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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

LOS ANGELES COUNTY
METROPOLITAN
TRANSPORTATION AUTHORITY,
a public entity,

Petitioner & Plaintiff,

v.

CITY OF BURBANK, a municipal
corporation; and DOES 1-10,
inclusive,

Respondents &
Defendants.

Case No. 26STCP01904

**CITY OF BURBANK'S
OPPOSITION TO LOS ANGELES
COUNTY METROPOLITAN
TRANSIT AUTHORITY'S
MOTION FOR PRELIMINARY
INJUNCTION**

*[Filed Concurrently With
Declarations of David Kriske,
Evidentiary Objections to Declaration
of Michael McKenna, and
Compendium of Exhibits In
Opposition to Motion]*

Date: July 16, 2026
Time: 1:30 p.m.
Dept.: 416

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1 **I. INTRODUCTION**

2 Respondent and Defendant City of Burbank (“Burbank” or “City”) Opposes
3 Petitioner and Plaintiff Los Angeles County Metropolitan Transportation
4 Authority’s (Metro) Motion for Preliminary Injunction. The Motion should be *denied*
5 for five basic reasons:

6 1. Plaintiff cannot establish a probability of prevailing on the merits on any
7 of its five causes of action. Plaintiff’s first and second causes of action purport to
8 compel a “ministerial” action by the City in reviewing and approving various
9 permits to construct and operate a bus rapid transit system going through City
10 boundaries. There is no such “ministerial” action to compel. Plaintiff’s third and
11 fourth causes of action allege a breach of contract or the implied covenant of good
12 faith related to a contract, but the contract at issue is a complex set of reciprocal
13 duties that cannot be subject to a motion for a preliminary injunction without
14 discovery and evidentiary hearing. Plaintiff’s fifth cause of action for declaratory
15 relief is also not susceptible to injunctive relief because Plaintiff alleges specific
16 monetary damages. (*See* City’s Demurrer filed June 22, 2026).

17 2. Plaintiff cannot establish irreparable harm. This is, at its core, a dispute
18 over a contract termed the “Cooperative Agreement.” Most, if not all of Plaintiff’s
19 claims of future harm are projections of an impossible construction schedule.
20 Plaintiff’s claims of a City-caused delay in construction are belied by its own Ex. 2
21 Part B (Schedule) to the Cooperative Agreement, which shows that it should have
22 started construction in late 2024. (Comp. Ex. 1 at BUR-0036). Beyond being late,
23 Metro has not produced what Mr. McKenna terms the “current schedule” by which
24 this Court can even begin to assess a current construction schedule. While the
25 Project Schedule is subject to change, the City has not received any official Notice
26 of such a change. (Kriske Dec. ¶13). Irreparable harm cannot be measured based
27 on an ever-changing schedule for construction, particularly a schedule that Metro
28 itself admits is “subject to revision” as recently as April 30, 2026.

1 3. Even if Plaintiff could (it cannot) establish a breach of contract, the
2 standard remedy applies—monetary damages. Plaintiff claims monetary damages
3 (Pet. ¶88) and even calculates a claimed daily rate of damages. (Pet. ¶89). Based on
4 its own pleadings, Plaintiff cannot allege any harm not compensable by monetary
5 damages. (*See* Pet., ¶¶88-89)

6 4. Plaintiff's Motion for a Preliminary Injunction is procedurally premature.
7 Respondent Burbank has filed a demurrer to all five causes of action which is set
8 for hearing on August 19, 2026. The City's demurrer should be heard and
9 determined before any consideration of a preliminary injunction, which requires a
10 likelihood of prevailing on the merits.

11 5. Plaintiff's Motion is similarly evidentiarily infirm. The Declaration of
12 Michael McKenna purports to offer legal conclusions about the proper
13 interpretation of a legal contract—the Cooperative Agreement. Not only are such
14 lay opinions about a legal contract improper, but they are also flawed based on a
15 “snip and cut” approach to the contract rather than a thorough reading of all the
16 contractual provisions together as a whole. Mr. McKenna was not a signatory to the
17 Cooperative Agreement. Indeed, he is not even listed as a person to be given
18 “Notice” under Section 10.4 of the Cooperative Agreement. His convenient opinions
19 about what that Agreement means are not based on negotiation history or other
20 documents evidencing a particular drafting intent. Rather, they are purely *ipse dixit*
21 by an incompetent witness. (*See* Evidentiary Objections to McKenna Declaration).

