinances when constructing the City Portion. Notwithstanding this, LACMTA shall obtain all necessary City permits and approvals and comply with City Standards relating to the Design and Construction of the City Portion, in each case to the extent required under and in accordance with, the terms of this Agreement.

(b) Without prejudice to Section 2.5(a) or the requirements set out in EXHIBIT 8 (*Construction Requirements*):

(i) within 45 days of the Effective Date, the City and LACMTA will coordinate to: identify any permits required for the City Portion; agree on any applicable permit fees required to be paid by LACMTA with respect to the City Portion; and agree on any services that will not require reimbursement by LACMTA through a Work Order to avoid double counting;

(ii) LACMTA or LACMTA Contractor shall pay any permit fees agreed by the Parties under Section 2.5(b)(i); and

(iii) the City will cooperate with LACMTA to ensure any processing procedures or timelines for permits shall be consistent with the terms and conditions set out in this Agreement and endeavor to reasonably streamline the permit process so far as reasonably practicable to support the timely delivery of the Noho to Pasadena Project in accordance with the Project Schedule.

(c) If requested by LACMTA, the City will provide reasonable assistance to LACMTA and the LACMTA Contractors in relation to any application by LACMTA or a LACMTA Contractor for a Governmental Approval or other Governmental Entity or third-party approval relating to or arising from, the Design, Construction, operation or maintenance of the City Portion.

2.6 **Coordination of Work**

(a) Except in the case of Adjacent Work required as a result of an emergency (which notification and coordination may occur as soon as reasonably practicable after the occurrence of the emergency), the City will promptly notify LACMTA upon becoming aware of any proposed or planned Adjacent Work and will take all reasonable actions within its powers, to coordinate the design and performance of any Adjacent Work with LACMTA so that such Adjacent Work shall not pose a safety hazard or interfere with, disrupt or delay the Design and Construction, or threaten the integrity of the City Portion including by:

(i) complying with the provisions of this Section 2.6 and LACMTA's standard procedures for Adjacent Works;

(ii) to the extent requested by LACMTA following its initial screening taking into account proximity of the Adjacent Work to the City Portion, adjacency conditions, and the potential to impact the City Portion and otherwise conducted in accordance with LACMTA's standard procedures for Adjacent Works, delivering copies of designs and plans for the Adjacent Work to LACMTA and giving LACMTA the right to review and comment on the designs and plans for the Adjacent Work and to approve the final designs and plans for the Adjacent Work to determine if elements of the Adjacent Work would impact the safe Construction of the NoHo to Pasadena Project; and

(iii) to the extent LACMTA reasonably determines and notifies the City that the Adjacent Work will, in whole or in part, pose a safety hazard or interfere with, disrupt or delay the Design, Construction, operation or maintenance of, or threaten the integrity of, the City Portion, LACMTA and City agree to coordinating the Adjacent Work or suspending the Adjacent Work or the relevant part of the Adjacent Work (as applicable).

(b) The City will, and will take all reasonable actions within its powers to ensure that any City Contractor or third party performing any Adjacent Work, City Construction Work or City Maintenance Work is obligated under contract and/or a permit process to:

(i) fully co-operate and coordinate with LACMTA and the LACMTA Contractors including:

(A) attending interface definition and coordination meetings upon reasonable request; and

(B) providing any other interface data reasonably requested by LACMTA or the relevant LACMTA Contractor and necessary to complete interface coordination;

(ii) perform the Adjacent Work, City Construction Work or City Maintenance Work (as applicable) so as to minimize any interference with or disruption or delay to construction of the City Portion or any other part of the NoHo to Pasadena Project;

(iii) to the extent applicable, comply with LACMTA or the relevant LACMTA Contractor's worksite health and safety policies and procedures; and

(iv) promptly advise LACMTA of all matters arising out of the Adjacent Work or City Construction Work or City Maintenance Work (as applicable) that may interfere with, disrupt, delay or otherwise have an adverse effect upon the City Portion or any other part of the NoHo to Pasadena Project.

2.7 **Utility Adjustments**

(a) In accordance with Section 1.1 (*Scope of Agreement*), LACMTA and the City will cooperate and coordinate in performing the steps necessary to ensure that applicable Utility owners implement the Utility Adjustments necessary to address Utility Conflicts that will impact the City Portion of a Project in a timely manner, including LACMTA and the City each exchanging information, participating in coordination meetings, coordinating in the issuance of notices to Utility owners requesting a Utility Adjustment, and performing the other steps and activities set out in EXHIBIT 5 (*Utility Adjustment Procedures*).

(b) LACMTA and the City shall cooperate and coordinate in executing the necessary documents for each step set out in EXHIBIT 5 (*Utility Adjustment Procedures*).

(c) The services performed by the City under the provisions of this Section 2.7, are eligible for reimbursement under Sections 2.2 (*Annual Work Plan*), 2.3 (*Work Orders*) and 7.1 (*Reimbursements to the City*).

2.8 **Governmental and Lender Requirements**

If the NoHo to Pasadena Project is subject to financial assistance provided by loan agreements with the U.S. Department of Transportation, Federal Transit Administration, other federal, state and local Governmental Entities, and/or financial institutions providing grants, funding or financing, the Parties will comply with any prescribed governmental and lender requirements set out in a Work Order or otherwise under the applicable grant, funding or financing agreements notified to the City provided that LACMTA notifies the City of the requirements prior to issuing the Work Order.

2.9 **Access**

If, prior to LACMTA's scheduled date of commencement of Construction work in a part of the City Portion, any Rearrangement is necessary to eliminate a conflict, the City may grant to LACMTA and/or its designee sufficient rights, if necessary, to allow LACMTA to proceed with investigation of existing conditions and the Construction of that part (limited to Public Rights-of-Way and City-owned properties only, and not including any privately-owned properties) of the City Portion in accordance with the Project Schedule; provided, however, that such grant does not unreasonably and adversely interfere with the provision of City's services to the public, or affect public health and safety; and provided further, that the City is permitted under Applicable Law to grant such right.

2.10 **Discretions**

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

## ARTICLE 3. DESIGN

3.1 **Design Responsibilities**

(a) Except to the extent of any Design work requested to be performed by the City under Section 3.1(b), LACMTA will (directly or through LACMTA Contractors) Design all Rearrangements and produce all Design Documentation relevant to those works in accordance with the provisions of this Agreement. LACMTA shall be responsible for any errors and omissions in the Design Documentation prepared by LACMTA or a LACMTA Contractor.

(b) LACMTA may request and authorize the City to perform:

(i) Design work and/or provide support services with respect to the Design of a Rearrangement pursuant to the procedures set out under Section 2.3 (*Work Orders*); and

(ii) additional Design work with respect to the City Portion that is not part of any Rearrangement pursuant to the procedures and subject to the requirements set out under EXHIBIT 12 (*City-Performed Project Work*).

The City shall diligently perform and shall ensure that any City Contractor diligently performs, such Design-related activities in accordance with the provisions of the applicable Work Order and this Agreement. The City shall be responsible for any errors and omissions in any Design Documentation prepared by the City or a City Contractor.

3.2 **Design Requirements**

The Designs of the Rearrangements shall comply with the requirements set out in EXHIBIT 6 (*Design Requirements*).

3.3 **Design Review Procedure**

(a) LACMTA will submit, and will require that the LACMTA Contractors submit, the Designs for any Rearrangements to the City for review in accordance with the procedures set out in EXHIBIT 7 (*LACMTA Submittal Review Procedure*) and otherwise in accordance with the provisions of this Agreement and any applicable Work Orders.

(b) The City will carry out the review and approval of the Designs for the Rearrangements in accordance with the procedures and the review periods set out in EXHIBIT 7 (*LACMTA Submittal Review Procedure*) and otherwise in accordance with the provisions of this Agreement and any applicable Work Orders.

(c) For the avoidance of doubt, LACMTA is not required to submit any Design for Construction work for the NoHo to Pasadena Project that is not part of the Rearrangements to the City for City's review and approval, including where:

(i) LACMTA, a LACMTA Contractor, or a tenant or licensee of LACMTA owns and maintains (or will own and maintain) the applicable structure or physical element; or

(ii) the work is related to utility trenching and shoring within OSHA guidelines and the relevant LACMTA Contractor is OSHA certified.

As between the City and LACMTA, LACMTA will be responsible for ensuring that the Design for the Construction work for the NoHo to Pasadena Project complies with Applicable Law and the FEIR. The City further acknowledges that as between LACMTA and the City, LACMTA has sole discretion to determine whether, and which, features or facilities are required in order for LACMTA to comply with its obligations under Applicable Law in connection with the NoHo to Pasadena Project (whether or not situated within the Public Rights-of-Way) including the ADA and in the case of its obligations under the ADA LACMTA will to determine whether matters are technically infeasible; provided, however, in making such determination, LACMTA shall utilize current rules and regulations promulgated under the ADA, and guidelines issued by federal agencies in accordance with the ADA, including but not limited to The ADA Best Practices Tool Kit for State and Local Governments published by Civil Rights Division of the U.S. Department of Justice. As described in Part C (*Physical Limits of the Project Work*) of EXHIBIT 3 (*Project Site*), LACMTA and the City will agree the physical limits of the structures and elements of the NoHo to Pasadena Project that: (a) LACMTA owns and maintains or will own or maintain; or (b) that are part of, or will become part of (under a Rearrangement), a City Facility.

3.4 **Design Development**

The Parties acknowledge and agree that:

(a) the Basis of Design will establish the scope, limits of work, specifications and requirements applicable to the Designs for any Rearrangements for the purposes of issuance of the Procurement Documents for the construction of the NoHo to Pasadena Project; and

(b) the Design Documentation for any Rearrangements will be submitted for review progressively in Packages and LACMTA and the applicable LACMTA Contractor will retain responsibility for defining the scope and timing of delivery of the Packages at each stage of Design.

3.5 **City Standards**

(a) The City agrees that it shall not adopt any new City Standards or otherwise amend or supplement any existing City Standards or its interpretation or application of any existing City Standards, for the sole or primary purpose of affecting the NoHo to Pasadena Project. For the avoidance of doubt, this Agreement and the provisions in this Section 3.5 do not restrict the City from exercising its legal authority and legislative power to adopt new City Standards.

(b) Subject to Sections 3.5(a) and 3.5(c), the Parties acknowledge that the City may adopt new City Standards not listed in EXHIBIT 6 (*Design Requirements*) or amend or supplement existing City Standards listed in EXHIBIT 6 (*Design Requirements*) during the Term, provided that the City shall promptly (and in any case within 15 days' of adoption) notify LACMTA of any changes or additions to the City Standards adopted during the Term.

(c) Any changes or additions to the City Standards applicable to a Rearrangement after the establishment of the Basis of Design for that Rearrangement or any adoption, amendment, supplement, or interpretation of City Standards for the sole purpose of effecting the NoHo to Pasadena Project in contravention of Section3.5(a) shall be considered a "Betterment" for the purposes of this Agreement (except to the extent an exclusion under that definition applies).

3.6 **Changes to Design**

(a) If LACMTA wishes to amend the Final Design for a Rearrangement for which it is responsible prior to completion of Construction of that Rearrangement, it must submit the amended Design Documentation to the City and EXHIBIT 7 (*LACMTA Submittal Review Procedure*) will apply as if the Design Documentation is for the Final Design.

(b) LACMTA may use or may allow the relevant LACMTA Contractor to use, the amended Final Design for Construction prior to approval by the City if and only if LACMTA, in consultation with the City Inspector, determines that the amendment to the Final Design is: (i) minor; (ii) does not adversely impact the relevant Rearrangement; and (iii) is necessary to overcome an issue which has arisen or become evident since the Final Design was initially approved.

3.7 **Value Engineering**

LACMTA and the City will cooperate with each other to identify efficiencies to reduce the overall cost of the NoHo to Pasadena Project in order to maximize the value of public funds. The City will exercise sound engineering judgment to cooperate and coordinate with LACMTA to identify efficient approaches to the Design of Rearrangements for the NoHo to Pasadena Project when:

(a) performing Design reviews under Section 3.3 (*Design Review Procedure*), including as part of the resolution of City comments made to Designs; and

(b) reviewing any requests for deviations to the City Standards and/or the Design and Construction requirements.

The Parties acknowledge and agree that this will include identifying, and reviewing LACMTA Contractor-identified, recommendations for potential innovations and value engineering opportunities with respect to the Rearrangements that offer value in terms of a reduced capital cost for the NoHo to Pasadena Project and/or that will offer value in terms of schedule savings, and/or quality benefits and adopting and applying those recommendations that, following evaluation by the Parties, will reduce the capital cost of the NoHo to Pasadena Project and/or that will offer value in terms of schedule savings, and/or quality benefits. Any innovation or value engineering recommendations will be evaluated on the basis that any such recommendation should satisfy the required function of the Rearrangement at the lowest total cost (capital, operating, and maintenance) consistent with the requirements of performance, reliability, maintainability, and safety and the FEIR project objectives. For the avoidance of doubt, following evaluation of potential innovations and value engineering opportunities in accordance with this Section 3.7, the City retains final decision-making authority to determine whether to approve a deviation from City Standards and/or the Design and Construction Requirements.

## ARTICLE 4. CONSTRUCTION

### 4.1 Construction Responsibilities

(a) Except to the extent of any Construction work requested to be performed by the City under Section 4.1(b), LACMTA (directly or through the LACMTA Contractors) will be responsible for the Construction of all Rearrangements and shall diligently perform and shall ensure that any LACMTA Contractor diligently performs, all such Construction in accordance with the provisions of this Agreement.

(b) LACMTA may request and authorize the City to perform:

(i) Construction work with respect to a Rearrangement and/or provide Construction support services pursuant to the procedures set out under Section 2.3 (*Work Orders*); and

(ii) additional Construction work with respect to the City Portion that is not part of any Rearrangement pursuant to the procedures and subject to the requirements set out under EXHIBIT 12 (*City-Performed Project Work*).

The City shall diligently perform and shall ensure that any City Contractor diligently performs, all such Construction work and/or support services in accordance with the provisions of the applicable Work Order and this Agreement.

### 4.2 Construction Requirements

The Construction of the Rearrangements and any other Construction work performed in the Public Rights-of-Way in connection with the NoHo to Pasadena Project shall comply with the requirements set out in EXHIBIT 8 (*Construction Requirements*).

### 4.3 Rights-of-Way

(a) Notwithstanding any LACMTA rights to use the Public Rights-of-Way under Applicable Law, LACMTA shall obtain all necessary City permits and approvals and comply with all City Standards relating to use of the Public Rights-of-Way, in each case to the extent required under and in accordance with, the terms of this Agreement.

(b) The location and type of replacement rights-of-way for the relocation of Conflicting Facilities as part of a Rearrangement shall be mutually agreed by the Parties during the Design Phase. When reasonably possible and where the City Facilities being replaced are located in a public right-of-way, a Rearrangement of those City Facilities shall be located in existing public rights-of-way. If it is not possible for a Rearrangement of a City Facility to be located in a Public Rights-of-Way: (i) the required replacement rights-of-way for the relocation of Conflicting Facilities shall be acquired by LACMTA or the City (as mutually agreed) at LACMTA's cost in accordance with the Project Schedule; and (ii) If LACMTA acquires the replacement rights-of-way, LACMTA shall provide the City with an easement, in a form reasonably acceptable to the City, to operate, maintain, and/or remove such City Facility. Upon acceptance of the applicable Replacement Facility, the City shall convey or relinquish to LACMTA or its designee, if permitted by Applicable Law and agreement, at no cost, any City real property interests not part of the Public Rights-of-Way being taken out of service by the Rearrangement, and for which replacement real property interests are provided in accordance with this Section 4.3(b). LACMTA reserves the right to convey replacement rights-of-way in fee to the City.

(c) Subject to Section 4.3(b), in the case of any Rearrangements, the Parties acknowledge that LACMTA is responsible for the acquisition of any private rights-of-way necessary to construct and/or operate the NoHo to Pasadena Project on the Project Right-of-Way and LACMTA (or the LACMTA Contractors) shall be responsible for the acquisition of any temporary construction easements necessary for the Construction of the NoHo to Pasadena Project. Upon reasonable request by LACMTA, the City shall provide reasonable assistance as may be required for LACMTA to obtain

rights-of-way necessary to construct the City Portion including considering reasonable requests by LACMTA to convey to LACMTA, at no cost to LACMTA, any City-owned temporary construction easements that may be required for Construction of the NoHo to Pasadena Project without requiring LACMTA to go through the appraisal, negotiations, offer, closing and transfer process. Following any such reasonable request, LACMTA will prepare or cause to be prepared, the title documents and documents of conveyance and shall transmit such documents to the City Representative who shall process them through the required departments for execution and return them to LACMTA within 90 days after receipt, but in any event in accordance with the Project Schedule.

(d) The City agrees and acknowledges that this Agreement satisfies any LACMTA obligations to the City and otherwise relating to the certification of rights-of-way as may be required by the California Public Utilities Commission or any other regulatory authority, and that the City shall cooperate with LACMTA, and assist LACMTA, with any right-of-way certification processes involving other entities or agencies such as the California Public Utilities Commission or any other regulatory authority.

4.4 **Hazardous Materials**

LACMTA (or its LACMTA Contractors) will be responsible for any environmental site assessments and any remediation of hazardous materials to be performed on the Project Site for the purposes of the NoHo to Pasadena Project. LACMTA will not be responsible for any costs relating to the presence or existence of any environmental hazard on, in, under or about any City Facility, including but not limited to, any **"hazardous substance"** as that term is defined under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.), unless LACMTA or any LACMTA Contractor caused the environmental hazard through its actions or remediation of hazardous materials is required to be performed on the Project Site for the purposes of the NoHo to Pasadena Project in accordance with the environmental site assessments.

4.5 **Inspection and Acceptance**

The Parties agree that inspection and acceptance of the Construction of Rearrangements performed under this Agreement will be carried out in accordance with the procedure set out in EXHIBIT 9 (*Inspection and Acceptance Procedure*).

**ARTICLE 5. BETTERMENTS**

5.1 **Notice of Betterments**

(a) The City shall inform LACMTA what Betterments, if any, the City requests be implemented as a Rearrangement or a part of a Rearrangement by submitting a completed City Betterment Request for LACMTA's review and approval. The City shall submit any City Betterment Request to LACMTA promptly after identifying a potential Betterment and in any event shall, unless later delivery is otherwise agreed by LACMTA or acknowledged under this Article 5, deliver all City Betterment Requests to LACMTA prior to the establishment of the Basis of Design.

(b) Any Design furnished by the City under a Work Order shall specifically identify any Betterments included in such Design and where Betterments are identified that were not previously agreed under this Article 5, any such Design shall be accompanied by a completed City Betterment Request and submitted for LACMTA's review and approval in accordance with this Article 5.

(c) If a City comment to a LACMTA Submittal or any other form of City request with respect to the NoHo to Pasadena Project constitutes a Betterment, LACMTA will deliver a LACMTA Notice of Potential Betterment to the City and within 10 days of delivery of that Notice, the City will: (i) withdraw the relevant comment; (ii) submit a request for the applicable Betterment by submitting a completed City Betterment Request for LACMTA's review and approval; or (iii) dispute the basis of the LACMTA Notice of Potential Betterment by referring the matter to the issue resolution ladder set out in EXHIBIT 4 (*Roles and Responsibilities*). If the City fails to respond within 10 days of a Notice delivered by

LACMTA under this Section 5.1(c), LACMTA may refer the matter to the issue resolution ladder set out in EXHIBIT 4 (*Roles and Responsibilities*).

5.2 **Approval of Betterments**

If LACMTA approves a Betterment (with or without changes negotiated and agreed by LACMTA and the City):

(a) the LACMTA Representative shall counter-sign the City Betterment Request (updated to include any changes negotiated and agreed by LACMTA and the City); and

(b) the City will be responsible for the cost of the Betterment.

5.3 **Right to Refuse a Betterment**

No Betterment shall be constructed that is not approved by LACMTA pursuant to this Article 5. LACMTA shall have the right to refuse and withhold approval for any Betterment, that:

(a) is incompatible with the NoHo to Pasadena Project;

(b) cannot be performed within the constraints of Applicable Law, any applicable Governmental Approvals, and/or the Project Schedule; or

(c) is requested after the establishment of the Basis of Design.

5.4 **Cost of Betterments**

LACMTA shall not be responsible for the cost of any Betterment (whether or not the cost exceeds any estimates provided by LACMTA and including the cost of any additional mitigation measures included as a result of the Betterment if a supplemental environmental approval is required to accommodate that Betterment). Such cost will be paid to LACMTA or credited to LACMTA in accordance with Section 7.2 (*Reimbursement and Credits to LACMTA*).

## ARTICLE 6. OPERATION AND MAINTENANCE

6.1 LACMTA and the City shall commence discussions regarding the Parties respective obligations regarding the operation and maintenance of the NoHo to Pasadena Project during the 60% Design Phase and shall use good faith efforts to agree on an amendment or supplement to this Agreement or to agree a new cooperative agreement to address the Parties respective obligations during the operation and maintenance of the NoHo to Pasadena Project and the procedures and cost reimbursement principles that shall apply to the coordination and performance of their respective obligations during the operation and maintenance of the NoHo to Pasadena Project by the Final Design.

6.2 The Parties agree that any amendment or supplement to this Agreement or any new agreement entered into in accordance with Section 6.1 shall be on terms that are substantially consistent with:

(a) the provisions set out in this Agreement (to the extent applicable and subject to any necessary amendments to reflect the different phase of the NoHo to Pasadena Project); and

(b) the agreed operation and maintenance principles set out in EXHIBIT 10 (*Operation and Maintenance Principles*).

6.3 Any amendment, or supplement or new agreement agreed by the Parties in accordance with Section 6.2 shall be finalized and documented in accordance with Section 10.7 (*Amendments*).

## ARTICLE 7. REIMBURSEMENT AND CREDITS

### 7.1 Reimbursements to the City

(a) Except with respect to Betterments, LACMTA will reimburse the City for Costs incurred for work performed by the City or the City Contractors under a Work Order in accordance with this Section 7.1 and the provisions of the applicable Work Order.

(b) If a Rearrangement performed under a Work Order is limited to the removal or elimination of a City Facility because the City has determined the City Facility does not need to be relocated, LACMTA will only be responsible for any Costs incurred in Abandoning such City Facility in accordance with the City Standards and will not be required to replace or compensate the City for the replacement of that City Facility.

(c) The City shall use the following procedures for submission of its billings to LACMTA, on a progress basis, for work performed by the City under a Work Order:

(i) the City shall commence its monthly billing within no more than 60 days, following the commencement of work under a specific Work Order and shall bill monthly thereafter following the City's standard billing procedures;

(ii) the City shall provide supporting documents to demonstrate the Costs incurred by the City with respect to a Work Order, including City Contractor invoices, the names of individuals performing the relevant tasks and the time committed to those tasks, a description of the tasks performed by reference to the tasks described in the Work Order, and any other supporting information required under the terms of the Work Order or otherwise requested by LACMTA;

(iii) each billing statement shall: (A) be noted as either "progress" or "final"; (B) be addressed to the LACMTA Representative; (C) include a certification that the Costs identified in such billing were appropriate and necessary to the performance of the work under the Work Order and have not previously been billed or paid; and (D) reflect any applicable credits due to LACMTA under this Article 7;

(iv) the final billing under a Work Order, with a notation that all work covered by that Work Order has been performed, shall be submitted to LACMTA within 60 days after completion of the work under the applicable Work Order, and shall summarize prior progress billings, show inclusive dates upon which work was performed, and include a certification that the Costs identified in such billing were appropriate and necessary to the performance of the work under the Work Order and have not previously been billed or paid; and

(v) after the expiration of the 60 day period described in Section 7.1(c)(iv), LACMTA may notify the City in writing that the 60 day closing billing period has expired, and upon the City's receipt of such Notice from LACMTA, the City shall have 60 days to submit its final invoice.

(d) On completion of the Construction of the City Portion, LACMTA will issue a Notice of closeout to the City (including Final Acceptance of all Rearrangements for that City Portion). Within 90 days of receiving such Notice, the City must issue invoices to LACMTA for all services under a Work Order for the Design and Construction of the NoHo to Pasadena Project.

### 7.2 Reimbursements and Credits to LACMTA

(a) LACMTA shall receive a credit, or payment for:

(i) salvage for items recovered from existing City Facilities that the City intends to re-use in the performance of Construction work performed under the provisions of this Agreement where the amount of salvage credit or payment, if any, shall equal the depreciated value of like or similar materials as determined by agreement of the Parties, plus reasonable storage and

transportation costs of such materials salvaged for the City's use. The sum of credits and/or payments due to LACMTA for salvage shall be agreed by the Parties based on applicable books, records, documents and other data, and in addition, LACMTA and the City may conduct an inspection survey of a City Facility prior to or during Design Development. LACMTA may request and authorize the City to perform support services with respect to any such inspection survey pursuant to the procedures set out under Section 2.3 (*Work Orders*);

(ii) all Costs relating to Betterments upon acceptance of physical work where:

(A) the initial amount of the Betterment payment or credit shall be based upon the estimated Cost for the Design and Construction of the Rearrangement with the Betterment *less* the estimated Cost for Design and Construction of the Rearrangement without the Betterment, in each case as set out by LACMTA in its response and approval to the applicable City Betterment Request; and

(B) upon acceptance of the physical work for the Betterment, the initial Betterment payment or credit shall be reconciled by the Parties against the actual Costs of the Betterment; and

(iii) the Expired Service Life Value of each Conflicting Facility being replaced if the Replacement Facility will have an expected period of useful service greater than the period that the existing Conflicting Facility would have had, had it remained in service and the Rearrangement not been made, where:

(A) the **"Expired Service Life Value"** shall be an amount determined by the Parties during Design Development based upon estimates provided by the City of the depreciated value of the Conflicting Facility (calculated by multiplying the cost of the Replacement Facility by a fraction, the numerator of which is the age of the Conflicting Facility and the denominator of which is the estimated overall service life of the Conflicting Facility); and

(B) the Expired Service Life Value shall be determined by the Parties in accordance with Section 7.2(a)(iii)(A) prior to the commencement of the applicable Rearrangement work and documented in the applicable Work Order,

provided that LACMTA shall not receive a credit or payment for Expired Service Life Value for street pavement, curbs, gutters, sidewalks, traffic signals, traffic control devices, streetlights, sewers and storm drain facilities, and any other City-owned Utilities completed as part of the NoHo to Pasadena Project and in accordance with City Standards. Any street pavement work performed as part of a Betterment will be subject to Article 5 (*Betterments*).

(b) LACMTA shall receive:

(i) a credit (reflected on the applicable invoice(s) submitted by the City) for salvage, Betterments, and Expired Service Life Value of the City Facilities against work performed by the City, where the City performs the work under a Work Order; and

(ii) payment from the City for salvage, costs of Betterments, and Expired Service Life Value of the City Facilities where LACMTA performs the work invoiced and paid in accordance with this Article 7.

(c) Where LACMTA is due a payment under this Article 7:

(i) LACMTA shall commence its monthly billing within no more than 60 days, following the commencement of the applicable work and shall bill monthly thereafter following LACMTA's standard billing procedures;

(ii) LACMTA shall provide supporting documents to demonstrate the costs incurred by LACMTA, including LACMTA Contractor invoices, and other data, to the City upon request;

(iii) each billing statement for a salvage, Betterment, or Expired Service Life Value with respect to a City Facility shall: (A) be noted as either "progress" or "final"; (B) be addressed to the City Representative; and (C) include a certification that the Costs identified in such billing were appropriate and necessary to the performance of the applicable work and have not previously been billed or paid;

(iv) the final billing for a salvage, Betterment, or Expired Service Life Value with respect to a City Facility, with a notation that all applicable payments due to LACMTA for that salvage, Betterment, or Expired Service Life Value, shall be submitted to the City within 60 days after completion of the applicable work, and shall summarize prior progress billings, show inclusive dates upon which work was performed, and include a certification that the costs identified in such billing were calculated in accordance with this Article 7 and have not previously been billed or paid; and

(v) after the expiration of the 60 day period described in Section 7.1(c)(iv) (*Reimbursements to the City*), the City may notify LACMTA in writing that the 60 day closing billing period has expired, and upon LACMTA's receipt of such Notice from the City, LACMTA shall have 30 days to its submit final invoice.

7.3 **Payment of Billings**

Payment of each invoice properly submitted pursuant to Section 7.1 (*Reimbursements to the City*) or 7.2 (*Reimbursements and Credits to LACMTA*) shall be due within 60 days of receipt; provided that: (a) all such payments shall be conditional, subject to post-audit adjustments; (b) final payment for a Rearrangement shall be contingent upon final inspection (and acceptance) of the work by the Party billed for such work, which inspection (and acceptance, where applicable), will not be unreasonably withheld or delayed; and (c) LACMTA may withhold payments in the amount of any credit amounts due to LACMTA if the City has not posted such credits within 60 days after submittal of requests for the same by LACMTA.

## ARTICLE 8. INDEMNITY, WARRANTIES AND INSURANCE

8.1 **Indemnity**

(a) Each Party shall release, defend, indemnify, and hold harmless the other Party and its respective officers, agents, contractors, representatives, and employees to the maximum extent allowed by law from and against all liabilities, expenses (including legal fees and costs), claims, losses, suits, and actions of any kind, and for damages of any nature, including but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with its performance, or the performance of any of its officers, agents, contractors, representatives, and employees, of any of the obligations, work, authority, presence, or jurisdiction allocated or delegated to it under this Agreement (including, in the case of LACMTA, the performance of the Design and Construction of the NoHo to Pasadena Project).

(b) In contemplation of the provisions of Section 895.2 of the California Government Code imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined by Section 895 of the Government Code, the Parties, as between themselves, pursuant to Sections 895.4 and 895.6 of the Government Code, each assume the full liability imposed on them, or any of their officers, agents or employees, by law for injury caused by negligent or wrongful act or omission occurring in the performance of this Agreement to the same extent that such Party would be responsible under Section 8.1(a). The provisions of California Civil Code Section 2778 are made a part of this Agreement as if fully set out in this Agreement.

(c) Each Party agrees to notify the other promptly upon receipt of any third-party claim for which a Party is entitled to indemnity under this Agreement.

8.2 **Warranty**

(a) Solely with respect to Rearrangements performed by LACMTA or the LACMTA Contractors and any work performed by the City or the City Contractors, the City and LACMTA each warrant to the other for a period of one year from and after Substantial Completion of that Rearrangement or work (or at such earlier date on which responsibility for the maintenance, loss or damage for that Rearrangement or work passes to the other Party) that such Rearrangement or work performed by them shall be free from defect, provided that in the case of any Punch List items recorded at Substantial Completion (or such earlier date on which the Parties agree responsibility for maintenance, loss or damage passes), the warranty period shall be for one year from and after completion of that Punch List item. The limited warranty given under this Section 8.2(a) is the sole warranty given by the City and/or LACMTA, and, pursuant to this warranty, and for the warranty period only, the City or LACMTA, as the case may be, shall remedy any such discovered defect at its sole expense.

(b) In connection with Rearrangements performed by LACMTA or the LACMTA Contractors and any work performed by the City or the City Contractors, warranties supplied by the LACMTA Contractors and City Contractors to LACMTA or the City (as applicable) shall be made for the benefit of both LACMTA and the City.

8.3 **Insurance**

(a) The Parties must ensure that any contract entered into in connection with performance of the work under this Agreement contains:

(i) a provision requiring the general contractor, as part of the liability insurance requirements, to provide an endorsement to each policy of general liability insurance naming the City and LACMTA as additional insureds and explicitly waiving subrogation rights against LACMTA and the City; and

(ii) unless otherwise mutually agreed by the Parties, the requirement for: (A) construction general contractors to provide evidence of insurance in the following amounts: $5,000,000 in general liability; $1,000,000 in workers' compensation/employer's liability; and $1,000,000 in combined single limit (CSL) in auto liability; and (B) design contractors to provide evidence of insurance in the following amounts: $5,000,000 in general liability; $1,000,000 in workers' compensation/employer's liability; $1,000,000 (CSL) in auto liability; and $1,000,000 in professional liability.

(b) Each Party must:

(i) give the other Party 20 days' Notice prior to any reduction in scope or cancellation or expiration of any insurance procured by it under this Section 8.3;

(ii) give the other Party 20 days' Notice prior to it agreeing to a reduction in scope or the cancellation or expiration of any insurance procured by a LACMTA Contractor or City Contractor (as applicable) under this Section 8.3; and

(iii) notify the other Party within five days if it receives a Notice from a LACMTA Contractor or City Contractor (as applicable) of the expiration of any insurance procured under this Section 8.3.

## ARTICLE 9. RESOLUTION OF DISPUTES

In the event of dispute or difference arising under, out of or in connection with or relating to this Agreement, including any question regarding its existence, validity or termination (**"Dispute"**), the Parties shall make good faith efforts to resolve the Dispute through negotiation and the issue resolution ladder under EXHIBIT 4 (*Roles and Responsibilities*) of this Agreement.

## ARTICLE 10. MISCELLANEOUS

### 10.1 Force Majeure

No Party may bring a claim for a breach of obligations under this Agreement by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party if a Force Majeure Event occurs and the affected Party is prevented from carrying out its obligations by that Force Majeure Event. During the continuation of any Force Majeure Event, the affected Party shall be excused from performing those of its obligations directly affected by such Force Majeure Event provided that the occurrence or continuation of any Force Majeure Event shall not excuse any Party from performing any payment obligations contemplated under this Agreement. If a Force Majeure Event occurs, the City agrees, if requested by LACMTA pursuant to Section 2.3 (*Work Orders*), and if deemed possible and feasible by the City (acting reasonably), to accelerate the performance of its obligations under this Agreement and any Work Order to mitigate any delay arising from the Force Majeure Event provided that LACMTA agrees to reimburse the City for the incremental actual costs of such acceleration.

### 10.2 Existing Agreements

This Agreement does not negate or otherwise modify any existing easements, licenses or other use and/or occupancy agreements between the City and LACMTA or to which LACMTA has become or does become a successor either by assignment or by operation of law.

### 10.3 Audit and Inspection; Maintenance of Records

(a) **Audit and Inspection**. For the period commencing on the Effective Date and ending on the date falling three years after the end of the Term, each Party will have such rights to review and audit the other Party and its books, records and documents as may be deemed necessary for the purposes of verifying compliance with this Agreement, Applicable Law and the City Standards at all times during normal business hours, without charge. Each Party represents and warrants the completeness and accuracy in all material respects of all information it or its agents provides in connection with any audit by the other Party. If an audit shows that a financial adjustment is required, the Parties will use good faith efforts to agree such adjustment. Examination of a document or record during one review and audit shall not preclude further re-examination of such document or record in a subsequent review and audit. The Parties must ensure that any contract entered into in connection with performance of the work under this Agreement contains provisions acknowledging the rights of the City or LACMTA (as applicable) under this Section 10.3(a).

(b) **Maintenance of Records**. The City shall (and shall ensure that any City Contractor will) keep and maintain its books, records, and documents related to performance of the work under this Agreement (including all Costs incurred) for three years after the end of the Term; except that, all records that relate to Disputes being processed or actions brought under this Agreement must be retained and made available until any later date that such Disputes and actions are finally resolved. The City reserves the right to assert exemptions from disclosure of information that would be exempt under Applicable Law from disclosure or introduction into evidence in legal actions.

### 10.4 Notices

(a) Each Notice under this Agreement must be in writing and: (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (iv) sent by email communication followed by a hard copy, to the following addresses (or to such other address as may from time to time be specified in writing by such person):

**To the City:**

City Manager (or designee)
the City of Burbank
275 E. Olive Avenue
Burbank, CA 91502
jhess@burbankca.gov
Attn: Justin Hess

With a copy to:

City Attorney's Office
the City of Burbank
275 E. Olive Avenue
Burbank, CA 91502
LKurihara@burbankca.gov
Attn: Lisa Kurihara, Senior Assistant City Attorney

With a copy to:

Director of Public Works (and/or the City Engineer)
the City of Burbank
275 E. Olive Avenue
Burbank, CA 91502
kberkman@burbankca.gov
Attn: Ken Berkman, Public Works Director

Community Development
the City of Burbank
Community Services Building
150 N. Third Street
Burbank, CA 91502
krisked@burbankca.gov
Attn: David Kriske, Assistant Community Development Director

**To LACMTA:**

Chief Program Management Officer
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza, 16th Floor
Los Angeles, CA 90012
Facsimile No.: (213) 922-7382
CervantesE@metro.net
Attn: Eduardo Cervantes or Ferdinand Chan, Third Party Administration

With a copy to:

Office of Program Management
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, CA 90012
Facsimile No.: (213) 922-7447
VanGesselM@metro.net
Attn: Mark Van Gessel, Deputy Executive Officer

With a copy to:

County Counsel
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza, 24th Floor
Los Angeles, CA 90012
Facsimile No.: (213) 922-7447
lowt@metro.net
Attn: Teddy Low, Senior Deputy County Counsel

With a copy to:

Metro Real Estate
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza, 22nd Floor – Real Estate
Los Angeles, CA 90012
Facsimile No.: (213) 922-7447
pottsj@metro.net
Attn: John Potts, Executive Officer

(b) Any Notice sent personally will be deemed delivered upon receipt, and any notice sent by mail or courier service will be deemed delivered on the date of receipt or on the date receipt at the appropriate address is refused, as shown on the records of the U.S. Postal Service, courier service or other person making the delivery, and any notice sent by email communication will be deemed delivered on the date of receipt as shown on the received email transmission (provided the hard copy is also delivered pursuant to Section 10.4(a)). All Notices (including by email communication) delivered after **5:00 p.m. PST** will be deemed delivered on the first day following delivery that is not a Saturday, a Sunday, or a federal public holiday.

10.5 **Assignment; Successors and Assigns**

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

10.6 **Waiver**

(a) No waiver of any term, covenant, or condition of this Agreement will be valid unless in writing and executed by the obligee Party.

(b) Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of this Agreement at any time will not in any way limit or waive that Party's right to subsequently enforce or compel strict compliance with every term, covenant, condition, or other provision of this Agreement, despite any course of dealing or custom of the trade (other than the waived breach or failure in accordance with the provisions of such waivers).

10.7 **Amendments**

This Agreement can only be amended or replaced by a written instrument duly executed by the Parties.

10.8 **Governing Law and Jurisdiction**

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

10.9 **Severability**

If any provision of this Agreement is ruled invalid by a court having proper jurisdiction, such invalidity or unenforceability will not affect the validity or enforceability of the balance of this Agreement, which will be construed and enforced as if this Agreement did not contain such invalid or unenforceable clause, provision, Article, Section, subsection or part.

10.10 **Counterparts**

This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

10.11 **Limitation on Third Party Beneficiaries**

Nothing contained in this Agreement is intended or will be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties toward, any person not a party to this Agreement.

10.12 **Survival**

The representations, warranties, indemnities, waivers and any express obligations of the Parties following termination, set out in this Agreement shall survive the expiration or termination, for any reason, of this Agreement.

10.13 **Approvals; Further Documents and Actions**

Any acceptance, approval, consent, permission, satisfaction, agreement, authorization or any other like action (collectively, **"Approval"**) required or permitted to be given by any Party pursuant to this Agreement or any Work Order:

(a) must be in writing to be effective (except if deemed granted pursuant to this Agreement);

(b) shall not be unreasonably withheld, conditioned or delayed; and if Approval is withheld, such withholding shall be in writing and shall state with specificity the reasons for withholding such Approval, and every effort shall be made to identify with as much detail as possible the changes that are required for Approval; and

(c) shall be deemed granted if no response is provided to the Party requesting an Approval within the time period prescribed by this Agreement or the applicable Work Order or if no time is prescribed by this Agreement or the applicable Work Order, within 30 days, in each case commencing upon actual receipt by the Party from which an Approval is requested or required, of a request for Approval from the requesting Party. Notwithstanding the foregoing, an approval shall not be deemed granted if the approval requires an action by City Council and the City Council has not acted.

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

**ARTICLE 11. DEFINITIONS AND INTERPRETATION**

11.1 **Definitions**

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

**"Approval"** has the meaning given in Section 10.13 (*Approvals; Further Documents, and Actions*).

**"Abandon"** means the permanent termination of service, or the removal of an existing City Facility or portion of it.

**"ADA"** means the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

**"Adjacent Work"** means any removal, demolition, repair, restoration, relocation or reconstruction of existing facilities and/or construction of new facilities and/or other physical works by the City or a third party: (a) that is performed or to be performed within, or within 100 feet of, the Project Site; or the performance of which is otherwise reasonably likely to conflict with the Design and Construction and (b) in the case of works performed or to be performed by a third party, of which the City is aware or ought to be aware.

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

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

**"Annual Work Plan"** means an annual work plan prepared and agreed by LACMTA and the City in accordance with Section 2.2 (*Annual Work Plan*).

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

**"Basis of Design"** means, with respect to any Rearrangements, the scope, criteria, specifications and requirements (including requirements of the FEIR) for those Rearrangements agreed by LACMTA and the City as at the date of issuance by LACMTA of the procurement documents for a construction manager/general contractor for the NoHo to Pasadena Project, as described in Section 1.1(c)(ii) (Scope of Agreement).

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

(a) comprising an upgrade, change or addition to a City Facility (or a part of a City Facility) requested by the City that provides for greater capacity, capability, durability, appearance, efficiency or function or other betterments of that City Facility over that which was provided by the City Facility prior to the Rearrangement; or

(b) for which the City Standards applicable to that Rearrangement are changed or added to after the establishment of the Basis of Design for that Rearrangement,

provided that the term "Betterment" shall exclude:

(i) an upgrade, which the Parties agree, will be of direct and principal benefit to the construction, operation and/or maintenance of the NoHo to Pasadena Project;

(ii) an upgrade resulting from Design or Construction in accordance with the applicable City Standards as set out in EXHIBIT 6 (*Design Requirements*) and any changes or additions to those City Standards notified to LACMTA prior to the establishment of the Basis of Design for the Rearrangement and that have not been adopted by the City in breach of Section 3.5(a) (*City Standards*);

(iii) measures to mitigate environmental impacts identified in the NoHo to Pasadena Project's Final Environmental Impact Report and any supplemental environmental reports for the NoHo to Pasadena Project;

(iv) replacement of devices or materials no longer regularly manufactured with the next highest grade or size; and

(v) an upgrade that is the consequence of changes made by LACMTA or a LACMTA Contractor after the establishment of the Basis of Design.

**"City"** is defined in the Preamble. "City" shall also refer to any City owned or operated **"water"** and/or **"power"** departments.

**"City Betterment Request"** means a Notice from the City to LACMTA requesting a Betterment in accordance with Article 5 (*Betterments*) and in the form set out in Part B of EXHIBIT 11 (*Forms*).

**"City Construction Work"** means any Construction work and activities performed or to be performed by the City or a City Contractor pursuant to a Work Order.

**"City Contractor"** means any contractor, consultant, tradesperson, supplier or other person engaged or authorized by the City to perform any Adjacent Work, City Design Work, City Construction Work or any other work to be performed by the City under the provisions of this Agreement or otherwise on or about the Project Site but excluding LACMTA and the LACMTA Contractors.

**"City Design Work"** means any Design work and activities performed or to be performed by the City or a City Contractor pursuant to a Work Order.

**"City Facility"** means real or personal property located within or near the City Portion, such as structures, improvements, and other properties, which are under the ownership or operating jurisdiction of the City, and shall include, but not be limited to, public streets (any classification), highways, bridges, retaining walls, pedestrian/utility tunnels, alleys, storm drains, sanitary sewers, survey monuments, parking lots, parks, public landscaping and trees, traffic control devices, lighting and communications equipment (cameras, sensors, LTE, microwave receivers, etc.) and public buildings, police and fire department related improvements, as well as any dams or water storage tanks, systems, and appurtenances. City-owned airport and harbor facilities are not included in this definition.

**"City Maintenance Work"** means any maintenance work and activities performed or to be performed by the City or a City Contractor pursuant to a Work Order or under the provisions of this Agreement.

**"City Municipal Code"** means the Burbank Municipal Code and the Burbank City Charter.

**"City Portion"** means that portion of the NoHo to Pasadena Project that will pass in, on, under, over or along public streets, highways, bridges, parks and other public right-of-way within the City, as shown in Part B of EXHIBIT 3 (*Project Site*).

**"City Representative"** is defined in Section 2.1(b) (*Governance*).

**"City Standards"** means the City's design standards and ordinances and City-owned Utility rules and regulations which govern the design of all Rearrangements, as specified in EXHIBIT 6 (*Design Requirements*) or adopted by the City and notified to LACMTA in accordance with Section 3.5 (*City Standards*) of this Agreement.

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

(a) the LACMTA Submittal or Design work or Construction work that is the subject of the LACMTA Submittal fails to comply with (or is reasonably likely to fail to comply if implemented in accordance

with the LACMTA Submittal) any applicable covenant, condition, requirement, term or provision of this Agreement; or

(b) LACMTA (or the relevant LACMTA Contractor (as applicable)) has not provided all content or information required with respect to the LACMTA Submittal.

"**Conflicting Facility**" means an existing City Facility, which the Parties determine requires Rearrangement in order to construct, operate or maintain the NoHo to Pasadena Project.

**"Construction"** means all construction activities related to the City Portion that are necessary to complete and operate and maintain the NoHo to Pasadena Project including the removal, demolition, replacement, restoration, alteration or realignment of existing facilities and the procurement, installation, inspection, and testing of new facilities including temporary and permanent materials, equipment, systems, software, and any components of such permanent materials, systems and software.

**"Construction Phase"** means the phase of the NoHo to Pasadena Project identified as such in EXHIBIT 2 (*Project Phases and Project Schedule*).

**"Construction Staging Plan"** has the meaning given in EXHIBIT 8 (*Construction Requirements*).

**"Cost"** means all eligible direct and indirect costs actually incurred for activities or work performed or materials acquired in accordance with the provisions of this Agreement, less (in respect of the City) credits to LACMTA as provided in Article 7 (*Reimbursement and Credits*) where:

(a) eligible direct costs include allowable direct labor costs, materials costs, and storage and transportation costs of materials salvaged for the City's use in performing the applicable work;

(b) eligible indirect costs shall be computed based upon the indirect cost rates approved annually for the City by its cognizant agency, and as noted on the Form 60, for allocation to federally funded or state funded contracts; and

(c) unless the Internal Revenue Service and the CPUC issue regulations or rulings to the contrary, the eligible direct and indirect costs shall not include taxes purportedly arising or resulting from LACMTA's payments to the City under this Agreement.

**"days"** means, unless otherwise stated and whether or not capitalized, calendar days.

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

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

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

**"Design Phase"** means the phase of the NoHo to Pasadena Project identified as such in EXHIBIT 2 (*Project Phases and Project Schedule*).