22 **II. STATEMENT OF FACTS**

23 Burbank starts with two fundamental observations about the facts (and
24 alleged facts). First, the City relies on the Declaration of David Kriske, its Assistant
25 Director of Community Development-Transportation, who has personal knowledge
26 of the events surrounding the draft EIR, the Final EIR, and the drafting of the
27 Cooperative Agreement. (Kriske Decl. ¶ 1.) Second, Petitioner LA Metro relies on
28 the Declaration of Michael McKenna, who lacks personal knowledge of most of these

1 events and instead takes conveniently-selected portions of the Cooperative
2 Agreement and essentially serves as a human highlighter. Unlike Mr. Kriske, Mr.
3 McKenna is not even a Notice recipient for Metro under the provisions of the
4 Agreement.

5 As a matter of law, the best basis for construing a contract are the plain words
6 of the contract, not one party's self-serving paraphrasing of those words. (*Pomona*
7 *Valley Hosp. Medical Center v. Kaiser Found. Health Plan, Inc.* (2026) 119
8 Cal.App.5th 43, 63 ["When the contract is clear and explicit, the parties' intent is
9 determined solely by reference to language of the agreement."]). Moreover, the law
10 requires a review of the entire contract, not just a cut-and-paste of certain parts of
11 the contract. (*Id.* [the "whole of [the] contract is to be taken together, so as to give
12 effect to every part, if reasonably practicable, each clause helping to interpret the
13 other" (Civ. Code, § 1641)]).

14 **A. Facts Related to the Two CEQA Causes of Action**

15 Petitioner claims that Burbank has violated CEQA in its first two causes of
16 action. In its first cause of action, Petitioner claims that the City cannot now request
17 that Metro, as the lead agency, conduct a supplemental environmental impact
18 report. (EIR). The Petitioner alleges that as a matter of law Burbank has no right
19 to request such a supplemental review. The facts related to this issue are contained
20 in the City's letters of January 30, 2026 and February 17, 2026 (Comp. Ex. 6 -7;
21 Kriske Dec. ¶ 18). In the January 30 letter, the City requested that: "Metro, the lead
22 agency for BRT, commence subsequent environmental review to determine
23 potentially significant environmental impacts around any SB 79 "transit-oriented
24 development stops" located within the City. (Comp. Ex. 6).

25 The City was *not* proposing to conduct supplemental review, but rather
26 requesting that Metro, the admitted lead agency, do so. (Comp. Ex. 6). It reiterated
27 this position in its February 17, 2026 letter. (Comp. Ex. 7)

28 The other pertinent fact is that the Agreement (a defined term in the

1 Cooperative Agreement) itself contemplates the possibility of a supplemental EIR.
2 Section 11.1 of the Agreement contains a set of defined terms, including “Project
3 Right-of-Way” which is the physical limits for the Design and Construction
4 of...Project, as identified in Part B of Exhibit 3 (Project Site), *or* as notified by
5 LACMTA to the City and compliant with the FEIR *and any supplemental*
6 *environmental reports for the NoHo to Pasadena Project...*” (Comp. Ex. 1 at BUR-
7 0030) [emphasis added]).

8 Thus, the notion that the City has “no legal right” to even request a
9 supplemental EIR or that the Agreement somehow precludes such a supplemental
10 EIR is wrong.

11 **B. Facts Related to the Contract Claims (Third and Fourth Causes**
12 **of Action)**

13 Petitioner’s third and fourth causes of action for breach of contract or breach
14 of an implied contractual covenant of good faith involve two specific facts. First, the
15 correct version (as executed) of the Agreement is a very complicated 68-page
16 document (Comp. Ex. 1). Petitioner’s efforts to ignore the requirement of reading
17 the entire agreement and one-sided citations ignore other pertinent parts of the
18 agreement. To take but one example, Metro agreed that notwithstanding its legal
19 rights under “Applicable Law” (a defined term), that it “shall” obtain all necessary
20 City permits and approvals and comply with “City Standards” relating to the use of
21 Public Rights-of-Way...” (Comp. Ex. 1 at BUR-0030). Petitioner alleges that it does
22 not legally need to obtain the rights of way permission from the City (Pet. ¶43), but
23 its own Agreement binds it to do so.