**"Dispute"** is defined in Article 9 (*Resolution of Disputes*).

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

**"Engineer of Record"** means the individual, firm or entity that performs the Design, that imprints the engineer's/architect's seal on the drawings, and is responsible and liable for the Final Design.

**"Expired Service Life Value"** is defined in Section 7.2(a)(iii)(A) (*Reimbursements and Credits to LACMTA*).

**"Final Acceptance"** has the meaning given in EXHIBIT 9 (*Inspection and Acceptance Procedure*).

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

**"Final Environmental Impact Report"** or **"FEIR"** means the final environmental impact report for the NoHo to Pasadena Project completed pursuant to the California Environmental Quality Act and certified by the LACMTA Board of Directors on April 28, 2022.

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

(a) war, civil war, invasion, violent act of foreign enemy or armed conflict or any act of terrorism;

(b) nuclear, chemical or biological contamination unless the source or cause of the contamination is brought to or near the Project Site by affected Party;

(c) ionizing radiation unless the source or cause of the ionizing radiation is brought to or near the Project Site by the affected Party;

(d) any fire, explosion, unusually adverse weather, flood or earthquakes;

(e) any named windstorm and ensuing storm surges, including the direct action of wind originating from a named windstorm;

(f) any riot or civil commotion;

(g) any blockade or embargo;

(h) epidemic, pandemic or quarantine; or

(i) any official or unofficial strike, lockout, go-slow or other dispute, generally affecting the construction industry or a significant sector of it,

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

**"Form 60"** means Form 60 (Professional Services Cost/Price Summary) in the form attached as Part A of EXHIBIT 11 (*Forms*).

**"Good Industry Practice"** means the exercise of the degree of skill, diligence, prudence, and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced designer or constructor (as applicable) seeking in good faith to comply with its contractual obligations, complying with all Applicable Laws and Governmental Approvals, using accepted construction standards and criteria normally used on similar projects in the State of California, and engaged in the same type of undertaking in the United States under similar circumstances and conditions.

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

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

**"LACMTA"** is defined in the Preamble.

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

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

**"LACMTA Fiscal Year"** means each one-year period commencing on July 1 of a calendar year and terminating on June 30 of the following calendar year.

**"LACMTA Notice of Potential Betterment"** means a Notice from LACMTA to the City notifying the City of a potential Betterment in accordance with Article 5 (*Betterments*) and in the form set out in Part C of EXHIBIT 11 (*Forms*).

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

**"LACMTA Submittal Review Period"** means, for each LACMTA Submittal, a period of 30 days from the date of delivery of the LACMTA Submittal to the City under the provisions of this Agreement or such other period as the Parties may agree under the applicable Work Order.

**"LACMTA Submittals"** means:

(a) Design Documentation for a Rearrangement (other than any Design Documentation for which the City is responsible under a Work Order);

(b) Construction Management Plans for Construction work performed by LACMTA or a LACMTA Contractor within the Public Rights-of-Way; and

(c) any other documents which LACMTA (or the LACMTA Contractors) must submit to the City in accordance with this Agreement.

**"NoHo to Pasadena Project"** means the design and construction of a new bus rapid transit line known as the North Hollywood to Pasadena Transit Corridor Project, as more fully described in EXHIBIT 1 (*Project Description*) and the FEIR.

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

**"Operation and Maintenance Phase"** means the phase of the NoHo to Pasadena Project identified as such in EXHIBIT 2 (*Project Phases and Project Schedule*).

**"Package"** means each package of Design Documentation submitted by LACMTA or a LACMTA Contractor to the City in accordance with this Agreement.

**"Parties"** means collectively the City and LACMTA, and each a **"Party"**.

**"Project Meeting"** means any Project Meeting, meeting, working session, over the shoulder review meeting, or other workshop or meeting convened by LACMTA as described in Section 2.1(d) (*Governance*).

**"Project Right-of-Way"** means the physical limits for the Design and Construction of the NoHo to Pasadena Project, as identified in Part A of EXHIBIT 3 (*Project Site*), or as notified by LACMTA to the City and compliant with the FEIR and any supplemental environmental reports for the NoHo to Pasadena Project, during the Design and Construction Phases.

**"Project Schedule"** means the schedule for the NoHo to Pasadena Project including the City Portion set out in Part B of EXHIBIT 2 (*Project Phases and Project Schedule*), as may be amended by a notice from LACMTA to the City or otherwise by an amendment to this Agreement.

**"Project Site"** means, collectively, the Project Right-of-Way and each temporary construction easement for the NoHo to Pasadena Project, as identified in Part A of EXHIBIT 3 (*Project Site*).

**"Public Rights-of-Way"** means the public streets, highways, bridges, parks and other public rights-of-way within the City.

**"Punch List"** means, with respect to a Rearrangement (or the applicable part of a Rearrangement), the list of work items which remain to be completed after Substantial Completion as agreed by the Parties and listed in the applicable Statement of Substantial Completion, which shall be limited to minor incidental items of work necessary to correct imperfections which would not prevent the safe use or operation of the Rearrangement (or applicable part of the Rearrangement) in accordance with the requirements under this Agreement.

**"Rearrangement"** means the work of:

(a) removal, replacement, restoration, alteration, reconstruction, support, or relocation of all or a portion of a Conflicting Facility, whether permanent or temporary, which LACMTA determines in its sole discretion is necessary in order for the NoHo to Pasadena Project to comply with Applicable Law or otherwise which LACMTA and the City mutually agree is necessary in order to construct, operate or maintain the NoHo to Pasadena Project; or

(b) the installation of new and required City Facilities which LACMTA determines in its sole discretion is necessary in order for the NoHo to Pasadena Project to comply with Applicable Law or otherwise which LACMTA and the City mutually agree is necessary as a result of the impact of the construction of the NoHo to Pasadena Project.

**"Replacement Facility"** means a facility, which may be constructed or provided under this Agreement as a consequence of the Rearrangement of a Conflicting Facility or a part of it.

**"Statement of Final Acceptance"** has the meaning given in EXHIBIT 9 (*Inspection and Acceptance Procedure*).

**"Statement of Substantial Completion"** has the meaning given in EXHIBIT 9 (*Inspection and Acceptance Procedure*).

**"Substantial Completion"** has the meaning given in EXHIBIT 9 (*Inspection and Acceptance Procedure*).

**"Substantial Completion Correction List"** has the meaning given in EXHIBIT 9 (*Inspection and Acceptance Procedure*).

**"Temporary Facilities"** means a facility constructed for the purpose of ensuring continued service while a City Facility is taken out of full or partial service for permanent Rearrangement and/or any work on a City Facility, which will be removed or restored to its original condition after such Construction activities are completed.

**"Term"** is defined in Section 1.2 (*Duration of Agreement*).

**"Traffic Control and Lighting Work"** has the meaning given in EXHIBIT 6 (*Design Requirements*).

**"Traffic Management Plan"** means a plan that addresses traffic control requirements in construction areas through a worksite traffic control plan and along detour routes through a traffic circulation plan.

**"Utility"** means a privately, publicly, or cooperatively owned line, facility, or system (including municipal or government lines, facilities, and systems) for transmitting or distributing communications, cable television, power, electricity, gas, oil, crude products, water, steam, waste, or any other similar item, including any fire or police signal system as well as streetlights associated with any publicly-owned roadways.

**"Utility Adjustment"** means a relocation (temporary or permanent), abandonment, protection-in-place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, rearrangements, or modification of existing Utilities necessary to affect a condition equal to the existing Utility facilities and excluding any Betterments.

**"Utility Conflict"** means an existing Utility, which LACMTA determines requires a Utility Adjustment in order to construct, operate or maintain the NoHo to Pasadena Project in compliance with the FEIR and subject to Section 2.5(a) (*Permits*), Applicable Law.

**"Work Order"** means a work request submitted by LACMTA to the City authorizing the performance of any work associated with the NoHo to Pasadena Project and the associated purchase of required materials.

11.2 **Interpretation**

(a) In this Agreement unless otherwise expressly stated:

(i) headings are for convenience only and do not affect interpretation;

(ii) a reference to this Agreement or any other agreement, instrument, or document is to this Agreement or such other agreement, instrument, or document as amended or supplemented from time to time;

(iii) a reference to this Agreement or any other agreement includes all exhibits, schedules, forms, appendices, addenda, attachments, or other documents attached to or otherwise expressly incorporated in this Agreement or any such other agreement (as applicable);

(iv) subject to Section 11.2(a)(v) (*Interpretation*), a reference to an Article, Section, subsection, clause, Exhibit, schedule, form or appendix is to the Article, Section, subsection, clause, Exhibit, schedule, form, or appendix in or attached to this Agreement;

(v) a reference in the main body of this Agreement, or in an Exhibit, to an Article, Section, subsection, or clause is to the Article, Section, subsection, or clause of the main body of this Agreement, or of that Exhibit (as applicable);

(vi) a reference to a person includes such person's permitted successors and assigns;

(vii) a reference to a singular word includes the plural and vice versa (as the context may require);

(viii) the words "including", "includes" and "include" mean "including, without limitation", "includes, without limitation" and "include, without limitation", respectively and the word "or" is not exclusive;

(ix) an obligation to do something "promptly" means an obligation to do so as soon as the circumstances permit, avoiding any delay and "shall" when stated is to be considered mandatory; and

(x) in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" mean "to and including".

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

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

APPROVED AS TO FORM

DAWYN R HARRISON,
County Counsel

By: Teddy Low
Teddy Low
Senior Deputy County Counsel

**"LACMTA"**

THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY, a California county transportation authority existing under the Authority of §§ 130050.2 *et seq.* of the California Public Utilities Code

By:
Name: Stephanie Wiggins
Its: Chief Executive Officer

APPROVED AS TO FORM

Joseph McDougall,
City Attorney

By:
Name: Lisa Kurihara
Sr. Assistant City Attorney

ATTEST
By: Kimberley Clark
Name: KIMBERLEY CLARK
City Clerk

**"CITY"**

CITY OF BURBANK,
a California municipal corporation

By:
Name:
Its: City Manager (or designee)

## EXHIBIT 1 – PROJECT DESCRIPTION

The NoHo to Pasadena Project is a new bus rapid transit (BRT) system that will provide a BRT service connecting several cities and communities between the San Fernando and San Gabriel Valleys. From west to east, the route traverses the communities of North Hollywood (in the City of Los Angeles), Burbank, Glendale, Eagle Rock (in the City of Los Angeles) and Pasadena. The NoHo to Pasadena Project will operate along a combination of local roadways and freeway sections with various configurations of mixed-flow and dedicated bus lanes depending on location.

The 19-mile BRT corridor serves as a key regional connection between the San Fernando and San Gabriel Valleys. Each community has dense residential populations and many cultural, entertainment, shopping, and employment areas throughout, including the NoHo Arts District, Burbank Media District, Glendale Galleria, Americana at Brand, Eagle Rock Plaza, and Old Pasadena to be served by 22 stations included in the Project. The Project will offer a premium transit service connecting to these destinations with an estimated end-to-end travel time of approximately 70 minutes. This compares with an existing travel time of approximately 2 hours using a combination of existing bus lines such as 180, 92, 155, and 224. Additionally, the Project will greatly enhance service reliability by separating buses from the fluctuating traffic congestion, resulting in more consistent run times. The Project will also maintain its faster travel times and reliability even as traffic congestion continues to worsen over time. Further, the BRT will also include additional features that will enhance the customer experience. The NoHo to Pasadena Project will provide improved and reliable transit service to meet the mobility needs of residents, employees, and visitors who travel within the corridor. As a result, the Project is anticipated to attract approximately 30,000 daily riders when it opens.

In addition, to advancing the goals of LACMTA's Vision 2028 Strategic Plan, objectives of the NoHo to Pasadena Project include:

1. Advance a premium transit service that is more competitive with auto travel.
2. Improve accessibility for disadvantaged communities.
3. Improve transit access to major activity and employment centers.
4. Enhance connectivity to LACMTA and other regional transit services.
5. Provide improved passenger comfort and convenience.
6. Support community plans and transit-oriented community goal.

## EXHIBIT 2 – PROJECT PHASES AND PROJECT SCHEDULE

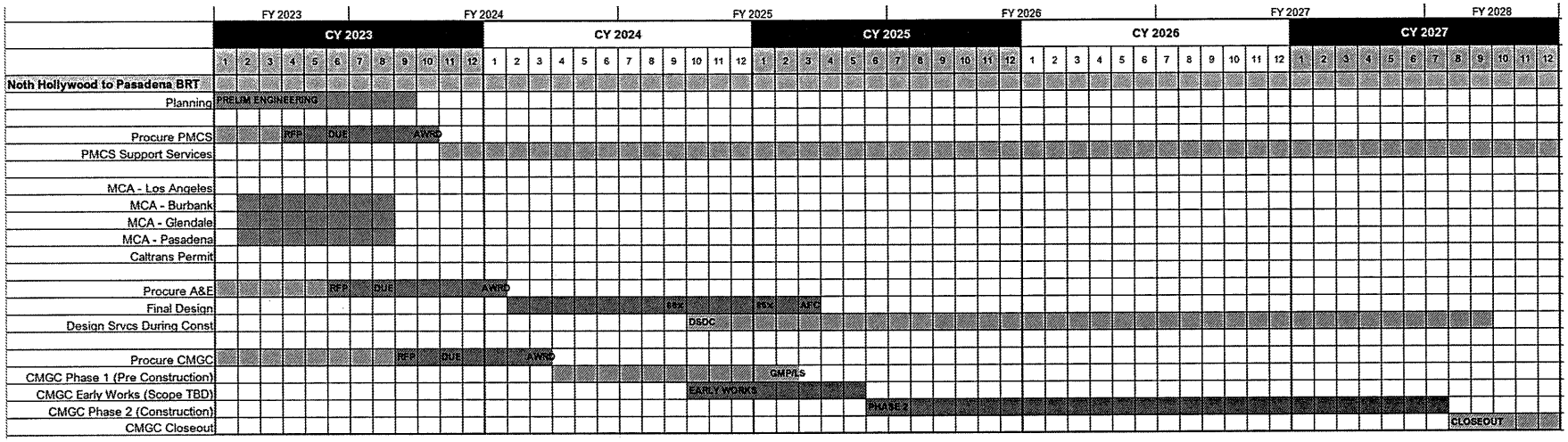
**Part A: Phases**

As at the date of this Agreement, the phasing and time periods for the NoHo to Pasadena Project is anticipated to be as set out in this Part A. The phases described in this Part A may overlap and the time periods are subject to change.

| PHASE | KEY ACTIVITIES |
|---|---|
| Planning & Advanced Conceptual Engineering Phase<br><br>To Q3 2023 | Key activities include:<br>• Preparation of the draft environmental impact report and the FEIR (complete).<br>• Certification of the FEIR (achieved on April 28, 2022).<br>• Preparation of Advanced Conceptual Engineering. |
| Design Phase<br><br>Q2 2023 to Q1 2025 | Key activities include:<br>• Agreement by the Parties of any Design work and/or Construction work to be performed by the City (including any City-Performed Project Work) in accordance with Sections 3.1(b) (*Design Responsibilities*) and 4.1(b) (*Construction Responsibilities*) of this Agreement.<br>• Procurement of the LACMTA Contractor to perform the Design work.<br>• Engineering and Design Development by LACMTA and the applicable LACMTA Contractor through to Final Design.<br>• Design review and support services provided by the City in accordance with this Agreement.<br>• Procurement of the LACMTA Contractor to perform Design review, preconstruction services, and the Construction work. |
| Construction Phase<br><br>Q4 2024/ Q1 2025 to Q1 2027 | Key activities include:<br>• Construction of the NoHo to Pasadena Project (including any Rearrangements).<br>• Inspection, Substantial Completion, and Final Acceptance. |
| Operation and Maintenance Phase<br><br>From Q1 2027 | Key activities include:<br>• Operation of passenger service.<br>• Maintenance of the NoHo to Pasadena Project. |

## Part B: Project Schedule

As at the date of this Agreement, the schedule for the NoHo to Pasadena Project is anticipated to be as set out in this Part B. However, this schedule is subject to change, with any changes as notified by LACMTA to the City or otherwise incorporated in an amendment of this Agreement.

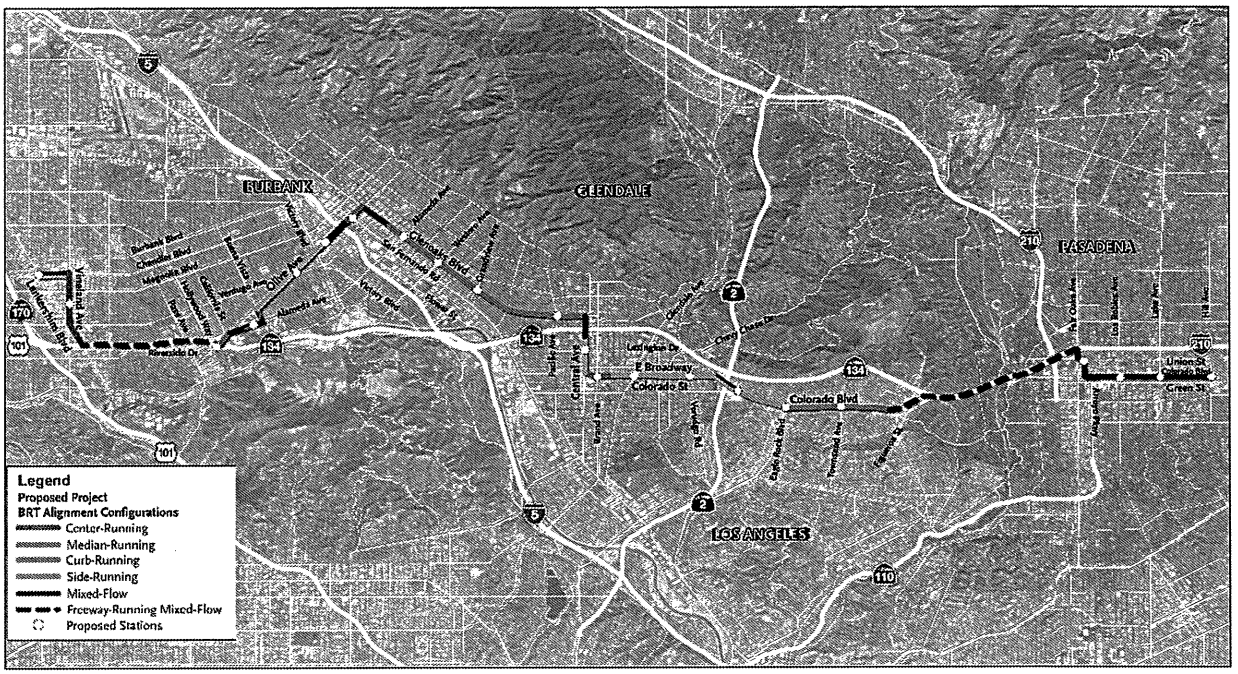





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## EXHIBIT 3– PROJECT SITE

**Part A: NoHo to Pasadena Project Site**




**Part B: City Portion**

The drawing depicting the City Portion will be as notified by LACMTA to the City or otherwise incorporated in an amendment of this Agreement.

**Part C: Physical Limits of the Project Work**

Prior to the establishment of the Basis of Design, LACMTA and the City will meet in good faith to define and agree the physical limits of the structures and elements of the NoHo to Pasadena Project Work (including with respect to bus charger masts and bus stops and canopies/shelters) that LACMTA owns and maintains, or will own or maintain.

In agreeing to such physical limits, LACMTA and the City will take into consideration the intended operation and maintenance roles and responsibilities, as described under EXHIBIT 10 (*Operation and Maintenance Principles*).

## EXHIBIT 4 – ROLES AND RESPONSIBILITIES

### Part A: LACMTA Representative and City Representative

The initial designations of the LACMTA Representative and City Representative are as follows:

| | |
|---|---|
| **LACMTA Representative** | LACMTA Program Management or such other person, or the holder of a specified office or position, specified, from time to time, by LACMTA's Chief Executive Officer, or his/her designee |
| **City Representative** | City Manager or his/her designee |

### Part B: Summary of Key Roles and Responsibilities

| Phase | LACMTA / LACMTA Contractors | City |
|---|---|---|
| **General** | Performing all of LACMTA's obligations under this Agreement and ensuring that the LACMTA Contractors comply with the provisions of this Agreement. | Performing all of City's obligations under this Agreement and ensuring that the City Contractors comply with the provisions of this Agreement. |
| **Planning and Advanced Conceptual Engineering Phase** | Managing the planning process and preparing all environmental documents including the FEIR.<br>Preparing Advanced Conceptual Engineering for the NoHo to Pasadena Project. | Providing support and assistance to LACMTA in obtaining Governmental Approvals and in dealing with other third parties with respect to the City Portion. |
| **Design Phase** | Discussing and identifying any Design work and/or Construction work to be performed by the City (including any City-Performed Project Work) in accordance with Sections 3.1(b) (*Design Responsibilities*) and 4.1(b) (*Construction Responsibilities*) of this Agreement.<br>Preparing the procurement documents and managing the procurement of the LACMTA Contractors for the Design work and the Construction work.<br>In the case of the LACMTA Contractor responsible for the Design work:<br>• defining its design management plan; and<br>• preparing and submitting the Design for the NoHo to Pasadena Project to the City to the extent required by this Agreement, up to and including Final Design stage. | Discussing and identifying any Design work and/or Construction work to be performed by the City (including any City-Performed Project Work) in accordance with Sections 3.1(b) (*Design Responsibilities*) and 4.1(b) (*Construction Responsibilities*) of this Agreement.<br>Continuing to provide support and assistance to LACMTA in obtaining Governmental Approvals and in dealing with other third parties with respect to the City Portion.<br>Reviewing and approving Designs submitted to it in accordance with agreed procedures.<br>Performing any other Design-related obligations under any Work Orders.<br>Providing assistance to LACMTA in procuring any right-of-way necessary for the City Portion to the extent set out in this Agreement. |

| Phase | LACMTA / LACMTA Contractors | City |
|---|---|---|
| | Monitoring the performance of the LACMTA Contractors. | |
| **Construction Phase** | In the case of the LACMTA Contractor responsible for the Construction work, performing the Construction work in accordance with the Final Designs, the provisions of its LACMTA Contract and the provisions of this Agreement.<br><br>Monitoring the performance of the LACMTA Contractors. | Performing its Construction-related obligations under any Work Orders.<br><br>Coordinating Adjacent Work, City Construction Work and City Maintenance Work. |
| **Operation and Maintenance Phase** | Operating and maintaining the NoHo to Pasadena Project, including performing any operation and maintenance work allocated to LACMTA under the provisions of this Agreement (including any amendment or supplement or new agreement entered into under Article 6 (*Operation and Maintenance*)). | Performing any operation and maintenance work allocated to the City under the provisions of this Agreement (including any amendment or supplement or new agreement entered into under Article 6 (*Operation and Maintenance*)) and coordinating maintenance work and Adjacent Work with LACMTA and any LACMTA Contractor(s). |

**Part C: Issue Resolution and Decision-Making**

The following City staff or its designees shall be responsible for coordinating among the applicable City departments and divisions as necessary to make the designated decision or approval.

| City Team | Partial List of Key Functions for Decision or Approval | LACMTA Team |
|---|---|---|
| City Manager, Director of Public Works, Director of Community Development | Spearhead council approvals.<br><br>**Level 2** decision makers for the purposes of the issue resolution ladder described below. | LACMTA Deputy Chief Program Management. |
| Director of Public Works, City Engineer, Director of Community Development, Assistant CD Director, Transportation | Approve all final Construction plans and related documents as required by this Agreement.<br><br>Provide overall leadership in timely resolution of Design, Construction, plan review, and related administrative matters.<br><br>CA Professional Engineer Registration<br><br>**Level 1** decision makers for the purposes of the issue resolution ladder described below. | LACMTA Senior Executive Officer or designated LACMTA Project Manager. |
| City Engineer or City designated Project Manager or equivalent designated representative(s) | Provide Construction support as specified in this Agreement.<br><br>Manage assigned resources and coordinate interactions between the City and LACMTA and the LACMTA Contractors as it relates to Construction support.<br><br>Provide independent quality assurance (IQA) functions. | LACMTA designated Project Manager (Executive Officer or Deputy Executive Officer) or designated Construction Manager (Deputy Executive |

| City Team | Partial List of Key Functions for Decision or Approval | LACMTA Team |
|---|---|---|
| | | Officer or Senior Director). |
| City Public Works Permit Division Head or equivalent designated representative(s) | Oversee and coordinate all plan reviews as specified in this Agreement.<br><br>Manage and coordinate interaction of the City with LACMTA and the LACMTA Contractors as it relates to Design review and comment resolution.<br><br>Provide the necessary coordination in planning, engineering, technical, analytical and administrative support services with respect to design approval including fire/life safety, police/public security, access, transportation engineering, civil and structural engineering, street lighting engineering, drainage, sanitation, landscaping, and related maintenance requirements.<br><br>Skilled in change management and expedited approvals. | LACMTA Designated Project Engineer (Deputy Executive Officer or Senior Director levels), consultant construction manager, and LACMTA Third Party Admin Dept Project Lead (Civil). |
| City Traffic Engineer or equivalent designated representative(s) | Approve all worksite traffic control plans and any final design documents pertaining to both permanent and temporary traffic controls (signals, striping, WATCH lane closures, MUTCD restrictions, etc.). | LACMTA designated Project Engineer (Deputy Executive Officer or Senior Director levels), consultant construction manager, LACMTA Third Party Admin Dept Project Lead (Civil) and traffic engineering consultants. |

Issues between the Parties that arise with respect to the NoHo to Pasadena Project under this Agreement that cannot be resolved at the working level will be escalated by the Parties for resolution as follows:

1. If the issue is unresolved at the working level for 20 days (or such other period as is expressly set out in this Agreement with respect to the relevant issue) commencing on the date when LACMTA or the City first identifies the issue to the other in a meeting (as documented in meeting minutes) or in an email notification to the other marked "Issue for Resolution" and describing the issue or difference and the background to it (together with any supporting information), then on the 21st day (or the first day after the applicable period as is expressly set out in this Agreement with respect to the relevant issue):

    a. the applicable LACMTA team member described in the table above will escalate the issue to the LACMTA level 1 decision maker identified in the table above; and

    b. the applicable City team member described in the table above will escalate the issue to the City level 1 decision maker identified in the table above,

    in each case describing the issue and the background to the issue in a position paper (together with any supporting materials). The level 1 decision maker from LACMTA and the City will then meet within ten days of being notified of the issue to attempt in good faith to resolve the issue.

2. If the level 1 decision makers are unable to resolve the issue within ten days of being notified of the issue:

    a. the LACMTA level 1 decision maker will escalate the issue to LACMTA's level 2 decision maker identified in the table above; and

b. the City level 1 decision maker will escalate the issue to the City's level 2 decision maker identified in the table above,

in each case describing the issue and the background to the issue in a position paper (together with any supporting materials). The level 2 decision makers from LACMTA and the City will then meet within ten days of being notified of the issue to attempt in good faith to resolve the issue.

3. If the level 2 decision makers are unable to resolve the issue within 20 days of being notified of the issue, then either Party may refer the issue to the dispute resolution procedures under Article 9 (*Resolution of Disputes*).

Any meetings of the level 1 or level 2 decision makers may be held in person or via videoconference or teleconference. Any resolution of an issue agreed by the Parties will be documented by the Parties in writing and any amendments to this Agreement agreed by the Parties as part of the resolution will be documented in accordance with Section 10.7 (*Amendments*) of this Agreement. To the extent that the LACMTA Representative or City Representative is not also a level 1 or level 2 decision maker, each Party is responsible for ensuring that its representative is notified of any issue escalation and of any resolution reached.

## EXHIBIT 5 – UTILITY ADJUSTMENT PROCEDURES

LACMTA and the City will perform the following actions and activities with Utilities that conflict with the City Portion:

1. **Identification of Utility Conflicts**

1.1 The City will coordinate and cooperate with LACMTA in providing any locational data or other information already in its possession regarding the location of Utilities within the City Portion.

1.2 LACMTA will identify Utility Conflicts within the City Portion and deliver a list of the identified Utility Conflicts to the City, including:

(a) City-owned Utilities; and

(b) private Utilities.

The list of identified Utility Conflicts will include the anticipated Utility Adjustment to address each Utility Conflict and a schedule defining when such Utility Adjustments should be completed. The City acknowledges and agrees that identification of Utility Conflicts within the City Portion will be an iterative process and that LACMTA may deliver more than one list of identified Utility Conflicts for each Project and may update the list of identified Utility Conflicts, during all phases of the NoHo to Pasadena Project.

2. **Interface with City-owned Utility Owner**

2.1 The Parties agree to cooperate and coordinate on the Rearrangement of City-owned Utilities within the Public Rights-of-Way. Except to the extent of any Utility Design or Construction work requested to be performed by LACMTA, the City-owned power Utility shall be responsible for the Design and Construction of power Utility Adjustments for City-owned Utilities.

2.2 Unless otherwise agreed, LACMTA will be responsible for the Design and Construction of water Utility Adjustments for the City-owned water Utility.

2.3 Within 20 days of delivery of a Utility Conflict identification list under Section 1.2(a) (*Identification of Utility Conflicts*) of this EXHIBIT 5 (or such longer time period as may be agreed to by the Parties), the Parties will meet to:

(a) verify that all City-owned Utility conflicts have been identified;

(b) discuss any additional locational data and other information required regarding the Utility;

(c) identify the LACMTA and City points-of-contact for each conflicting Utility;

(d) agree on timing for the Utility Adjustments, the applicable City Standards and coordination of the schedule for Construction with LACMTA's Project Schedule; and

(e) discuss the Design Documentation that the City-owned Utility shall prepare for the 65%, 85% and 100% Designs (including horizontal design, profiles, shoring, and worksite traffic control plans) for the Utility Adjustments to ensure the Design for the Utility Adjustment does not interfere with, disrupt or delay the Design, Construction, operation or maintenance of the NoHo to Pasadena Project.

2.4 LACMTA shall reimburse the City-owned Utility for agreed upon Costs to perform any Utility Adjustments, Design, Design support, other Design-related activities and/or Construction work in accordance with the terms of this Agreement. A Form 60 submitted by the City-owned Utility for the Utility Adjustments or any work related to the Utility Adjustments shall estimate the total effort required for the City-owned Utility to perform the Design, Design support, other Design-related activities and/or Construction work and shall attach the schedule prepared in accordance with this Agreement and agreed by the Parties for the performance of the

Design, Design support, other Design-related activities and/or Construction work under a Work Order in accordance with the terms of that Work Order and this Agreement.

3. **Interface with Private Utility Owner**

3.1 Promptly following delivery of a Utility Conflict identification list under Section 1.2 (*Identification of Utility Conflicts*) of this EXHIBIT 5 (and in the case of Section 3.2(a) below, within 10 days of delivery of a Utility Conflict identification list under Section 1.2 (*Identification of Utility Conflicts*) of this EXHIBIT 5 (or such longer time period as may be agreed by the Parties)), for each Utility Conflict that has been identified, the City will:

(a) review any applicable franchise agreement and identify in a Notice to LACMTA (attaching any applicable franchise agreements and any other supporting documentation) the following terms under any applicable franchise agreement:

(i) the process to have the Utility owner perform the required Utility Adjustment (including any notices to be delivered);

(ii) procedures to obtain further locational data or other information regarding the Utilities;

(iii) responsibility for costs for the required Utility Adjustment;

(iv) timeframes for the required Utility Adjustment; and

(v) constraints or limitations on the City's ability to exercise its franchise rights for the purposes of Utility Adjustments to address a Utility Conflict within the City Portion; and

(b) exercise any rights under any applicable franchise agreement or Applicable Law to obtain locational data and other information regarding the Utilities within the City Portion and shall provide any and all such information received from the Utility owner to LACMTA.

3.2 Within 20 days of delivery of a Utility Conflict identification list under Section 1.2 (*Identification of Utility Conflicts*) of this EXHIBIT 5 (or such longer time period as may be agreed to by the Parties), LACMTA and the City will meet to:

(a) review the information provided by the City under Section 3.1 (*Interface with Private Utility Owner*) of this EXHIBIT 5 and any comments or questions from LACMTA regarding the terms of each applicable franchise agreement;

(b) consider any real property rights held by LACMTA in the City Portion to be raised and addressed with the Utility owner;

(c) identify the LACMTA and City points-of-contact for each other and the applicable Utility owners with conflicting Utilities; and

(d) where a Utility Conflict has been identified, discuss and agree timing and approach and roles and responsibilities under this Exhibit including identifying:

(i) whether the City will be requested to exercise franchise rights; and

(ii) if the City will not be requested to exercise its franchise rights, any other cooperation and coordination activities to be performed by the City in accordance with this Agreement.

3.3 Following each such meeting, LACMTA and the City will document the agreed timing, approach and roles and responsibilities to be taken in accordance with this EXHIBIT 5 in minutes signed by each Party. Following identification of Utility Conflicts within the City Portion under Section 1 (*Identification of Utility Conflicts*) of this EXHIBIT 5 and agreement of the activities, roles and responsibilities under Section 3.2 (*Interface with Private Utility Owner*) of this EXHIBIT 5:

(a) for any Utility Conflicts where the Parties have agreed that the City will exercise its rights under the applicable franchise agreement:

(i) within 10 days of receipt of a written request from LACMTA (or such longer time period as may be agreed to by the Parties) the City will exercise its franchise rights under the franchise agreement with the applicable Utility owner by sending written notice to the applicable Utility owner instructing it to relocate or remove the conflicting Utility or perform any other Utility Adjustment at that Utility owner's expense;

(ii) LACMTA with the support of the City as necessary, will request a meeting with each applicable Utility owner, to be attended by LACMTA and the City and at each such meeting with an applicable Utility owner, the City point-of-contact will lead the Utility Conflict and Utility Adjustment discussions (including schedule expectations in accordance with the Project Schedule for the City Portion and cost reimbursement expectations), with the assistance of LACMTA;

(iii) within the time periods required under the applicable franchise agreement or Applicable Law, the City will coordinate with LACMTA to send any other written notices to the applicable Utility owner, as required under the applicable franchise agreement or Applicable Law in order for the City to exercise its franchise rights or other rights under Applicable Law with respect to the Utility Conflict(s) and required Utility Adjustment(s);

(iv) within the time periods required under the applicable local, state and/or federal government codes, the City will send all such notices as are required to be submitted for each of the processing steps required by local, state, and federal government codes in order for the City to exercise its franchise rights or other rights under Applicable Law with respect to the Utility Conflict(s) and required Utility Adjustment(s) (including any utility claim letters, record of investigations, draft utility agreements and/or utility certifications);

(v) LACMTA, with the support of the City as necessary, will submit any required project plans, Designs, and other relevant documents for the City Portion prepared by LACMTA to each applicable Utility owner, for that Utility owner's review;

(vi) all responses to reviews, comments and other correspondence relating to a Utility Conflict or the exercise of franchise or other City rights in accordance with this Exhibit from Utility owners shall be delivered to the City in accordance with the time periods required under the applicable franchise agreement or under Applicable Law or any more stringent schedule agreed with the Utility owner for the NoHo to Pasadena Project, with a copy to LACMTA. If a Utility owner fails to provide a copy to LACMTA, the City agrees to forward a copy of such responses, comments or other correspondence to LACMTA promptly (and in any case within 5 days of receipt);

(vii) LACMTA will address any comments received from Utility owners and will submit responses to the Utility owner, with a copy to the City. If LACMTA is not permitted to submit responses directly to the Utility owner under the terms of the franchise agreement or otherwise under Applicable Law, the City agrees to transmit LACMTA's response to the Utility owner;

(viii) LACMTA with the support of the City as necessary, shall request that each applicable Utility owner prepare 65%, 85% and 100% Designs (including horizontal design, profiles, shoring, and worksite traffic control plans) for the Utility Adjustments to be performed by that Utility owner;

(ix) the City shall exercise its rights under the terms of the franchise agreement or otherwise under Applicable Law to coordinate the Design of the Utility Adjustment with the Design for the City Portion and ensure that the Design for the Utility Adjustment does not interfere with, disrupt or delay the Design, Construction, operation or maintenance of the City Portion, including ensuring that the Utility owner delivers or the City shall otherwise deliver promptly

upon receipt from the Utility owner, copies of all Designs and plans for the Utility Adjustment work to LACMTA and shall give LACMTA the right to review and comment on the Designs (including the final Designs) and plans for the Utility Adjustment work. Any LACMTA comments to or acceptance or approval of a Utility owner's Design under this EXHIBIT 5 will not relieve the relevant Utility owner or its contractors from professional liability (errors and omissions) as the Design Engineer of Record for any Utility Adjustment performed by the Utility owner or its contractors and

(x) with respect to Design and Construction work for Utility Adjustments that are to be performed by a Utility owner, LACMTA with the support of the City as necessary (including exercising its rights under the terms of the franchise agreement or otherwise under Applicable Law shall) shall:

(A) enforce the Utility owner's schedule for Design and Construction in accordance with any timelines set out under the terms of the City franchise agreement, Applicable Law or any more stringent schedule agreed with the Utility owner for the NoHo to Pasadena Project;

(B) assist in coordinating the Utility owner's schedule for Construction with LACMTA's Project Schedule and shall otherwise require that the Utility owner comply with Section 2.6 (*Coordination of Work*) of this Agreement with respect to the coordination of the Utility Adjustment work;

(C) ensure all costs for that Design and Construction work are incurred solely in conformance with the terms of any applicable franchise agreement or Applicable Law;

(D) undertake inspections (including surveys) to ensure that all such Utility Adjustments are constructed in accordance with the approved Designs;

(E) invite LACMTA to inspect all such Utility Adjustments together with the City; and

(F) if requested by LACMTA, the City will undertake subsequent enforcement actions to enforce its franchise rights with respect to a required Utility Adjustment in the event no action is taken by the applicable Utility owner in response to a notice issued by the City under this EXHIBIT 5 provided that Section 2.7 (*Utility Adjustments*) of this Agreement will apply with respect to the City's Costs incurred in taking such enforcement actions; and further provided that to the extent that the applicable Utility owner disputes the City's right to exercise its franchise rights or other rights under Applicable Law with respect to a Utility Adjustment for the City Portion and/or commences any actions or legal proceedings with regard to the same, LACMTA's indemnity in favor of the City under Section 8.1 (*Indemnity*) of this Agreement will apply. If requested by LACMTA, the City will suspend or withdraw any enforcement or defense of its franchise rights or rights under Applicable Law to require a Utility Adjustment in the City Portion; or

(b) for any other Utility Conflict, the City will cooperate with and assist LACMTA in performing the necessary steps to ensure that applicable Utility owners implement the Utility Adjustments necessary to address conflicting Utilities that will impact the City Portion in a timely manner including:

(i) If requested by LACMTA, attending meetings with the Utility owners;

(ii) notifying LACMTA of any other Utility works requested by the City for City projects unrelated to the City Portion and coordinating any such other Utility adjustments with LACMTA; and

(iii) providing LACMTA with all information available to the City regarding Utility Conflicts or potential Utility Conflicts.

## EXHIBIT 6– DESIGN REQUIREMENTS

1. **GENERAL DESIGN CRITERIA**

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

(a) the Design requirements set out in this EXHIBIT 6 or otherwise under the provisions of this Agreement and the relevant Work Order (if applicable); and

(b) all Governmental Approvals, Applicable Law and, subject to Section 3.5 (*City Standards*) of this Agreement, the City Standards.

2. **CITY STANDARDS**

The Parties agree that for the purposes of this Agreement, the **"City Standards"** will be those City design standards and ordinances, City-owned Utility rules and regulations, notified by the City to LACMTA, or otherwise incorporated in an amendment of this Agreement in accordance with Section 3.5 (*City Standards*) of this Agreement. The City Standards include, in each case subject to and in accordance with Section 3.5 (*City Standards*) of this Agreement:

(a) Complete Streets Objective Design Standards;

(b) Burbank Water and Power Rules and Regulations;

(c) City of Burbank Public Works Standard Plans;

(d) Objective standards codified in the City Municipal Code;

(e) Standard Specifications for Public Works Construction 2012 Edition (Greenbook), 2012 Edition (unless otherwise specified by the City) and related Standard Plans;

(f) California Manual on Uniform Traffic Control Devices – latest edition (unless otherwise specified by the City); and

(g) Caltrans Standard Plans and Specifications (for traffic signal design only) - latest edition (unless otherwise specified by the City).

3. **SPECIFIC DESIGN REQUIREMENTS FOR REARRANGEMENTS**

3.1 **Surface Openings**. To the extent operationally and fiscally practical, LACMTA shall locate surface openings, if any to mitigate: (a) the effect on existing features of landscape and improvements; and (b) public disruption; in each case after taking account of health and safety concerns. Placement of gratings in sidewalks will be avoided to the extent reasonably practicable; however, all other openings, such as mechanical access openings, shall be regularly permitted in sidewalks, provided such openings are enclosed.

3.2 **Landscaping**. Trees and landscaped areas under ownership or daily control of the City shall be preserved whenever practical. Trees in the Project Site, which are not being removed by LACMTA, shall be adequately protected. Trees that must be removed due to Rearrangements shall be replaced by LACMTA, if the City elects and right-of-way is available. All landscaping changes shall be coordinated with the City's Urban Forestry Section. Replacement work shall be in accordance with applicable City Standards and shall be coordinated with the City. Landscaped areas removed due to Rearrangements shall be restored to the original condition to the extent practical as agreed to by the City and LACMTA. LACMTA shall prepare the Landscape Replacement Study in accordance with the FEIR Mitigation Monitoring and Reporting Program. Recycled water shall be used for landscaping to the furthest extent reasonably practicable.

3.3 **Traffic Control Devices and Lighting Systems**. If a Rearrangement requires the removal and reinstallation, or modification of existing or installation of new traffic control devices or lighting systems (**"Traffic Control and Lighting Work"**), then LACMTA must obtain the City's approval of LACMTA's Design for the Traffic Control and Lighting Work (which consent may not be unreasonably delayed or withheld).

3.4 **Private Projections in Public Ways**. If LACMTA determines that a private projection in, over or under any City Facilities or the Public Rights-of-Way must be removed to accommodate the NoHo to Pasadena Project, LACMTA will issue a Work Order to the City and the City shall take all reasonable actions within its powers to require the elimination of such projections by the time specified in the Work Order. If the City is not empowered to affect the removal of such projections, or if LACMTA otherwise elects, LACMTA will make its own arrangements for removal of such projections. The City will cooperate with LACMTA to minimize the cost to eliminate, move, remove or otherwise terminate projections.

3.5 **City Communications Facilities**. The relocation of any conflicting underground City communications facilities shall be done by employing intercept-style manholes at both ends of every conflicting communications conduit segment in question, directly on the alignment of existing conduit segment(s), and beyond the area of the conflicting communications facilities.

4. **PREPARATION AND SUBMISSION OF DESIGN DOCUMENTATION**

For those Rearrangements where LACMTA is responsible for the Design work under the provisions of this Agreement, LACMTA will, and will ensure that the LACMTA Contractors will:

(a) prepare and submit all Design Documentation to the City:

(i) in Packages in accordance with the schedule under the applicable design management plan defined by LACMTA and/or the applicable LACMTA Contractor and notified to the City (as may be updated and notified to the City from time to time); and

(ii) in a manner and at a rate which, having regard to the quantum of Design Documentation submitted, will give the City a reasonable opportunity to review the submitted Design Documentation;

(b) ensure that the Design Documentation submitted for the Final Design is of a level of detail which is sufficient to permit the City to determine whether the Design Documentation complies with this Agreement and the Construction work which will be performed in accordance with the Design Documentation will comply with this Agreement and highlights any material amendments made since any earlier submittal of that Design Documentation;

(c) invite the City to attend any pre-submittal workshops held where Design Documentation for a Rearrangement is to be presented; and

(d) if reasonably requested by the City, make available the appropriate design personnel to participate in design review meetings after submittal of any Design Documentation for a Rearrangement to explain the Design Documentation or a particular element of it and provide such information regarding the Design Documentation as the City may reasonably request.

## EXHIBIT 7 – LACMTA SUBMITTAL REVIEW PROCEDURE

1. **GENERAL**

1.1 The Parties agree that individuals undertaking Design review on behalf of the City under this Agreement shall, where reasonably possible, be consistent throughout the Design Phase. The City will ensure that any individual undertaking Design review on behalf of the City under this agreement has the appropriate qualifications, capability and experience to perform the review.

1.2 The procedures set out in this EXHIBIT 7 will govern all LACMTA Submittals to the City pursuant to this Agreement.

2. **REVIEW PROCEDURE**

2.1 The City shall notify LACMTA and the relevant LACMTA Contractor (if applicable) within 10 days of receipt of a LACMTA Submittal from LACMTA or a LACMTA Contractor if it considers (acting reasonably based on the preliminary review) that the LACMTA Submittal submitted is incomplete or deficient for the City's review purposes and requires re-submission, together with a detailed description of the information that it deems to be missing or deficient. If no such Notice is delivered by the City within such ten-day period, the LACMTA Submittal shall be deemed complete and acceptable for review purposes.

2.2 The City shall (or must require that the relevant City Contractor) within the LACMTA Submittal Review Period:

(a) review the LACMTA Submittal; and

(b) notify LACMTA and the relevant LACMTA Contractor (if applicable) that it:

(i) approves the LACMTA Submittal; or

(ii) rejects the LACMTA Submittal with detailed reasons including all Compliance Comments.

2.3 All Compliance Comments shall be transmitted in the form of a comment matrix, through the LACMTA 'Quality Management Oversight' database or through another equivalent format (in each case, as notified and provided by LACMTA) and shall be accompanied by an annotated LACMTA Submittal (if applicable). Where a database is used for transmission of comments, LACMTA will provide the City (and the relevant City Contractors) with user accounts and training for this purpose.

2.4 If no comments are received within the LACMTA Submittal Review Period (or such longer time period as may be agreed to by the Parties), the LACMTA Submittal shall be deemed complete and approved by the City.

2.5 The Parties acknowledge that the LACMTA Submittal review process set out in this EXHIBIT 7 is intended to facilitate the LACMTA Submittal review process and be consistent (with necessary changes) with the LACMTA Guidelines on Enhanced Partnered Coordination and shall supersede the submittal / shop drawing review schedules specified in any standards referenced in this Agreement.

3. **GROUNDS FOR OBJECTION OR COMMENT**

3.1 The City will only be entitled to reject a LACMTA Submittal under Article 2 (*Review Procedure*) of this EXHIBIT 7 if such LACMTA Submittal fails to comply with the requirements set out in this Agreement, as specified in the City's Compliance Comments.

3.2 If the City rejects a LACMTA Submittal in accordance with Article 2 (*Review Procedure*) of this EXHIBIT 7, LACMTA must (or must require that the relevant LACMTA Contractor):

(a) address the Compliance Comments and re-submit the LACMTA Submittal for review; or

(b) notify the City that it does not agree with the grounds for rejection. If LACMTA does not agree with the grounds for rejection on the basis that such grounds would constitute a Betterment, Article 5 (*Betterments*) of this Agreement shall apply.

3.3 The City agrees that during the Final Design stage, it shall not raise any new issues, or make any comments, which are inconsistent with its comments on earlier submittals, or with any changes already agreed to by the City.

3.4 The City's approval of the Final Design for any Rearrangement will not be withheld if the submittal is consistent with the most recent earlier submittal for such Rearrangement, modified as appropriate to respond to the City's Compliance Comments on such earlier submittal (to the extent such comments were made in accordance with the provisions of this Agreement) and to reflect any subsequent changes agreed to by the City and LACMTA.

## 4. NO COMMENCEMENT OF CONSTRUCTION WORK

LACMTA and the City must not commence or permit the commencement of any Construction work that is the subject of, governed by or dependent upon a LACMTA Submittal until LACMTA (or a LACMTA Contractor) has submitted the relevant LACMTA Submittal to the City in accordance with this EXHIBIT 7 and:

(a) within ten days of receiving a Notice from LACMTA (or the relevant LACMTA Contractor (as applicable)) that the City failed to respond to a LACMTA Submittal within the relevant LACMTA Submittal Review Period (or any such longer time period agreed to by the Parties), the City fails to respond to such LACMTA Submittal; or

(b) the City has notified LACMTA (and the relevant LACMTA Contractor (as applicable)) that it approves such LACMTA Submittal.

## EXHIBIT 8 – CONSTRUCTION REQUIREMENTS

1. **GENERAL REQUIREMENTS**

(a) Any Construction work for any Rearrangements or the City Portion to be performed within the Public Rights-of-Way shall be performed in accordance with:

(i) in the case of any Rearrangements, the approved Final Design (including any changes agreed under Section 3.6 (*Changes to Design*) of this Agreement);

(ii) all Governmental Approvals, Applicable Law and, subject to Section 3.5 (*City Standards*) of this Agreement, the City Standards;

(iii) the schedule for such Construction work agreed under the relevant Work Order (if applicable) or otherwise under the Project Schedule; and

(iv) all other Construction requirements set out in this EXHIBIT 8 or otherwise under the provisions of this Agreement and any relevant Work Order (if applicable).

(b) In conjunction with its contractors, LACMTA will be responsible for conducting public outreach to provide proper notifications to the affected communities prior to and during Construction complying with the FEIR. LACMTA will coordinate its outreach with the City's Public Information Office, as needed.

(c) LACMTA is responsible for ensuring that any LACMTA Contractors performing Construction work for the Rearrangements, in the Public Rights-of-Way, or on City-owned property have obtained all performance and payment bonds required under Applicable Law.

2. **WORKING HOURS**

Construction hours shall comply with the City Municipal Code and the holiday moratorium shall be observed in accordance with the City Municipal Code. Notwithstanding, the Parties acknowledge that extended working hours may be necessary to facilitate Construction of the City Portion. If a change is required to the working hours, the Parties will discuss in good faith extended working hours following joint review of the schedule and activities to be carried out by LACMTA and the LACMTA Contractors and agree to such change as appropriate.

3. **HAUL ROUTES**

The Parties will agree haul routes reasonably necessary to facilitate Construction, operation and maintenance of the City Portion. If a change is required to an agreed haul route, the Parties will negotiate in good faith to agree such change. The City Permits issued to LACMTA or LACMTA Contractor will include provisions for maintenance and cleaning of the haul routes.

4. **INTERRUPTIONS**

(a) The Parties acknowledge that certain components of the work in the City Portion will require interruption of the City services. The Parties will agree a plan for any such interruptions and, subject to City approval of the plan, the City consents to scheduled interruption of services deemed necessary by LACMTA. LACMTA must provide the City prior Notice before the City services are interrupted.

(b) LACMTA will notify affected parties, including residents, businesses, Council office, and other elected officials in advance of scheduled interruptions and will cooperate with the City to minimize interruption of the City services and resulting disruptions, provided that notification may be delayed where LACMTA is required to interrupt services in the event of emergency. Where the City determines that Temporary Facilities are necessary and appropriate, LACMTA shall accommodate this request.

## 5. CONSTRUCTION STAGING PLANS

### 5.1 General Requirements

(a) LACMTA or the LACMTA Contractors shall develop a construction staging plan (**"Construction Staging Plan"**) for any Construction work to be performed within the Public Rights-of-Way. The Staging Plan shall be reviewed and approved by the City.

(b) The City acknowledges that the Construction work to be performed by LACMTA or the LACMTA Contractors within the Public Rights-of-Way is intended to be performed progressively under multiple contractual packages and the Construction Staging Plans described in this EXHIBIT 8 may, therefore, be prepared for each contractual package or for a portion of such Construction work.

(c) A Construction Staging Plan shall provide, among other things, for:

(i) the handling of vehicular, bicycle, pedestrian and transit traffic on streets adjacent to the Construction with the Construction phasing showing street closures, detours, warning devices and other pertinent information specified on the plan (worksite traffic control plans);

(ii) actions to maintain access to businesses adjacent to the Construction areas, as possible, and actions to ensure safe access and circulation for pedestrians, bicyclists and vehicular and transit traffic as described in the worksite traffic control plans; and

(iii) elements of public awareness as well as mechanisms to assist affected parties in complaint resolutions.

(d) The City understands that LACMTA requires flexibility in the execution of Construction phasing and traffic management planning during Construction, and agrees to impose only the minimum requirements for traffic management planning and Construction sequencing that are necessary in order to provide for public health and safety (including pedestrian, vehicular, transit, and bicycle safety), and functionality (including public and business access and circulation).

### 5.2 Specific Requirements – Street Lighting Systems

LACMTA or the LACMTA Contractors shall develop street lighting Construction Staging Plans, which shall provide, among other things, for:

(a) the safety and security at nighttime of vehicular, pedestrian, transit, and bicycle traffic on streets adjacent to Construction, with the street lighting Construction Staging Plans showing street closures, detours, lighting devices, circuit and power service connections, and other pertinent information; and

(b) lighting levels to maintain safe access to businesses adjacent to the Construction areas, and to ensure safe circulation for pedestrian and vehicular traffic.

### 5.3 Specific Requirements – Traffic Management Plan

(a) LACMTA and the City may agree that a street, highway, bridge or the other Public Rights-of-Way shall be temporarily closed for the necessity and convenience of the Construction of the NoHo to Pasadena Project. If agreed to, a Traffic Management Plan must be developed and submitted by LACMTA or the LACMTA Contractors, which shall provide, among other things, for worksite traffic control plans, traffic circulation plans, and temporary traffic signal plans.

(b) A traffic control plan developed using the California Manual on Uniform Traffic Control Devices shall be provided for all traffic control plans and submittal.

(c) The City's Publics Works Traffic Division staff involved in the review and approval process shall facilitate the City's internal approvals regarding peak hour exemptions, holiday moratoriums, changes to existing parking restrictions in the work zone, night work, and noise variances.

(d) Any Traffic Management Plan must include a requirement that LACMTA or LACMTA Contractor shall be responsible for notifying all transit providers of any street closure that affects transit routes or Construction that affects transit stops.

5.4 **Review and Implementation of Construction Staging Plans**

(a) LACMTA (or the relevant LACMTA Contractor (as applicable)) must submit each Construction Staging Plan to the City for review in accordance with EXHIBIT 7 (*LACMTA Submittal Review Procedure*).

(b) LACMTA (or the relevant LACMTA Contractor (as applicable)) may update a Construction Staging Plan after it has been approved by the City and must promptly submit each updated Construction Staging Plan to the City for review in accordance with EXHIBIT 7 (*LACMTA Submittal Review Procedure*).

(c) LACMTA must, and must ensure that the LACMTA Contractors, implement and comply with each Construction Staging Plan which has been submitted to the City and which has been either approved (or deemed approved) under EXHIBIT 7 (*LACMTA Submittal Review Procedure*).

6. **WORK IN STREETS**

6.1 **General Requirements**

(a) The Parties acknowledge that the City has the duties of supervising, maintaining and controlling streets, highways, and the other Public Rights-of-Way. Accordingly, LACMTA shall give the City 14 days' advance written Notice where Construction work is to be performed in the Public Rights-of-Way. All full or directional street closures shall require a minimum 14-day notification.

(b) LACMTA and the LACMTA Contractors shall take all appropriate actions to ensure safe performance of the Construction work within the Public Rights-of-Way. The City reserves the right to stop work if public health and safety is or will be comprised by such work.

(c) If LACMTA or a LACMTA Contractor fails to perform any Construction work within the Public Rights-of-Way in accordance with the Final Design and/or Construction Staging Plans approved (or deemed approved) by the City under this Agreement then upon written Notice of the non-compliance from the City, LACMTA must cure or must ensure that the LACMTA Contractor cures, the non-compliance.

6.2 **Traffic Control and Lighting**

LACMTA must provide the City prior Notice before conducting the Traffic Control and Lighting Work that will result in an interruption to service of traffic control devices or lighting systems and LACMTA shall cooperate with the City to minimize such interruption.

6.3 **City Communication Facilities**

Construction of replacement conduit segments, inner ducts, and manholes that bypass the conflicting conduit segments shall be done prior to relocation of the communications cables. In addition, relocation/installation work of communications cables that carry live production traffic shall be scheduled during a maintenance window, in order to minimize system downtime and minimize the City network traffic disruption.

## 7. TEMPORARY STREET CLOSURES

Upon notification of a proposed temporary street closure, the City, as requested by LACMTA, shall initiate the appropriate proceedings and shall establish the necessary conditions for the closures. LACMTA shall be responsible for any reasonable Costs associated with a requested street closure.

## 8. TEMPORARY FACILITIES

### 8.1 LACMTA Facilities

Temporary Facilities may be necessary to facilitate Construction of the NoHo to Pasadena Project (including Rearrangements). In accordance with Section4.3(c) (*Rights-of-Way*) of this Agreement, the City shall provide reasonable assistance as may be required for LACMTA to obtain rights-of-way necessary to construct the City Portion. This shall include considering reasonable requests by LACMTA for LACMTA or its designee to use lands owned or controlled by the City for, the erection and use of Temporary Facilities thereon; provided that, the City shall first approve in writing the availability, location and duration of the Temporary Facilities, with the City's approval not to be unreasonably withheld. Upon completion of the related Construction and LACMTA's determination that the Temporary Facilities no longer are needed, LACMTA shall remove all Temporary Facilities and restore the area as nearly as practicable to its original condition unless LACMTA and the City agree to some other arrangement.

### 8.2 City Facilities

In the event that Temporary Facilities are necessary to effect a Rearrangement being constructed by the City, the City or its designee may use, without cost, lands owned or controlled by LACMTA for the purpose of using or erecting Temporary Facilities thereon; provided that, LACMTA shall first approve in writing the availability, location and duration of the Temporary Facilities. Upon completion of the Rearrangement in its permanent location, the City shall remove all Temporary Facilities and restore the area as nearly as practicable to its original condition unless the City and LACMTA agree to some other arrangement.

## 9. UNDERGROUND SERVICE ALERT

Prior to any commencement of underground work by either Party, an "Underground Service Alert" shall be notified in accordance with California law by such Party or its contractor.

## 10. ENVIRONMENTAL CONTROLS

All Construction work performed by the City or City Contractors pursuant to this Agreement shall comply with the environmental controls established by LACMTA in the LACMTA Contracts, including construction noise and vibration control, pollution controls, archaeological coordination and paleontological coordination and use of 'Best Management Practices'.

## 11. SALVAGED MATERIALS

The Parties may agree to salvage certain materials belonging to the City during the course of Rearrangement. If materials belonging to the City are to be reused, LACMTA's contractor shall exercise reasonable care in removal and storage of such materials. Materials shall be inspected and stored until such time as the progress of work allows the reinstallation of such materials. Materials that are not to be reused in a Rearrangement, but which the City desires to reclaim, may be recovered by the City staff within an agreed time frame or shall be delivered by LACMTA to a location proximate to the salvage site and suitable to the City. Subject to acceptance by LACMTA, if materials removed by LACMTA are not reused and are not desired by the City, such materials shall become the property of LACMTA.

## 12. AS-BUILT DRAWINGS

12.1 LACMTA and the City shall each maintain a set of "as-built" plans of Rearrangements performed by LACMTA and the City, respectively, during Construction. Red line mark-ups for temporary lighting systems, traffic signal systems, and other the City Facilities shall be submitted to the City and LACMTA within 15 days after completion of Construction. All Design changes shall be documented on RFI/RFC forms. Upon completion of the Rearrangement work, the Party that performed the work shall furnish the other Party with reproducible "as-built" drawings showing all Replacement Facilities installed by the performing Party, within 75 days after completion of such work for each set of plans.

12.2 LACMTA and the City agree to provide the other with electronic files and full-size paper hard copies of those final contract documents that they have prepared, or caused to be prepared, to govern the Construction of a given Rearrangement by their respective contractor so that each Party may compile a complete set of contract documents. Each Party shall prepare or cause to be prepared the contract documents for which it is responsible.

## EXHIBIT 9 – INSPECTION AND ACCEPTANCE PROCEDURE

1. **Substantial Completion**

1.1 The following requirements must be satisfied to achieve substantial completion of a Rearrangement (or a part of a Rearrangement that is capable of being accepted in advance of completion of the whole) ("**Substantial Completion**"):

(a) LACMTA (or the applicable LACMTA Contractor) has completed the work for the Rearrangement (or applicable part of the Rearrangement) except for Punch List items or outstanding work that is otherwise only required to be performed under this Agreement for the purposes of achieving Final Acceptance;

(b) all known defects or omissions in the work for the Rearrangement (or applicable part of the Rearrangement) have been remedied (other than Punch List items); and

(c) the Rearrangement (or applicable part of the Rearrangement) is ready for handover to the City in accordance with the requirements set out under this Agreement.

1.2 If LACMTA considers that the requirements for Substantial Completion of a Rearrangement (or the applicable part of the Rearrangement) have been satisfied in accordance with Section 1.1 (*Substantial Completion*) of this EXHIBIT 9, LACMTA shall submit a Notice to the City requesting a Statement of Substantial Completion in the form set out as Attachment 1 to this EXHIBIT 9. LACMTA may issue a Notice under this Section 1.2 notwithstanding that there are known Punch List items or outstanding work that is otherwise only required to be performed under this Agreement for the purposes of achieving Final Acceptance, provided that LACMTA's Notice shall include the list of proposed Punch List items.

1.3 Within ten days (or such longer time period as may be agreed to by the Parties) of delivery of a Notice by LACMTA requesting a Statement of Substantial Completion, the City's designated final inspector ("City Inspector") and LACMTA will together inspect the Rearrangement (or the applicable part of the Rearrangement) to determine its status of completion and to agree the list of Punch List items.

1.4 Within 2 days (or such longer time period as may be agreed to by the Parties) of completion of the inspection of the applicable part of the Rearrangement, the City will either:

(a) if the City accepts the Rearrangement (or applicable part of the Rearrangement) as Substantially Complete in accordance with the terms of this Agreement subject to any agreed Punch List items and the work that is otherwise only required to be performed under this Agreement for the purposes of achieving Final Acceptance, issue a Statement of Substantial Completion, together with the Punch List items agreed by LACMTA and the City following inspection of the Rearrangement (or applicable part of the Rearrangement); or

(b) if the City determines that the Rearrangement (or applicable part of the Rearrangement) has not yet achieved Substantial Completion in accordance with the terms of this Agreement, reject by Notice LACMTA's request, together with a list of the corrections required to complete the Rearrangement (or applicable part of the Rearrangement) in accordance with the terms of this Agreement ("**Substantial Completion Correction List**"). Punch List items or outstanding work that is otherwise only required to be performed under this agreement for the purposes of achieving Final Acceptance, will not be a sufficient basis for rejecting a request for a Statement of Substantial Completion. Any such rejection must be on the basis that the work that is outstanding is sufficiently material in nature to prevent the safe use or operation of the Rearrangement (or applicable part of the Rearrangement).

1.5 If the City rejects a request for a Statement of Substantial Completion for a Rearrangement (or any part of a Rearrangement), LACMTA shall perform the corrections set out under the Substantial Completion Correction List, following which LACMTA will again deliver a Notice requesting a Statement of Substantial Completion.

1.6 Promptly after issuance of a Statement of Substantial Completion, LACMTA (or the LACMTA Contractors) will complete all work items on the Punch List attached to the Statement of Substantial Completion and satisfy all of its other obligations under this Agreement required to be completed before final acceptance for that Rearrangement, including submittal of applicable "as-built" drawings for that Rearrangement.

1.7 If LACMTA does not agree with the City Inspector's rejection of a request for a Statement of Substantial Completion or the corrections listed by the City Inspector under a Substantial Completion Correction List or if the Parties are unable to agree on the Punch List items, the matter will be referred to the issue resolution ladder under EXHIBIT 4 (*Roles and Responsibilities*) of this Agreement.

2. **Statement of Final Acceptance**

2.1 The following requirements must be satisfied to achieve Final Acceptance of a Rearrangement ("**Final Acceptance**"):

(a) the entire work for that Rearrangement is fully completed;

(b) all Punch List items for that Rearrangement (or for all parts of that Rearrangement where Substantial Completion of a part was permitted) are completed; and

(c) LACMTA (or the applicable LACMTA Contractor) has delivered all "as-built" drawings for the Rearrangement.

2.2 If LACMTA considers that the requirements for Final Acceptance of a Rearrangement have been satisfied in accordance with Section 2.1 of this EXHIBIT 9, LACMTA shall submit a Notice to the City requesting a Statement of Final Acceptance.

2.3 Within ten days (or such longer time period as may be agreed to by the Parties) of delivery of a Notice by LACMTA requesting a Statement of Final Acceptance, the City Inspector and LACMTA will together inspect the Rearrangement to determine its status of completion.

2.4 Within two days (or such longer time period as may be agreed to by the Parties) of completion of the inspection of the applicable part of the Rearrangement, the City will either:

(a) if the City accepts that the requirements for Final Acceptance of the Rearrangement have been achieved, issue a Statement of Final Acceptance; or

(b) if the City determines that the requirements for Final Acceptance of the Rearrangement have not been achieved, reject by Notice LACMTA's request, together with a list of the corrections required to satisfy the requirements for Final Acceptance of the Rearrangement in accordance with the terms of this Agreement ("**Final Acceptance Correction List**").

2.5 If the City rejects a request for a Statement of Final Acceptance for a Rearrangement, LACMTA shall perform the corrections set out under the Final Acceptance Correction List, following which LACMTA will again deliver a Notice requesting a Statement of Final Acceptance.

2.6 If LACMTA does not agree with the corrections listed by the City Inspector under a Final Acceptance Correction List, the matter will be referred to the issue resolution ladder set out in EXHIBIT 4 (*Roles and Responsibilities*) of this Agreement.

3. **Responsibility to Complete the Work**

3.1 Where a Statement of Substantial Completion is issued with respect to a part (and not the whole) of a Rearrangement, LACMTA shall retain full responsibility for completion of the whole of the Rearrangement.

3.2 The issuance of a Statement of Substantial Completion for a Rearrangement (or a part of a Rearrangement) shall not relieve LACMTA of its obligation to complete the work for the Punch List items and to promptly

remedy any omissions and latent or unnoticed defects in the Rearrangement covered by the Statement of Substantial Completion in accordance with the warranties under Section 8.2 (*Warranty*) of this Agreement.

3.3 Until a Statement of Substantial Completion is issued for a Rearrangement (or the applicable part of it), all responsibility for care and maintenance of the Rearrangement (or the applicable part of it) shall be borne by LACMTA. The City will be responsible for the maintenance, loss, or damage to a Rearrangement (or the applicable part of a Rearrangement) under a Statement of Substantial Completion upon issuance of that Statement of Substantial Completion except that:

(a) in accordance with Sections 3.1 and 3.2 above, it shall be LACMTA's continuing responsibility to complete and deliver every part, and the integrated whole, of the Rearrangement and to satisfy the conditions to Final Acceptance of that Rearrangement; and

(b) responsibility and liability will remain with LACMTA to the extent of the warranties under Section 8.2 (*Warranty*) of this Agreement.

3.4 To the extent that LACMTA (or a LACMTA Contractor) fails to leave the Public Rights-of-Way in a clean, neat, and orderly condition upon completion of the Rearrangements and with all Temporary Facilities removed and the area restored in accordance with Section 8 (*Temporary Facilities*) of EXHIBIT 8 (*Construction Requirements*), the City may by Notice to LACMTA suspend LACMTA's obligation to perform such clean-up and restoration activities and perform the clean-up and restoration activities utilizing City personnel or City Contractor. To the extent the City takes over such clean-up and restoration activities, LACMTA shall reimburse the City for Costs properly incurred in performing such clean-up activities pursuant to a Work Order agreed under Section 2.3 (*Work Orders*) of this Agreement or otherwise under Section 8.1 (*Indemnity*) of this Agreement.

## EXHIBIT 10 - OPERATION AND MAINTENANCE PRINCIPLES

1. **PRIMARY RESPONSIBILITIES**

1.1 LACMTA (directly or through the LACMTA Contractors) will be responsible for the operation and maintenance of the NoHo to Pasadena Project.

1.2 The City (directly or through the City Contractors) will be responsible for:

(a) the maintenance of all City Facilities within the Public Rights-of-Way including trees, gutters, sidewalks, ramps, streets, roadways, utilities, vaults, pull boxes, lights, signals, City loops, striping, signage, irrigation, bio swales and landscape; and

(b) operation of the traffic signal system within the jurisdiction and control of the City.

1.3 As described in Article 6 (*Operation and Maintenance*) of the Agreement, the City and LACMTA will discuss in good faith and agree the detailed operation and maintenance responsibilities of each of the Parties, including with respect to the following:

(a) dedicated bus lane policy particulars and enforcement;

(b) bus positions and route info on stations shared with City local buses;

(c) TSP equipment maintenance and adjustments;

(d) pavement maintenance; and

(e) striping maintenance.

With respect to its responsibility for the operation of the traffic signal system within the jurisdiction and control of the City, the City shall work cooperatively with LACMTA to facilitate the safe and efficient operation of the City Portion. The City shall not modify the traffic signal model controller software on the City Portion without notification to and coordination with LACMTA.

2. **MAINTENANCE OF THE CITY PORTION**

LACMTA shall obtain appropriate permits from the City when performing maintenance work on or near the Public Rights-of-Way and conform to all of the City's permitting requirements for the submittal, review, and approval of temporary traffic control plans, use of Public Rights-of-Way, or any other activity requiring a permit or license in accordance with the City use of public property permit process and application and requirements for traffic control plans. All traffic control devices shall conform to accepted City practices and shall be installed and maintained in accordance with the California Manual on Uniform Traffic Control Devices. All City staff costs incurred for permitting such work shall be reimbursed by LACMTA through the Work Order process set forth in this Agreement.

3. **UTILITY CONTRACTS**

The City will provide electric and water service and service restoration in accordance with the City-owned Utility rules and regulations.

## EXHIBIT 11–FORMS

**Part A: Form 60**

| | | | | | |
|---|---|---|---|---|---|
| Name of Offeror/Contractor/Utility Company (Name of Preparer): | | | Scope of Work/Deliverable (provide expanded description on Form 60 page 2) | | |
| Home office address | | | | | |
| Division(s) and Locations where Work is to be performed | | | LACMTA Solicitation/Proposal/Contract Number/Work Order/Change Notice and/or Change Order Reference Number(s): | | |
| NOTE: For proper calculations of cost elements link additional sheets to this summary page. | | | | | |
| 1. | **Direct Labor** | **Est. Hours** | **Rate Per Hour** | **Est. Cost** | **TOTAL** |
| 2. | | 0.00 | $0.00 | $0.00 | |
| 3. | | 0.00 | $0.00 | $0.00 | |
| 4. | | 0.00 | $0.00 | $0.00 | |
| 5. | **TOTAL DIRECT LABOR HOURS** | **0.00** | **TOTAL DIRECT LABOR** | | **$0.00** |
| 6. | **Labor Overhead (O/H)** | **O/H Rate** | **x Base** | **Est. Cost** | |
| 7. | | 0% | | $0.00 | |
| | | | | | |
| 8. | | | | **TOTAL LABOR OVERHEAD** | **$0.00** |
| 9. | **Direct Material** | | | **Est. Cost** | |
| 10. | **a. Purchase Parts** | | | $0.00 | |
| 11. | **b. Subcontracted items** | | | $0.00 | |
| 12. | **c. Other** | | | $0.00 | |
| 13. | | | | **TOTAL DIRECT MATERIAL** | **$0.00** |
| 14. | **Equipment** | | **Unit Cost** | **Est. Cost** | |
| 15. | | | $0.00 | $0.00 | |
| 16. | | | $0.00 | $0.00 | |
| 17. | | | | **TOTAL EQUIPMENT** | **$0.00** |
| 18. | **Subcontractors*** | | | **Est. Cost** | |
| 19. | | | | $0.00 | |
| 20. | | | | $0.00 | |
| 21. | | | | $0.00 | |
| 22. | | | | **TOTAL SUBCONTRACTORS** | **$0.00** |
| 23. | | | | **TOTAL BURDENED COST (add lines 5, 8, 13, 17 and 22)** | **$0.00** |
| 24. | **Other Direct Costs** | | | **Est. Cost** | |
| 25. | | | | $0.00 | |
| 26. | | | | $0.00 | |
| 27. | | | | $0.00 | |
| 28. | | | | **TOTAL OTHER DIRECT COSTS** | **$0.00** |
| 29. | **Travel** | | | **Est. Cost** | |
| 30. | **a. Transportation** | | | $0.00 | |
| 31. | **b. Per Diem or Subsistence** | | | $0.00 | |
| 32. | | | | **TOTAL TRAVEL** | **$0.00** |
| 33. | **General and Administrative Expense** | **Rate %** | **% x Line 23** | | |
| 34. | | 0% | | $0.00 | |
| 35. | | | | **TOTAL GENERAL AND ADMINISTRATIVE EXPENSE** | **$0.00** |
| 36. | | | | **TOTAL ESTIMATED COSTS (Total Lines 23, 28, 32 and 35)** | **$0.00** |
| 37. | **Profit/Fee** | **Total Labor and Overhead (line 5 + line 8)** | **Rate %** | **% x Total Labor and Overhead** | |
| 38. | | | 0% | $0.00 | |
| 39. | | | | **TOTAL FEE** | **$0.00** |
| 40. | | | | **TOTAL ESTIMATED PRICE (Total of Lines 36 and 39)** | **$0.00** |

| 41. | **Milestone /Task Number** | **Milestones/Tasks** | **Hours** | **Completion Date** | **Payment Amount** | |
|---|---|---|---|---|---|---|
| 42. | | | | | $0.00 | |
| 43. | | | | | $0.00 | |
| 44. | | | | | $0.00 | |
| 45. | | **TOTAL MILESTONES/TASKS (Must equal line 40)** | | | | **$0.00** |
| | * Attach Form 60 for all proposed subcontractors performing work under Form 60 Prime Contractor where applicable. Transfer Est. Cost to this Section. | | | | | |
| 46. | Fill in applicable sections only | | | | | |

| 47. Has any Agency of the United States Government, State government, local public agency or the Los Angeles County Metropolitan Transportation Authority (LACMTA) performed any review of your account or records, overhead rates and general and administrative rates in connection with any public prime contract or subcontract within the past twelve months? Yes No If yes, when? Reference Contract No. | |
|---|---|
| 48.a. Agency Name/Address | 48.b. Individual to contact/Telephone Number |

49. As required by LACMTA, firms not audited, as described above, shall submit financial data and calculations in sufficient detail to support all proposed direct costs and subcontractor costs.

50. The proposal reflects our estimates and/or actual costs as of the date and by submitting this proposal, Proposer/Consultant grants to LACMTA Contracting Officer and authorized representative(s) the right to examine, at any time before award, those records, which include books, documents, accounting procedures and practices, and other supporting data, regardless of type and form or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of such cost or pricing data, along with the computations and projections used therein, for the purpose of verifying the cost or pricing data submitted. This right may also be exercised in connection with any negotiations/discussions prior to contract award or execution of contract modification.

51. CERTIFICATE

The labor rates and overhead costs are current and other estimated costs have been determined by generally accepted accounting principles. Proposer/Consultant represents: (a) that it has , has not , employed or retained any company or person (other than a full time bona fide employee working solely for the Proposer/Consultant) to solicit or secure a contract, and (b) that it has , has not , paid or agreed to pay to any company or person (other than a full time bona fide employee working solely for the Proposer/Consultant) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to information relating to (a) and (b) above, as requested by the Contracting Officer.

52. CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in Section 2.101 of the Federal Acquisition Regulations (FAR) and required under subsection 15.403-4) submitted, either actually or by specific identification in writing, to LACMTA's Contracting Officer or to LACMTA's Contracting Officer's representative in support of _____* are accurate, complete and current as of _____**. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the Proposer/Consultant/Contractor and LACMTA that are a part of the proposal.

53. This proposal as submitted represents our best estimates and/or actual costs as of this date.

| 54. Type Name and Title of Authorized Representative | Signature | Date*** |
|---|---|---|
| | | |

| 55. | | * Identify the proposal, quotation, request for price adjustment, or other submission involved, giving appropriate identifying number (e.g. Information For Bid No., Work Order No., Request for Proposal No., Change Order No., Modification No., etc.) |
|---|---|---|
| 56. | | ** Insert the day, month and year when price negotiations were concluded and price agreement was reached. |
| 57. | | *** Insert the day, month and year of signing (i.e., When price negotiations were concluded and mutual agreement was reached on contract price). |

Form 60 Attachments (Applicable if Box is checked)

| | Scope of Work Expanded Description for which Cost Estimate is based on: |
|---|---|
| 1 | |
| 2 | |
| 3 | |

| | |
|---|---|
| 4 | |
| | Schedule in which Scope of Work is based on: |
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| | The Non-Disclosure Agreement (NDA) provisions (as set out in the NDA between City and LACMTA) are applicable to the following Form 60-specific items: |
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| | Track Allocation Request for Metro active bus rapid right-of-way encroachment is anticipated per stated Scope of Work. The following information is provided in advance to facilitate final Metro TAR approval: |
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| FORM 60 IS SIGNED AND EXECUTED WITH THE FOLLOWING ADDITIONAL ASSUMPTIONS: | |
| 1 CITY AS-BUILT RESEARCH BY CITY FOR METRO PROJECTS IN THE PLANNING PHASE SHALL BE TREATED AS PART OF LABOR OVERHEAD PORTION OF COST | |

**Part B - City Betterment Request Form[1]**

**CITY BETTERMENT REQUEST**

Date: _____

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

From: City of Burbank (City)

Subject Scope/ Scope Element: _____

Project: NoHo to Pasadena Project (Project)

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

Scope of requested Betterment:

_____

_____

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

_____

_____

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

CITY OF BURBANK

By:_____

Name: _____

Title: _____

Date:_____

_____

LACMTA has reviewed the above City Betterment Request and:

1. rejects the requested Betterment in accordance with the CA on the basis that the Betterment is:

   - ❑ incompatible with the Project;
   - ❑ cannot be performed within the constraints of Applicable Law, any applicable Governmental Approvals, and/or the Project Schedule; or
   - ❑ requested after establishment of the Basis of Design for the Subject Transportation Project.

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[1] Please refer to Article 6. This is the form that would be used for the City to identify/request the design and construction of Betterments at its cost. You will see that the form also incorporates responses from LACMTA, approving or rejecting the Betterment and providing an estimated cost. The reasons for rejecting a Betterment listed here are aligned with the provisions of Article 6.

2. approves the Betterment in accordance with the CA subject to the following changes or terms as negotiated with the City (if none, enter "none"): An estimated cost is listed below:

   Design Costs: $_____ Construction Costs: $_____

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

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

By:_____

Name: _____

Title: _____

Date: _____

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

CITY OF BURBANK

By:_____

Name: _____

Title: _____

Date: _____

**Part C – LACMTA Notice of Potential Betterment[2]**

Date: _____

To: City of Burbank (City)

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

Subject Scope/ Scope Element: _____

Project: NoHo to Pasadena Project (Project)

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

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

_____

_____

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

- ❑ if implemented, the City comment or request would comprise an upgrade, change or addition to a City Facility (or a part of a City Facility) that provides for greater capacity, capability, durability, appearance, efficiency or function or other betterments of that City Facility over that which was provided by the City Facility prior to the Project and none of the exclusions listed in the CA apply; or

- ❑ If implemented, the City comment or request would comprise a change in or supplement to, the City Standards applicable to that work after the establishment of the Basis of Design and none of the exclusions listed in the CA apply.

Details:_____

_____

LACMTA requests the City's response to this LACMTA Notice of Potential Betterment as set out below. In accordance with Article 5 (*Betterments*) of the CA, if the City fails to respond within 10 days of this LACMTA Notice of Potential Betterment, the relevant City comment or request will be deemed to be withdrawn provided that such deemed withdrawal shall be without prejudice to the City's right to submit the Betterment under a subsequent City Betterment Request under Article 5 (*Betterments*) of the CA.

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

By:_____

Name: _____

Title: _____

Date: _____

---

[2] Please refer to Article 6. This is the form that would be used by LACMTA if it identifies a City request or comment as a potential Betterment. The reasons for identifying a City request or comment as a potential Betterment listed in the form are intended to align with the definition of Betterment. It also includes a response form from the City, withdrawing the comment or enclosing a City Betterment Request.

The City has reviewed the above LACMTA Notice of Potential Betterment and:

- ☐ withdraws the relevant City comment or request referenced in the above LACMTA Notice of Potential Betterment; or

- ☐ submits the City comment or request referenced in the above LACMTA Notice of Potential Betterment as a City request for a Betterment in accordance with Article 5 (*Betterments*) of the CA and for this purpose encloses a completed City Betterment Request.

CITY OF BURBANK

By:_____

Name: _____

Title: _____

Date: _____

## EXHIBIT 12 – CITY-PERFORMED PROJECT WORK

1. **Request for the City to Perform Design and/or Construction work**

1.1 In accordance with Sections 3.1(b)(ii) (*Design Responsibilities*) and 4.1(b)(ii) (*Construction Responsibilities*) of this Agreement, LACMTA may request by Notice that the City prepare a cost estimate and proposal for the City to perform Design work and/or Construction work with respect to the City Portion of the NoHo to Pasadena (rather than a Rearrangement) (**"City-Performed Project Work"**). The request submitted by LACMTA shall set out:

(a) the proposed scope, criteria, specifications, and requirements for the proposed City-Performed Project Work including with respect to Utility Conflicts (taking account of the information identified and agreements reached under EXHIBIT 5 (*Utility Adjustment Procedures*));

(b) any prescribed governmental and lender requirements applicable to the proposed City-Performed Project Work under applicable grant, funding or financing agreements; and

(c) the then current Project Schedule and proposed schedule for the City-Performed Project Work, including the proposed dates for providing the City and the City Contractors with access to the Project Right-of-Way.

1.2 Promptly (and in any event within 15 days or any other time period agreed by the Parties) after submission of a Notice by LACMTA under Section 1.1 above, the Parties will meet to discuss the request and following such meeting the City will, within 15 days of that meeting, Notify LACMTA if it is not able to perform or procure the City-Performed Project Work or will otherwise, within 30 days of that meeting, provide LACMTA with:

(a) the City's estimate for the Cost of procuring and performing the City-Performed Project Work; and

(b) any City comments to the proposed scope, criteria, specifications, requirements, and schedule for the City-Performed Project Work.

1.3 The Parties will discuss in good faith the cost estimate and comments submitted by the City and mutually agree the scope, criteria, specifications, requirements, cost estimates, and schedule for the proposed City-Performed Project Work.

1.4 If the Parties agree that the City will proceed with a procurement for the City-Performed Project Work, the City will submit a Form 60 in accordance with Section 2.3 (*Work Orders*) of this Agreement, and following agreement of the Parties, LACMTA will issue a Work Order authorizing the procurement of the City-Performed Project Work.

2. **Schedule for the City-Performed Project Work**

2.1 The schedule agreed by the Parties for the procurement and performance of any City-Performed Project Work will be aligned with, and allow for, the timely delivery of the City Portion in accordance with the Project Schedule.

2.2 If at any time the City becomes aware of any delay to the procurement or performance of any City-Performed Project Work, the City shall promptly give Notice to LACMTA to that effect specifying the reason for the delay and the estimated impact to the agreed schedule.

3. **Constructability Reviews of Designs for the City-Performed Project Work**

Where the City-Performed Project Work for a Project includes only Construction work (and not the preparation of the Designs for that Construction work) then, if requested by LACMTA, agreed by the Parties and authorized under a Work Order, the City or a City Contractor (if included as part of a procurement under Article 4 (*Procurement of City-Performed Project Work*) of this EXHIBIT 12) will perform Design support services prior to commencing the City-Performed Project Work, including performing constructability reviews.

4. **Procurement of City-Performed Project Work**

4.1 Any procurement for City-Performed Project Work that will not be performed by City forces shall be performed:

(a) on the basis of full and open competition;

(b) utilizing the agreed scope, criteria, specifications, and requirements applicable to the scope of the City-Performed Project Work that is being procured;

(c) in accordance with the requirements set out in this EXHIBIT 12 or otherwise under the provisions of this Agreement;

(d) in accordance with the applicable Annual Work Plan and Work Order(s), including the agreed schedule set out under that Annual Work Plan and those Work Order(s); and

(e) in accordance with all Governmental Approvals, Applicable Law, and any additional prescribed governmental and lender requirements under the applicable grant, funding or financing agreements notified to the City in accordance with Section 2.8 (*Governmental and Lender Requirements*) of this Agreement.

4.2 Prior to advertising a procurement for the performance (in whole or in part) of City-Performed Project Work, the City shall provide LACMTA with the draft procurement documents, including the draft contractual terms and conditions, intended to be issued by the City for that work. LACMTA will review the draft procurement documents and provide comments to the City. The Parties will discuss in good faith and resolve comments submitted by LACMTA and mutually agree the form of procurement documents to be issued by the City. If the Parties are unable to agree the form of procurement documents, LACMTA may withdraw the request for City-Performed Project Work in accordance with Section 4.4 below.

4.3 LACMTA shall have the right to require a minimum number of bids or proposals, to review the bids or proposals received, and to approve the recommendation for contract award prior to presentation to the City Council for award. The City agrees that it shall not present a contract for any part of City-Performed Project Work for to the City Council for award until the bidder or proposer proposed for award has been approved by LACMTA.

4.4 LACMTA reserves the right (in its sole discretion) to withdraw the request for City-Performed Project Work at any time during procurement and to require that the City cancel the procurement and reject all bids or proposals, if received at the time of withdrawal, provided that LACMTA shall be required to reimburse the City for the costs of services in coordinating and managing the procurement in accordance with the terms of the applicable Work Order.

5. **Performance of City-Performed Project Work**

5.1 After review and approval of any contract award under Article 4 (*Procurement of City-Performed Project Work*) of this EXHIBIT 12 and the City's submission of a Form 60 in accordance with Section 2.3 (*Work Orders*) of this Agreement, LACMTA will issue a Work Order authorizing the performance of the City-Performed Project Work (or a part of it, as applicable). The payment terms for the City-Performed Project Work will be mutually agreed by the Parties under that Work Order.

5.2 Any City-Performed Project Work shall be performed in accordance with:

(a) in the case of any Construction work, the Final Design for the City-Performed Project Work that is approved-for-construction;

(b) the requirements set out in this EXHIBIT 12 or otherwise under the provisions of this Agreement, and the agreed scope, criteria, specifications, requirements, and contractual terms and conditions;

(c) the environmental controls established in the LACMTA Contracts for the NoHo to Pasadena Project, including construction noise and vibration control, pollution controls, and archaeological and paleontological coordination;

(d) the applicable Annual Work Plan and Work Order(s), including the agreed schedule set out under that Annual Work Plan and those Work Order(s);

(e) Good Industry Practice;

(f) the Project Right-of-Way constraints and other physical limits affecting the City Portion; and

(g) the FEIR and all other applicable Governmental Approvals, Applicable Law, and any additional prescribed governmental and lender requirements under the applicable grant, funding or financing agreements notified to the City in accordance with Section 2.8 (*Governmental and Lender Requirements*) of this Agreement.

5.3 In performing any City-Performed Project Work, the City and any City Contractors, must comply with all quality assurance, quality control, and quality management requirements set out in the agreed scope, criteria, specifications, and requirements, and in accordance with Applicable Law and Good Industry Practice.

5.4 In performing any City-Performed Project Work, the City and any City Contractors shall coordinate their work with the work of LACMTA and the LACMTA Contractors, including as defined under any interface requirements set out in the agreed scope, criteria, specifications, requirements, and contractual terms and conditions.

5.5 The City will obtain LACMTA's approval for any modifications to any City Contract for City-Performed Project Work and in any event shall inform LACMTA promptly when the City has reason to believe that the agreed Cost estimate for the City-Performed Project Work is likely to be exceeded, and shall obtain LACMTA authorization of such a Cost increase under Section 2.3 (*Work Orders*) of this Agreement.

6. **Inspection**

All City-Performed Project Work will be subject to inspection in accordance with the agreed scope, criteria, specifications, requirements, and contractual terms and conditions.

7. **Debarred Contractors**

In accordance with California Public Contract Code Section 6109(a), the City shall not perform City-Performed Project Work with any contractor who is ineligible to perform work on a public works project pursuant to California Labor Code Section 1777.1 or Section 1777.7. In accordance with California Public Contract Code Section 6109(b), any contract on a public works project entered into between the City and a debarred contractor is void as a matter of law. A debarred contractor may not receive any public money for performing work as a contractor on a public works contract, and any public money that may have been paid to a debarred contractor by the City for City-Performed Project Work shall be returned to LACMTA. The City shall be responsible for the payment of wages to workers of a debarred contractor who has been allowed by the City to perform any City-Performed Project Work. The Parties agree to strictly comply with the Applicable Law and will act on information related to any debarred contractor in accordance with Applicable Law.

EXHIBIT C 1

CITY OF BURBANK
OFFICE OF THE CITY COUNCIL

December 20, 2020

Metropolitan Transportation Authority
Attn: North Hollywood to Pasadena Bus Rapid Transit Corridor Project DEIR Comment
One Gateway Plaza
Los Angeles, CA 90012

**RE: City of Burbank Comments on Draft Environmental Impact Report for the Metro North Hollywood to Pasadena Bus Rapid Transit Corridor Project**

Dear Members of the Board of Directors:

The City of Burbank wants to thank you for the opportunity to provide comments on the Draft Environmental Impact Report (DEIR) for Metro's North Hollywood to Pasadena Bus Rapid Transit Corridor Project. As the City of Burbank is located along the proposed corridor and would have several stations located within the city, we are committed to ensuring that the proposed project expands the Los Angeles County regional transit network, connects Burbank jobs to reliable and convenient transit, and supports Burbank's goal of connecting 12,000 new housing units to transportation alternatives. In meeting these goals, the City also wishes to ensure Metro builds the project in a way that ensures that the interests of Burbank's residents and businesses are protected from significant adverse environmental impacts caused by the project. With the release of the DEIR, the City submits the following comments to ensure that the Project's environmental impacts are fully disclosed, analyzed, considered, and mitigated.

**Insufficient Range of Project Alternatives**

The DEIR fails to include an adequate range of project alternatives to mitigate potential project impacts. Specifically, the nature of Bus Rapid Transit allows for different BRT elements and roadway cross sections to be implemented depending on the local context of the project. The DEIR includes a project alternative with full BRT implementation including dedicated bus lanes and transit priority lanes on virtually the entire corridor. It also includes an "Improved Existing Bus Service Alternative" that would implement regular transit service frequency improvements but would construct no BRT improvements. This "all or nothing" project alternative approach fails to comply with CEQA's requirement to evaluate a reasonable range of feasible alternatives. The DEIR does not acknowledge that the implementation of targeted BRT elements, like bus lanes or queue jumps, installed at high-congestion and other critical areas, can dramatically



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improve travel time and potentially meet project objectives without creating a significant adverse environmental impact. To be legally adequate, the DEIR should include a project alternative that includes targeted BRT elements in areas where they would have highest impact to improving transit service in the corridor.

Also, more disruptive BRT elements, such as dedicated bus lanes, have tradeoffs with existing roadway elements like sidewalks, travel lanes and parking. And BRT elements have varying levels of transit improvement relative to adjoining vehicle traffic congestion and delays. The DEIR does not include adequate information on the existing congestion levels and delays on the corridor relative to the proposed transit service for the public and decision makers to evaluate the relative improvement and tradeoffs that BRT elements like dedicated bus lanes have along different segments of the project corridor. The DEIR therefore does not include adequate project alternatives nor information on existing roadway congestion levels to fully disclose the relative benefits, tradeoffs, and impacts that the project has on the environment. In particular, there is insufficient information in the DEIR for the public and decision makers to evaluate whether the proposed bus lanes on Olive Avenue and Glenoaks Boulevard should be implemented as peak-only bus lanes, or whether buses should travel in more mixed-flow segments because existing vehicle congestion and delay in the existing general purpose lanes is low and therefore bus lanes are not warranted.

The project alternative proposes to install a new BRT transit station at the top of the Olive Avenue overpass to directly connect BRT riders to the Downtown Burbank Metrolink Station below. The City of Burbank suggested and proposes this direct connection. However, the implementation of this connection as described in the DEIR introduces substantial transportation policy and safety impacts by reducing travel lanes on Olive Avenue contrary to the Burbank General Plan and creating a pedestrian crossing and travel lane merge movements along an old bridge vertical curve that will likely introduce new safety impacts. The construction of the proposed station is also likely infeasible because any types of heavy construction including station platforms, ADA ramps, signal foundations, pull boxes, and underground conduits will likely compromise the structural integrity of the existing bridge. The DEIR should include a project alternative that implements this station by widening the Olive Avenue bridge to expand pedestrian sidewalks, improving substandard bridge railings, creating a bus turnout and station platform outside of the existing Olive Avenue roadway, and constructing a second elevator on the south side of Olive Avenue to eliminate the proposed hazardous pedestrian crossing. This project alternative would eliminate several project impacts identified above, and would likely contribute to an environmentally superior project alternative.

The Project Alternatives section identifies that the No Project Alternative is environmentally superior, and then identifies the "Improved Existing Bus Service Alternative" (Alternative 2) as the environmentally superior alternative of the remaining two build alternatives. The project alternative is not identified as environmentally superior and the DEIR fails to address how the project alternative meets the stated project objectives better than the environmentally superior alternative to warrant it being chosen

over the environmentally superior Alternative 2. Based on this omission, the public and decision makers are led to believe that Alternative 2 should be selected as the preferred project, rather than the proposed project. As such, the alternatives analysis is legally inadequate.

**Transportation Plan, Policy, and Safety Impacts not Identified and Mitigated**

The DEIR indicates that the project would have a less-than significant transportation impact because the project does not conflict with a program, plan, ordinance, or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities. While the proposed project is consistent with some City of Burbank Mobility Element policies related to transit facilities as documented in the DEIR, , the DEIR fails to document several inconsistencies with numerous other Burbank Mobility Element policies related to roadway, transit, bicycle, and pedestrian facilities which are not disclosed in the DEIR. The proposed project is inconsistent with the following transportation program, plans, or policies:

Roadway Policy Impacts

- *Burbank2035 General Plan Mobility Element Roadway Circulation Street Classifications.*
  The DEIR fails to disclose the significant adverse impact the project will cause on maintaining the City's circulation network and street classifications. The Burbank General Plan designates Olive Avenue as a Major Arterial (General Plan Exhibit M-2) with five travel lanes. Major arterials should give priority to regional transit and auto traffic, and should encourage good transit and automobile progression using traffic signal timing (General Plan Page 4-11). The DEIR indicates that Olive Avenue would retain two travel lanes on Olive Avenue in each direction, but fails to disclose that the project would remove one travel lane in each direction on the Olive Avenue overpass of Interstate 5, which reduces the number of travel lanes from five lanes to three and conflicts with the General Plan street classification and roadway cross section requirements for major arterials which requires two lanes in each direction. The DEIR is inadequate in disclosing this significant roadway policy impact and in failing to identify appropriate mitigation measures for this impact. The DEIR must disclose congestion and potential impacts to public safety caused by narrowing of Olive Avenue to one lane in each direction. The DEIR must include a project alternative or mitigation measure that implements this station by widening the Olive Avenue bridge to expand pedestrian sidewalks, improving substandard bridge railing, creating a bus turnout and station platform outside of the existing Olive Avenue roadway, and constructing a second elevator on the south side of Olive Avenue to eliminate the proposed hazardous pedestrian crossing.
- *Burbank2035 General Plan Mobility Element Policy 1.2: Recognize that…wholesale changes to street rights-of-way are infeasible.*
  The DEIR is inadequate in failing to disclose a roadway policy impact with Burbank General Plan Mobility Element Policy 1.2. The project proposes to

widen the entire length of Olive Avenue by one to two feet through the entire length of the City to accommodate a transit-only bus lane. Burbank2035 General Plan Policy 1.2 does not support "wholesale changes to street rights-of-way," therefore the project is inconsistent with Policy 1.2.

- *Burbank2035 General Plan Mobility Element Policy 3.4: All street improvements should be implemented within the existing right-of-way. Consider street widening and right-of-way acquisition as methods of last resort.* The DEIR is inadequate in identifying roadway policy significant impacts with the Burbank General Plan Mobility Element. The project would require the curb-to-curb street width of Olive Avenue and Glenoaks Boulevard to be widened by up to four feet along the entire length of the project, which conflicts with Mobility Element Policy 3.4. The DEIR does not investigate feasible mitigation measures to address this policy impact, such as project alternatives that preserve the existing street roadway width consistent with this policy. Further, the DEIR does not identify the numerous locations along Olive Avenue where the half-street street right-of-way width is only 40 feet, , which may be insufficient to accommodate the proposed project's 36-foot wide half-street width (72-foot total width)without eliminating sidewalks. Providing ADA-accessible sidewalks in these locations may require property acquisition which is not disclosed in the DEIR, and which is inconsistent with Policy 3.4.
- *Burbank2035 General Plan Mobility Element Policy 6.1: Maintain arterial street efficiency to discourage spillover traffic into residential neighborhoods.* The DEIR is inadequate in assessing the proposed project's impact on Olive Avenue and Glenoaks Boulevard arterial street efficiency, and does not disclose whether the project will cause arterial spillover traffic into adjacent residential neighborhoods. The proposed project includes transit signal priority and transit queue jumps at intersections, but does not disclose how these improvements may influence arterial street traffic. In particular, Olive Avenue is a diagonal street that intersects other north-south and east-west arterial streets. Implementing transit system priority signal timing on this diagonal arterial may introduce unacceptable delays on all other north-south and east-west streets near the proposed project, and may prevent the City from synchronizing its other arterial streets. The DEIR must disclose and analyze how potential transit system signal priority will affect the City's arterial traffic signal coordination and synchronization.

<u>Transit Policy Impacts</u>

- *Burbank2035 General Plan Mobility Element Policy 4.1: Ensure that local transit service is reliable, safe, and provides high-quality service to major employment centers, shopping districts, regional transit centers, and residential areas*

  The proposed project corridor passes by, but does not serve, the Disney Studio Campus and St. Joseph's Hospital and related medical complexes at the

intersection of Buena Vista Street and Alameda Avenue. Because the proposed project passes near, but does not serve this major employment center, the project conflicts with Burbank General Plan Policy 4.1 which requires transit to serve the City's major employment centers. DEIR should study a route alternative to divert the project alignment onto Alameda Avenue and Buena Vista Street to serve this major employment and community center and including a stop at the Buena Vista Street / Alameda Avenue Intersection.

- *Burbank2035 General Plan Mobility Element Policy 4.3: Improve and Expand Transit Centers; create a new transit center in the Media District*
  The Burbank2035 General Plan identifies a future bus transit center to be located within the Burbank Media District, at a location where local and regional bus lines intersect. The proposed project includes a station located where this future transit center is identified. However, the DEIR fails to analyze how the proposed project supports or inhibits the development of this transit center. The DEIR should evaluate how the construction of the proposed project's stop at Hollywood Way / Riverside Drive / Olive Avenue can serve as the foundation for a future bus transit center in the Media District, specifically how the proposed project's station will provide connections to BurbankBus, Metro Local, and Metro Express service in the Media District while supporting the required first-last mile improvements necessary to support the station.
- *Burbank2035 General Plan Mobility Element Policy 4.8: Promote multimodal transit centers and stops to encourage seamless connections between local and regional transit systems, pedestrian and bicycle networks, and commercial and employment centers.*
  The DEIR fails to analyze how the proposed project is compatible with Burbank2035 General Plan Mobility Element Policy 4.8 relating to the project's seamless connection between the Downtown Metrolink Station as well as the City's existing and planned off-street bicycle network that serves the Downtown Burbank Metrolink Station. The proposed transit station on the Olive Avenue overpass does not support a seamless connection to the existing Burbank Channel Class I Bikeway, and the future Chandler Extension Class I Bikeway because it requires eastbound riders to navigate a circuitous route across Olive Avenue and down the existing elevator. The proposed project should promote a more seamless connection to these other transportation systems by implementing this station by widening the Olive Avenue bridge to expand pedestrian sidewalks, improving substandard bridge railings, creating a bus turnout and station platform outside of the existing Olive Avenue roadway, and constructing a second elevator on the south side of Olive Avenue to eliminate the proposed hazardous pedestrian crossing.

The DEIR fails to analyze the proposed project's potential ridership impacts to the existing BurbankBus Pink Route service in conflict with Burbank2035 General Plan Mobility Element Policy 4.8. The Pink Route provides local

service along the Olive Avenue corridor and connects the Universal City Red Line Station and Downtown Burbank Metrolink Station to the Media District. This impact is especially pertinent as the City is being asked to become the primary local transit provider in the corridor due to the NextGen Bus Plan eliminating Metro 155 service.

Pedestrian Policy Impacts

- *Burbank2035 General Plan Mobility Element Pedestrian Transportation Sidewalk Standards*
  The DEIR fails to disclose a significant policy impact with Burbank2035 General Plan Mobility Element standard sidewalk width requirements. The project would widen Olive Avenue and Glenoaks Boulevard by one to two feet in both directions to convert the existing on-street parking into a bus-only lane. This would require sidewalks widths on Olive Avenue and Glenoaks Boulevard to be reduced below the standard widths identified in the Burbank2035 General Plan (Table M-2 – Sidewalk Standards, Page 4-21). The sidewalk width standards are generally 15 feet along the project corridor, and the required street widening would reduce these widths to 14 feet. In some locations on Olive Avenue, sidewalk widths would be reduced to 4 feet, which does not meet ADA minimum width standards. The DEIR fails to identify a significant transportation impact, nor does it identify feasible mitigation measures to this significant impact. *Burbank General Plan Mobility Element Policy 9.2: Address the needs of people with disabilities and comply with the requirements of the ADA during the planning and implementation of transportation improvement projects.*
  The DEIR fails to disclose a significant policy impact with the Burbank General Plan Mobility Element because the project proposes to reduce sidewalk widths on Olive Avenue in certain segments to four feet wide, which is below the ADA minimum width.

Bicycle Policy Impacts

- *Burbank2035 General Plan Mobility Element Bicycle Routes*
  The DEIR fails to disclose a policy impact with the Burbank General Plan Mobility Element Planned Bicycle Routes and the Bicycle Master Plan Top Priority Projects, which both include the addition of Class II bicycle lanes on Glenoaks Boulevard between Providencia Avenue and Alameda Avenue, with connections to the Class III bicycle route on Providencia Avenue. Further, the project precludes the City from connecting this planned facility to the Downtown Burbank Metrolink Station via Glenoaks Boulevard between Providencia Avenue and Verdugo Avenue, which is a bicycle network gap identified in the City's Complete Streets Plan. The DEIR must identify a mitigation measure for this policy impact.

Other Transportation Impacts

The DEIR fails to disclose a potential transportation impact by introducing a hazard due to a geometric design feature. The project proposes to construct a transit station at the top of the Olive Avenue Overpass, and install a signalized pedestrian crosswalk at the crest of the overpass. The DEIR did not analyze of the placement of this pedestrian crossing at the top of a 60 year old overpass with poor vehicle sightlines due to high roadway grades caused by the profile of the overpass. The project proposes to construct two roadway travel lane drops on the overpass immediately approaching the proposed station platform, and the DEIR does not disclose or analyze whether the introduction of this roadway design feature on the existing overpass creates a potentially significant adverse impact. The project also proposes to introduce additional pedestrian traffic travelling to and from the new station platform. These pedestrians will be boarding and alighting buses mixed with through pedestrian traffic on the bridge's existing seven foot sidewalks. These sidewalks are located along bridge railings that are of substandard height (39 inches) separating pedestrian traffic from falling to the Interstate 5 freeway below.

The DEIR fails to analyze whether the proposed station loading platforms with midblock crosswalk on the Olive bridge is feasible. A midblock crosswalk on the Olive bridge is likely hazardous for pedestrians and vehicles due to creating a visibility issue on the bridge's vertical curve. The DEIR did not adequately investigate whether a signalized crosswalk can be constructed on the existing Olive bridge given the types of heavy construction including station platforms, ADA ramps, signal foundations, pull boxes, and underground conduits that will be required and may likely compromise the structural integrity of the existing bridge. The DEIR is inadequate in analyzing these potential safety impacts and identifying mitigation measures for those potentially significant adverse impacts. The DEIR should include a project alternative or mitigation measure that implements this station by widening the Olive Avenue bridge to maintain four travel lanes, expand pedestrian sidewalks, improve substandard bridge railings, creating a bus turnout and station platform outside of the existing Olive Avenue roadway, and constructing a second elevator on the south side of Olive Avenue to eliminate the proposed hazardous pedestrian crossing.

The DEIR fails to analyze a potential transportation impact caused by a hazardous geometric design feature by proposing bus left turn movements to westbound Olive Avenue from the far-most right turn lane of northbound Glenoaks Boulevard. The DEIR does not disclose this potential hazardous condition or identify mitigation measures to reduce potential significant impacts. Making a left turn from the far-most right turn lane also violates California Vehicle Code Section 22100(b) and may cause other drivers to unintentionally copy the same movement, thereby introducing a new hazardous condition for pedestrians and road users.

The DEIR fails to analyze a potential transportation impact caused by a hazardous geometric design feature by proposing to install center-running median bus lanes on Glenoaks Boulevard at the Alameda Avenue and Providencia Avenue

intersections across conflicting left turn movements to these streets. The DEIR does not disclose this potential hazardous condition or identify mitigation measures to reduce potential significant impacts.

The proposed project allows right-turning vehicles to merge with the curb-running bus lane approaching each intersection and allows right turns be made from the bus lane. Existing right turn lanes with protected right turn signal indication cannot be merged with the curb-running bus lane due to the complexity of the signal operation at these locations. Removing the protected right turn indication will compromise vehicular safety at these locations. The DEIR failed to analyze the impact of traffic circulation should these protected right turn lanes be removed. The DEIR fails to analyze a potential transportation impact caused by hazardous geometric design feature by proposing to integrate the bus stations into the sidewalk area and using a curb extension to facilitate access and pedestrian circulation.

The DEIR fails to adequately analyze if including 11 foot bus only curb lanes adjacent to the existing 10 foot travel lanes on Olive Avenue and Glenoaks Boulevard will create a potentially significant adverse safety impact. The DEIR should analyze how the geometric configuration of BRT elements, such as dedicated lanes, curb extensions, and bus stations may create hazardous geometric design features, particularly where the alignment is required to make left or right turns, enter, exit, and cross freeway ramps, bicycle facilities, and pedestrian crossings at intersections.

**Cumulative Impacts Not Fully Disclosed**

The DEIR appears to use the "related projects list" method of analyzing potential cumulative impacts. The list of cumulative projects (Table 5-1, Page 5.2) included in the Cumulative Impact section of the DEIR omits several projects in the City of Burbank, including approved entitlements for the City's three major studio campuses. The City of Burbank's cumulative project list can be provided to Metro to add the additional cumulative projects located within ½ mile of the project alignment

The DEIR related projects list includes the City of Los Angeles Colorado Boulevard Specific Plan, but does not include the two City of Burbank Specific Plans that the alignment passes through (Media District and Burbank Center Specific Plans). Further, the Burbank Center Plan is not considered in the Population and Housing Section of the DEIR.

The DEIR related project list includes the unfunded Metro Los Angeles – Glendale – Burbank Feasibility Study, but does not include the funded Antelope Valley Line Improvement Project, which will fund capital improvements to expand Metrolink service to 30 minute, all-day, bi-directional service. The DEIR's failure to include these service improvements as a cumulative project makes the DEIR inadequate in analyzing the need for the BRT project to seamlessly connect to this important regional connection, and

inclusion of this cumulative project would likely provide support for the Olive Avenue / Metrolink transit stop improvements described elsewhere in this comment letter.

The DEIR identifies the Metro / City of Burbank Olive/Verdugo/Sparks intersection improvement project as a related project, but does not identify the conflict the proposed project would have with the City's planned improvement of this intersection, which would construct pedestrian, bicycle, and vehicle channelization improvements that would preclude the installation of bus lanes through the intersection.

The DEIR identifies the City of Burbank Olive Avenue Bridge Improvement project as a related project, but does not disclose that the proposed narrowing of Olive Avenue to one lane in each direction is in conflict with one of the purposes of the bridge improvement, which is to improve operational efficiency while also adding bicycle and pedestrian improvements to the bridge. Constructing a transit stop at the top of the bridge in the middle of the travelled roadway would conflict with this project. These numerous omissions and inconsistencies render the Cumulative Impacts analysis legally inadequate because the findings and conclusions are not supported by substantial evidence.

**Aesthetic and Biological Resources Not Addressed**

The DEIR identifies that a significant aesthetic impact would occur if the project would "substantially damage scenic resources, including...trees..." and identifies several impacts to existing mature tree landscape elements along the corridor outside the City of Burbank (Page 3.2-14). However, the project does not apply this threshold to the City of Burbank and therefore does not identify impacts to mature street trees in the City of Burbank. In particular, the project would require the removal of several rows of large mature street trees on Olive Avenue and Glenoaks Boulevard in Downtown Burbank. These trees would be removed because the project is required to widen Olive avenue by one to two feet for the proposed project. By applying the project's aesthetic impact significance thresholds to the City's street trees, the DEIR should identify a significant impact to aesthetic resources in Burbank by removing these trees, and should identify feasible mitigation measures to lessen these impacts. In addition, the DEIR must analyze the removal of these trees as a significant Biological Resources impact give the contribution these mature street trees give to the City's urban forest resources. Without this additional analysis, the Aesthetics and Biological Resources impact analyses are legally inadequate because they are not supported by substantial evidence.

**Public Service Impacts Not Identified**

The DEIR indicates that the proposed project will cause no impact to police public services because it will not lead to an increase in police service calls or the local jurisdictional service ratio. However, there is no evidence to support this conclusion (Page 4-22). The DEIR states that the project will be subject to Metro's transit police strategy including Transit Services Bureau officers and contracted polices services. But it does not state directly if the proposed project will be patrolled and staffed by Metro transit police or local jurisdictional police, and if local police will be contracted to provide

police service. Also, the DEIR is silent on whether local or Metro law enforcement will be required to enforce bus-only lanes and other transit-only facilities, and fails to define the requirements and costs to enforce bus-only facilities. The DEIR fails to adequately identify if the project will pose a significant adverse impact to police service. Therefore, the Public Service impact analysis is legally inadequate because it is not supported by substantial evidence.

**Utility Systems and Roadway Infrastructure not Analyzed**

The DEIR indicates that the project will have no impact to electric utility systems, but does not document why this statement is true. Metro is proposing to utilize electric transit vehicles for the project, which could require substantial electrical utility system improvements if vehicle charging is expected to occur within the City of Burbank. The DEIR indicates that "the location of charging stations for electric buses would be analyzed and located where sufficient capacity is located" (Appendix S, Page 29) but does not include this analysis in the DEIR. The DEIR is insufficient in determining whether the proposed project will create a significant impact to the City's electrical utility system.

The DEIR fails to identify a significant impact to the City's recycled water interconnect with the City of Glendale located in the Glenoaks Boulevard median south of Alameda Avenue. The proposed project will likely impact this critical recycled water interconnect including hydrants, valves, vacuum/air release valves, meter boxes, and a fiber optic communication pull box. The DEIR should identify this significant impact and identify mitigation measures to mitigate it.

The DEIR fails to identify the impacts caused by several miles of street widening with respect to existing overhead and underground utilities, drainage, sidewalk width, street trees, street lights, sidewalk furniture, landscape, etc. The DEIR should disclose any potential significant impacts to public infrastructure. As such, the Utility Systems impact analysis is legally inadequate because it is not supported by substantial evidence.

The DEIR fails to document the increased annual pavement maintenance costs to the City's streets caused by frequent heavy bus service operating in the curb lane of Olive Avenue and Glenoaks Boulevard. Identifying impacts to increased pavement wear could require mitigation measures such as strengthening the roadway cross section in the bus lanes to accommodate heavy bus travel. The DEIR also fails to identify maintenance costs for other roadway elements including signs, striping, traffic signals, and other roadway infrastructure. Additional comments related to civil public infrastructure are attached to this comment letter.

**Other Project Considerations**

The City recognizes that impacts to public parking are not considered CEQA impacts. Nonetheless, the project proposes to eliminate 500 curb parking spaces along Olive Avenue and Glenoaks Boulevard without identifying a parking program or plan to address this lack of curb parking. These parking spaces currently serve a significant amount of

mid-century, single story strip commercial development that does not include on-site parking. Removing parking for these land uses without providing a parking program to address this parking loss would create an economic impact on these strip commercial businesses who rely on this curb parking. Removing all parking inventory for these businesses would impact the business viability and prevent use and re-use of these older buildings. Further, wholesale removal of curb parking would push parking demand into adjacent residential neighborhoods, likely requiring the City of Burbank to implement additional permit parking zones in these residentially-adjacent neighborhoods. The DEIR should disclose this potential economic affect and provide a program or plan to offset the loss of parking caused by the proposed project. The DEIR should also propose project alternatives to the implementation of full-time bus lanes in areas where loss of curb parking will impact adjoining land uses.

The DEIR fails to disclose if new transit stations will induce additional parking demand around them, especially if parking demand will impact sensitive residential or strip commercial land uses. Bus Rapid Transit is meant to operate similarly to light rail transit, but BRT stations, unlike light rail stations are built without parking. The DEIR should disclose the number of new transit riders at each station who are expected to arrive by automobile and identify potential parking demands caused by the proposed project.

Thank you again for providing an opportunity to comment on the DEIR for the Noho to Pasadena Bus Rapid Transit Corridor Project located in the City of Burbank. If you have any questions regarding the contents of this letter, please feel free to contact David Kriske, Assistant Community Development Director with the Community Development Department, at 818.238.5269 or via email at dkriske@burbankca.gov.

Sincerely,

Sharon Springer, Mayor

Bob Frutos, Vice Mayor

Jess A. Talamantes, Council Member

Emily Gabel-Luddy, Council Member

Timothy M. Murphy, Council Member

Attachment: Memorandum

# MEMORANDUM

CITY OF BURBANK PUBLIC WORKS

**DATE:** November 30, 2020

**TO:** David Kriske, Assistant Community Development Director

**FROM:** Daniel J. Rynn, Chief Assistant Public Works Director – City Engineer

**SUBJECT:** Project No. Metro Bus Rapid Transit Project
Located at North Hollywood to Pasadena

**Project Description:**

On October 26, 2020, Metro released a Draft Environmental Impact Report (DEIR) for its North Hollywood to Pasadena Bus Rapid Transit Project. The Proposed Project would run from the North Hollywood Red/Orange Line Station in the City of Los Angeles through the Cities of Burbank and Glendale and into the City of Pasadena ending at Pasadena City College. Bus Rapid Transit is high capacity, frequent bus service that operates on local streets in both mixed-flow and dedicated bus lanes with fixed transit stops like a rail line. The Proposed Project would operate along a combination of local roadways and freeway sections with various configurations of mixed-flow and dedicated bus lanes depending on location. Attachment 1 shows the project corridor. In Burbank, the route is proposed to operate as a dedicated bus lane along Olive Avenue and Glenoaks Boulevard.

The bus lane would be constructed by generally widening these streets by one to two feet on each side and eliminating on-street parking. Stations are proposed in public right of way on Olive Avenue at Hollywood Way, Alameda Avenue, I-5 Olive overpass / Metrolink Station, and San Fernando. A station is also proposed on Glenoaks Boulevard at Alameda Avenue. The project would be served by electric transit buses.

**ENGINEERING DIVISION**

**General Requirements**:

- The City's arterial paving program has identified portions of Olive Ave to be repaved by 2022. Any impacts to the pavement on these segments of Olive Ave will have to be repaired per the City of Burbank Standards.

- Bus pads will be required at all bus stops.

- The Olive Ave bridge currently has two lanes of traffic in each direction. Creating one lane in each direction as a dedicated bus lane may cause additional traffic congestion and additional pedestrian traffic over the bridge and to the Metrolink access point. The DEIR should consider widening the bridge to create the dedicated bus lanes and/or bus turnouts. At a minimum, the sidewalk widths should be increased and the substandard safety barrier rails on both sides of the bridge should be upgraded.

For additional information or questions, please contact Anthony Roman, Civil Engineer Associate, at (818) 238-3945.

Checked by: ___Anthony Roman_____ Date: _November 18, 2020_

**WATER RECLAMATION AND SEWER**

**SECTION 2.9 – CONSTRUCTION:**

- Proposed stations/stops located near City of Burbank and/ or County of Los Angeles catch basins must include trash receptacles.

**SECTION 2.10 – PERMITS AND APPROVALS:**

- Altering any part of the existing storm drain infrastructure requires approval and permits from the City of Burbank and/ or the County of Los Angeles.

**SECTION 4.1.3 – HYDROLOGY AND WATER QUALITY:**

- In addition to SWPPP and County SUSMP requirements, the City of Burbank has a Low Impact Development (LID) ordinance. Due to the proposed construction activities, revise document to include the aforementioned City LID ordinance.

**SECTION 4.1.9 – UTILITIES AND SERVICE SYSTEMS:**

- Best Management Practices shall apply to all construction projects and shall be required from time of land clearing, demolition or commencement of construction. Refer to BMC 9-3-407 for additional information.

- Certain construction and re-construction activities on private property will need to comply with post-construction Best Management Practices (BMPs), which include Sections 8-1-1007 and 9-3-414.D of the BMC authorizing the City to require projects to comply with the Standard Urban Stormwater Mitigation Plan provisions and the City's **Low Impact Development** (LID) ordinance. For questions on these requirements, please contact the City's Building Division at (818) 238-5220.

- The project will disturb more than 5,000 SF within the City's transportation corridors (i.e., public streets, parkway areas, and public parking) and as such, is subject to the City's Green Streets Policy requirements. This policy can be reviewed at the following address: http://file.burbankca.gov/publicworks/OnlineCounter/permits/app_docs_procedures/greenstreet/gspolicy.pdf

For additional information or questions, please contact Eden Lopez at (818) 238-3930.

Checked by: __Stephen Walker_____ Date: _November 19, 2020_

**TRAFFIC ENGINEERING**

**General Requirements:**

**CONDITIONS:**

- An operational analysis shall be performed to show traffic congestion caused by narrowing of Olive Avenue to one lane in each direction.

- The DEIR should provide a feasibility study to address the impacts and review whether the proposed station loading platforms with midblock crosswalk on the Olive bridge is feasible. Midblock crosswalk on the Olive bridge is hazardous for pedestrians and vehicles due to visibility issue on the vertical curve. A signalized crosswalk cannot be constructed on the existing Olive bridge because any types of heavy construction including station platforms, ADA ramps, signal foundations, pull boxes, and underground conduits will compromise the structural integrity of the existing bridge. Metro may need to reconstruct the bridge to maintain 4 travel lanes with bus turnouts or dedicated bus lanes, sidewalk widening, and new pedestrian signals.

- An operational analysis shall be performed to show traffic congestion caused by narrowing of Olive Avenue to one lane in each direction.

- The DEIR also fails to identify the feasibility of street widening with respect to existing overhead and underground utilities, drainage, sidewalk width, sidewalk furniture, landscape, etc.

- The DEIR should provide a feasibility study to address the impacts and review whether the proposed station loading platforms with midblock crosswalk on the Olive bridge is feasible. Midblock crosswalk on the Olive bridge is hazardous for pedestrians and vehicles due to visibility issue on the vertical curve. A signalized crosswalk cannot be constructed on the existing Olive bridge because any types of heavy construction including station platforms, ADA ramps, signal foundations, pull boxes, and underground conduits will compromise the structural integrity of the existing bridge. Metro may need to reconstruct the bridge to maintain 4 travel lanes with bus turnouts or dedicated bus lanes, sidewalk widening, and new pedestrian signals.

- Making a left turn from the far-most right turn lane also violates California Vehicle Code Section 22100(b) and may cause other drivers to unintentionally copy the same movement, thereby introducing a new hazardous condition for pedestrians and road users.

- The proposed project allows right-turning vehicles to merge with the curb-running bus lane approaching each intersection and allows right turns be made from the bus lane. Existing right turn lanes with protected right turn signal indication cannot be merged with the curb-running bus lane due to the complexity of the signal operation at these locations. Removing the protected right turn indication will compromise vehicular safety at these locations. The DEIR failed to analyze the impact of traffic circulation should these protected right turn lanes be removed.
- The DEIR fails to analyze a potential transportation impact caused by hazardous geometric design feature by proposing to integrate the bus stations into the sidewalk area and using a curb extension to facilitate access and pedestrian circulation. The DEIR does not disclose traffic congestion as a result of the dedicated bus lanes in combination with narrowing of the roadway at bus stations via curb extension.

- The DEIR showed cross sections but fails to identify locations where existing lane width is substandard and fails to analyze the potentially hazardous condition as a result of addition of dedicated bus lanes in the already congested and substandard travel lanes. City of Burbank requires minimum 10.5 feet travel lane and 12 feet curb lane where there is transit service. The DEIR should analyze how the geometric configuration of BRT elements, such as dedicated lanes, curb extensions, and bus stations may create hazardous geometric design features,

particularly where the alignment is required to make left or right turns, enter, exit, and cross freeway ramps, bicycle facilities, and pedestrian crossings at intersections. Should curb parking be modified to provide a dedicated bus lane or queue jump, the project DEIR should analyze how these elements may reduce travel lanes below 10.5 feet, curb lanes below 12 feet.

For additional information or questions, please contact Vikki Davtian, Principal Engineer – Traffic, at (818) 238-3922.

Checked by: Vikki Davtian Date: November 30, 2020

**FIELD SERVICES**

**General Comments:**

**Utilities and Service Systems:**

- The proposed project would utilize electric-powered vehicles, which may require recharging using electrical networks. The project should analyze the potential to create electrical system impacts associated with powering required transit vehicle charging stations located in the City of Burbank.

- The proposed project would potentially conflict with, or require the relocation/reconstruction of, storm water drainage facilities in roadways along the project's alignment. The Project DEIR should analyze the project's impact of City and County storm water facilities within the project alignment.

- The unique nature of a BRT project, whereby a regional transit agency constructs capital improvements and operates transit vehicles on public infrastructure owned by another agency, could result in additional impacts to City of Burbank public service systems. In particular, the project DEIR should identify impacts to roadway maintenance of local streets including the increased maintenance needed for pavement, signage, striping, station maintenance, lighting, and other roadway infrastructure used by the project and owned and maintained by the City. Also, the DEIR should analyze right-of-way impacts to land adjacent to streets along the alignment, including any land acquisition required for stations or roadway widening. Also, the City seeks clarification on whether public easements necessary for the project will be required within City right of way.

**Transportation:**

- Refer to attached letter.

For additional information or questions, please contact Public Works Field Services at (818) 238-3800.

Checked by: John Molinar Date: November 23, 2020

EXHIBIT C 2

CITY OF BURBANK
OFFICE OF THE CITY COUNCIL

April 20, 2022

Metropolitan Transportation Authority
Attn: North Hollywood to Pasadena Bus Rapid Transit Corridor Project FEIR Comment
One Gateway Plaza
Los Angeles, CA 90012

**RE: City of Burbank Comments on North Hollywood to Pasadena Bus Rapid Transit Corridor Project and Final Environmental Impact Report**

Dear Members of the Board of Directors:

The City of Burbank wants to thank you for the opportunity to provide comments prior to your consideration to approve the North Hollywood to Pasadena Bus Rapid Transit Corridor Project and to certify the Final Environmental Impact Report. The City of Burbank remains committed to ensuring that the proposed project expands the Los Angeles County regional transit network, connects Burbank jobs to reliable and convenient transit, and supports Burbank's goal of connecting 12,000 new housing units to transportation alternatives. We want to ensure that our City's residents and businesses are protected from potential impacts caused by the project, and we also want to ensure the project's success in further connecting to the regional transportation network. With these important goals in mind, the City of Burbank submits the following comments in response to the Final Environmental Impact Report and the changes proposed by Metro staff.

**Dedicated Bus Lanes on Olive Avenue**

The Burbank Community and the City Council have continued to voice concerns over the potential impacts of bus lanes on Olive Avenue. Metro's change from "curb-running" (bus lanes created from parking lane) to "side-running" (bus lanes created from a travel lane) has eliminated the primary concerns of parking and economic impacts to adjacent strip-commercial land uses on Olive Avenue, the risk for parking spillover into single family neighborhoods, and impacts to sidewalk widths and pedestrian access along and across Olive Avenue caused by street widening. We appreciate that Metro listened to the comments we submitted as part of the Draft EIR and removed the curb-running option from consideration.

The side-running option would affect transportation and land use along Olive Avenue differently than the curb-running option. Removing a travel lane on Olive Avenue would increase congestion and delay for motor vehicles traveling along the street, given the amount of traffic that currently uses Olive Avenue. Metro included a traffic diversion analysis in the FEIR that indicates that converting a travel lane to a bus lane would cause vehicle traffic to shift onto other streets (to bypass the resulting vehicle delays), and that the traffic that continues to use Olive Avenue would actually see improved travel times because the signal improvements made for the BRT would also improve travel for cars. Unfortunately this analysis and its assumptions were not documented in the FEIR. While the City agrees that traffic will shift to other streets, we disagrees with Metro's assessment of the amount of traffic that will shift. Based on verbal discussions with Metro's staff regarding the assumptions made in this analysis, the City believes that it fails to account for the delays caused by that shifted traffic to other arterial intersections in the City



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because it fails to properly analyze the available capacity at those streets' intersections. In urban street networks like Burbank, the roadway capacity constraints are at intersections, not along the street segments, which were measured by Metro. We believe converting a travel lane on Olive Avenue to a bus lane would result in some lesser amount of traffic shifts to other streets (due to less available intersection capacity elsewhere) and would result in higher levels of intersection congestion and delay on Olive Avenue during peak periods that would be noticeable to the driving public and would increase the risk of peak-period cut-through traffic into adjoining neighborhoods. A more detailed analysis of these shifts, along with an operational analysis of the project's impacts to Olive Avenue should be conducted to properly disclose how the project will affect Olive Avenue. A more detailed analysis will likely show that vehicle congestion on Olive Avenue will increase, along with a resulting increase in cut-through and spillover traffic into adjacent residential neighborhoods.

**City of Burbank Requests Additional Funding for Neighborhood Protection**

The City Council believes that implementation of side-running bus-only lanes require investments in additional neighborhood protection measures to ensure Olive Avenue vehicle traffic does not divert into adjoining neighborhoods The City Council requests that Metro fund additional neighborhood protection and/or first-last mile improvements in the amount of $5 million directed to neighborhoods adjacent to Olive Avenue between Alameda Avenue and Victory Boulevard, and that these improvements may be defined by the City of Burbank. These neighborhood protection elements would be funded as part of the project, and would be in addition to any other first-last mile improvements earmarked for project stations. This funding is necessary for the City to be able to protect neighborhoods while it simultaneously supports necessary regional transit connections that support its other goals and policies.

**Olive Avenue between Buena Vista and Lake Should be Configured as Mixed-Flow Unless Ridership Goals Met Within 36 Months**

Because implementation of a side-running bus lane and removing a travel lane could be detrimental to Burbank neighborhoods, Metro and the City will not see the true effects of this roadway reconfiguration until after the project is constructed. In addition, once the project is constructed, its operation may reveal that project ridership may not be high enough to justify the impacts on these neighborhoods caused by the conversion of travel lanes to bus lanes. Therefore, the City Council will not permit the construction of side-running bus lanes on Olive Avenue until the project achieves at least 17,500 average daily weekday boardings within 36 months of opening day. Should the project achieve that ridership level, then the City and Metro shall confer and consider whether Metro should install side-running bus lanes on Olive Avenue at its sole cost. This allows Metro and the City of Burbank to evaluate whether the project's ridership sufficiently justifies the conversion of vehicle lanes to bus lanes and the potential impact that conversion has on adjacent residential neighborhoods.

**City Believes Olive Bridge Station Should be a Required Separate Project**

Metro's removal of the Olive Avenue Bridge station and its relocation to Lake Street will significantly compromise the project's ability to meet the goals and objectives of providing a convenient, reliable, regional transit service for the region's transit riders. Connecting the proposed BRT project to Metrolink is critical to creating a travel alternative to the automobile and to support the region's investments in Metrolink service. The new proposed station at Olive and Lake would require connecting Metrolink riders to walk 1/3 mile along an uninviting and narrow pedestrian path alongside and under the Olive overpass, which would unduly burden patrons with

disabilities. This lack of connection is contrary to Burbank2035 Mobility Element Policy 4.8, which is to "Promote multimodal transit centers and stops to encourage seamless connections between local and regional transit systems, pedestrian and bicycle networks, and commercial and employment centers." Further, moving the station to Lake Street does not address the FEIR's failure to address the project's connection to the following existing and planned Class I and IV bicycle facilities, which is also contrary to Policy 4.8: Chandler Bikeway, Burbank Channel Bikeway, San Fernando Bikeway, First Street Bikeway, and Front Street Cycle Track. Connecting the BRT to Metrolink and the adjacent bicycle facilities must be a high priority for the project.

The City Council requests that the Metro Board of Directors direct its staff to work with the City to develop a program to upgrade the Olive Avenue Bridge to include a BRT station, including the required vertical connections to the Metrolink Station below and the necessary pedestrian improvements made to the bridge. This will likely require a substantial modification or reconstruction of the Bridge, and would likely take longer to implement than the BRT project's 2024 timeline for opening. The City Council believes Metro do more than simply offer to move the station should the City reconfigure the bridge, but instead should actively seek outside state and federal funding for the necessary improvements, and include this project as one of its formal funding priorities. The City has already committed a portion of its Measure R Arroyo Verdugo Highway Operations Improvement Funds to the project that could be leveraged with other outside funding.

**Additional Comments on Metro's FEIR Responses to City of Burbank**

Other Transportation Plan, Policy, and Safety Impacts

The City's DEIR comment letter stated that the DEIR was inadequate in assessing the proposed projects impact on Olive Avenue vehicular efficiency, and did not disclose whether the project will cause spillover into adjacent neighborhoods. The DEIR further did not assess whether potential BRT improvements may influence street traffic including proposed transit signal priority improvements. In response, Metro indicated that curb-running bus lanes would not have an impact on vehicle travel, and that side-running bus lanes (that convert two vehicle lanes to two bus lanes) would not cause residential spillover traffic onto residential streets because Olive Avenue vehicle traffic will shift to other streets such that the speeds of the remaining traffic on Olive Avenue will not be affected. Because of this, vehicle traffic will not spillover into adjacent residential neighborhoods. Unfortunately no documentation was provided with the traffic diversion analysis included in the FEIR to support this assertion. Given the amount of traffic currently on Olive Avenue, the limited ability for alternative streets to accommodate diverted traffic, and the loss of vehicle capacity caused by the side-running bus lanes, the City believes that the proposed project will cause spillover traffic into residential neighborhoods, which is contrary to Burbank2035 Mobility Element Policy 6.1, which is to "Maintain arterial street efficiency to discourage spillover traffic into residential neighborhoods". The FEIR is therefore inadequate in evaluating this policy conflict with Burbank2035, and important effects the project will have on adjacent residential neighborhoods is not disclosed to the public or to the Metro Board of Directors.

The City's DEIR comment letter stated that the DEIR failed to disclose a policy impact with Burbank 2035 General Plan Planned Bicycle Routes, which includes provision for a Class II bike route on Glenoaks Boulevard between Providencia and Alameda Avenue. In response, Metro indicated that the proposed project would operate as mixed-flow on Glenoaks Boulevard between Olive Avenue and Providencia Avenue. This response referenced the wrong segment of Glenoaks Boulevard, and did not address the potential conflict. The proposed project should accommodate the proposed bicycle facility on Glenoaks Boulevard, including accommodating the

implementation of that facility in accordance with the goals and policies of the City's Complete Streets Plan, which could include a buffered or protected bicycle facility that would match the facility planned for Glenoaks Boulevard in the City of Glendale.

Public Service Impacts

The City's DEIR comment letter stated that the DEIR conclusion that the project will not cause impacts to police public services did not include evidence to support this conclusion, and that the DEIR did not disclose whether local police resources would be required to police the project as well as enforce new bus lane or other vehicle code regulations that apply to the project. In response, Metro indicated in the FEIR that the project would not have impacts on police public services because it will not increase population levels necessitating additional police resources. However, the FEIR did not address the City's concern relating to additional police public service resources needed to ensure public safety of the project, other than to indicate that Metro would "develop appropriate enforcement strategies." The City requests that Metro identify how required police public services will be provided for the project and which agency will be expected to bear the costs of these services.

Utility Systems and Roadway Infrastructure

The City's DEIR comment letter stated that the DEIR failed to identify a significant impact to the City's recycled water interconnection with the City of Glendale. In response, Metro indicated that impacts to this facility would be identified as part of the project's design phase. However, the City believe this response is inadequate given the importance of this interconnect and fails to disclose the project's potential impact. Mitigation of this impact could involve redesigning the project in this area to avoid this infrastructure, which could introduce secondary impacts that are not identified as part of the FEIR.

Similarly, the City's DEIR comment letter stated that the DEIR failed to identify the impacts to overhead and underground utilities, drainage, sidewalk widths, street trees, street lights, sidewalk furniture, and landscape. In response, Metro indicated that the project is not anticipated to require the construction or relocation of utilities that could cause an impact because these relocations would be coordinated with utility providers, and a utility base map will be prepared to identify utility conflicts. This response is inadequate because the mere coordination with utility providers is not substantial evidence to support the assertion that no impacts are anticipated.

The City's DEIR comment letter stated that the DEIR failed to document the increased annual pavement maintenance costs to the City's streets caused by frequent heavy bus service operating in the curb lane of Olive Avenue, which could require mitigation measures to improve the pavement structural section to accommodate the bus traffic. In response, Metro indicated that the small amount of bus trips added by the project to Olive Avenue relative to the existing traffic on Olive would not be expected to accelerate pavement deterioration. However, given the size and speed of the large buses used for the project as well as their travel on the outer edges of Olive Avenue, the City remains concerned that the project will accelerate the pavement wear of Olive Avenue. The City requests further details on the proposed joint maintenance agreement that would identify the maintenance obligations of both parties in maintaining the project.

The City of Burbank remains committed to the NoHo to Pasadena BRT project and believes it will be an important way for the City and Metro to improve regional transit, provide competitive travel options, improve air quality, and reduce Greenhouse Gas emissions. The City believes that the project's success hinges on its ability to provide an important travel alternative while protecting Burbank neighborhoods from impacts and connecting directly to the Metrolink system. Metro's changes to the project description between the release of the Draft and Final EIRs is responsive

to many of the City's requests. Addressing the remaining concerns and changes expressed in this letter will ensure that this project will be a successful enhancement to the regional transit network and will be compatible with the Burbank neighborhoods that it will travel through.

The Burbank City Council respectfully requests the Metro Board of Directors consider the points raised in this letter as it considers approving the project.

Sincerely,

Jess A. Talamantes, Mayor

Konstantine Anthony, Vice Mayor

Bob Frutos, Council Member

Sharon Springer, Council Member

Nick Schultz, Council Member

EXHIBIT D

**COMMUNITY DEVELOPMENT**

May 18, 2026

**SENT VIA ELECTRONIC MAIL**

Mr. Anthony DeFrenza, Project Manager
Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, CA 90012

**Re: City of Burbank Review of the North Hollywood to Pasadena Bus Rapid Transit Corridor Project (BRT) Second 100 Percent Plans**

Dear Mr. DeFrenza:

The City of Burbank has completed reviewing the second 100 percent plan set for the Metropolitan Transportation Authority (Metro) North Hollywood to Pasadena Bus Rapid Transit Corridor (BRT) Project, which was delivered to the City on April 11, 2026 and revised by Metro April 16, 2026. The City delivered comments to Metro on Monday, May 18, 2026 as agreed under the terms set by the Cooperative Agreement. The City's comments are made for project plans that include bus lanes on only a portion of the alignment within the City.

As discussed in the City's letters to Metro on January 30, 2026 and February 17, 2026, accompanying comments to Metro's prior 100 percent plan set, Senate Bill 79's (SB 79) mandatory upzoning constitutes new information that changes the circumstances under which the BRT project was proposed and renders its Final Environmental Impact Report (EIR) legally inadequate. SB 79 and its imposition of higher residential densities around five of six Burbank BRT stations as proposed by your 100 percent plan presents substantial new information that could not have been known, which is of substantial importance to the project, and will have significant and unavoidable impacts to Burbank's infrastructure that have not been analyzed.

Metro's second 100 percent plans continue to include project elements that the City has not agreed to and which will trigger SB 79 around five of the six project stations in the City. As a Responsible Agency for the Project under the California Environmental Quality Act (CEQA), Burbank cannot issue an excavation permit for the Project until Metro conducts subsequent environmental review to analyze, publicly disclose and mitigate potential significant environmental impacts of any BRT stations that qualify for SB 79 density increases as a "transit-oriented development stop." Alternatively, on April 22, 2026, the City offered three project design modifications that could avoid SB 79 densities around five of the six project stations in Burbank, thereby avoiding additional potentially significant environmental impacts and allowing the City to issue the required excavation permit for construction.

150 NORTH THIRD STREET
BURBANK, CA 91502

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INFO@BURBANKCA.GOV

In sum, the City has timely delivered comments on each of Metro's plan submissions including this second 100 percent plans as required by the Cooperative Agreement, but cannot issue an excavation permit for a project with significant unavoidable impacts to infrastructure that have yet to be analyzed. Metro must either conduct subsequent environmental review or modify the project so as to not trigger such significant unstudied densities.

Sincerely,



David Kriske
Assistant Community Development Director, Transportation

Cc: Patrick Prescott, Community Development Director
Damian Skinner, Public Works Director
Lifan Xu, Chief Assistant Public Works Director- City Engineer
Fred Ramirez, Assistant Community Development Director

EXHIBIT E

**COMMUNITY DEVELOPMENT**

September 29, 2026

**SENT VIA ELECTRONIC MAIL**

Mr. Anthony DeFrenza, Project Manager
Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, CA 90012

**Re: Denial of Signing and Striping Plans for Certain Dedicated Bus Lanes for the North Hollywood to Pasadena Bus Rapid Transit Corridor (BRT) Project**

Dear Mr. DeFrenza:

The City recently approved 100 percent design plans and issued construction permits for the North Hollywood to Pasadena BRT Project. This approval did not include certain plan sheets related to signing and striping of dedicated bus lanes on Olive Avenue, Alameda Avenue, and Buena Vista Street. By this communication the City formally denies plan sheets SS-101 to SS-109, SS-111, SS-114, SS-115, TS-101, TS-103 to TS-105, which are returned to Metro and marked as "Not Approved."

This letter restates the City's longstanding position that bus operations on Olive Avenue must be designated and designed as mixed flow and it rejects full-time dedicated bus lanes on Olive Avenue, as well as those on Alameda Avenue and Buena Vista Street. Disapproval of these sheets is consistent with "Exhibit 1 – Project Description" and "Exhibit 3 – Project Site" of the *Cooperative Agreement for the Design and Construction of the North Hollywood to Pasadena Bus Rapid Transit Corridor Project* which intentionally did not specify roadway striping configurations. Disapproval is also consistent with the Burbank City Council's position to install mixed-flow lanes on Olive Avenue as communicated to Metro since 2022 during the project's environmental review.

Finally, the City owns the relevant street rights of way along the Project corridor, and while Metro may run its buses on City streets, Metro cannot take said streets in a dedication exclusively for its transit use. The City has the authority to approve or deny the installation of roadway signing and striping along the BRT Project corridor.

Sincerely,

David Kriske
Assistant Community Development Director, Transportation

Cc: Patrick Prescott, Community Development Director
Damian Skinner, Public Works Director
Lifan Xu, Chief Assistant Public Works Director – City Engineer