24 Petitioner fails to even acknowledge that it expressly contracted certain of its
25 putative statutory powers away as a precise provision in the Cooperative
26 Agreement. In Section 2.5 of that agreement, Metro contractually committed to
27 obtain “all necessary City permits and approvals and comply with City Standards
28 relating to the Design and Construction of the City Portion.” (Comp. Ex. 1 at BUR-

1 0009). Moreover, it is Petitioner who has fallen years behind the “Project Schedule”
2 (another defined term) which was supposed to start in the fourth quarter of 2024.
3 (Comp. Ex. 1 at BUR-0030 [Ex. 2];Kriske Dec. ¶10). Taken literally, the Agreement
4 cannot be performed according to the Project Schedule, and Petitioner’s current
5 efforts to invoke an outdated Performance Schedule must fail.¹

6 **C. Facts related to the Fifth Cause of Action for Declaratory Relief**

7 The singular most important fact related to Petitioner’s fifth cause of action
8 seeking a declaration of rights is that the Agreement expressly provides for a set of
9 remedies that preclude such equitable relief. The Agreement provides in part that:
10 “To the extent the City fails to carry out any work or obligations...and such failure
11 is attributable to the City, then, solely to the extent such delay directly causes: (i)
12 LACMTA to incur additional costs; or (ii) a delay to the NoHo to Pasadena Project,
13 the City must reimburse LACMTA for all actual and documented costs and
14 expenses incurred by LACMTA...” (Comp. Ex. 1 at BUR-0008).

15 **III. LEGAL STANDARD**

16 A preliminary injunction is a drastic and extraordinary remedy that should
17 be granted only upon a clear showing justifying relief pending trial. The moving
18 party bears the burden of establishing, under California’s two-factor test, both a
19 likelihood of success on the merits and that the balance of interim harms tips in its
20 favor. *See* Cal. Civ. Proc. Code §§ 526, 527; *IT Corp v. County of Imperial* (1983) 35
21 Cal.3d 63, 69-73; *Butt v. State of California* (1992) 4 Cal.4th 668, 677-78; *White v.*
22 *Davis* (2003) 30 Cal.4th 528, 554-555.

23 Critically, the movant must present *admissible* evidence establishing a
24

25 ¹ Metro alludes to a “current schedule” in the McKenna Declaration without
26 attaching that document for this Court’s review. Any replacement of the original
27 Project Schedule, however, must be the product of either a formal amendment or
28 Notice by Metro to the City. Metro has no document showing that it provided the
“current schedule” to the City pursuant to the Agreement’s formal Notice
provision in Section 10.4. (*See* Comp. Ex. 16 [email to City consultant, not to
formal City members]).

1 reasonable probability or likelihood of success on the merits; bare allegations,
2 conclusions, or speculative assertions do not suffice. *See White*, 30 Cal. 4th at 554-55;
3 *IT Corp.*, 35 Cal. 3d at 69-73; *Butt, supra*, 4 Cal. 4th at 677-78.

4 **IV. ARGUMENT**

5 **A. Petitioner Cannot Establish a Likelihood of Success on the** 6 **Merits as to Any of its Five Causes of Action**

7 A critical prerequisite to obtaining a preliminary injunction requires Petitioner
8 to demonstrate that it has a reasonable probability of prevailing on the merits of its
9 Petition. *See, e.g., Evans v. Evans* (2008) 162 Cal.App.4th 1157, 1166 (“[t]o show
10 entitlement to a preliminary injunction, a plaintiff must prove a likelihood of
11 prevailing on the merits...”); *Tulare Lake Basin Water Storage Dist. v. Department of*
12 *Water Resources* (2025) 115 Cal.App.5th 342, 359 (“...plaintiffs were required to
13 demonstrate ‘(1) a reasonable probability [they would] prevail on the merits...”).

14 Moreover, when a preliminary injunction seeks to compel an affirmative
15 act that changes the status quo – such as compelling the City to approve permits
16 that will surrender a portion of its right of way and trigger high density
17 development under SB 79 – it is a mandatory injunction. (Code Civ. Proc., § 525;
18 *Kettenhofen v. Superior Court* (1961) 55 Cal.2d 189, 191) “The judicial resistance
19 to injunctive relief increases when the attempt is made to compel the doing of
20 affirmative acts. A mandatory preliminary injunction is only granted “‘in extreme
21 cases where the right thereto is clearly established.” (*Shoemaker v. Cnty. of Los*
22 *Angeles* (1995) 37 Cal. App. 4th 618, 625). In this case, Metro seeks an order
23 mandating that the City approve submissions without “conditioning” them on
24 anything—even including a City standard permit condition.

25 **1. Petitioner is not likely to succeed on its First Two** 26 **Claims related to CEQA**

27 Petitioner’s first cause of action alleges that the City is acting in violation of
28 and in excess of its authority under CEQA. However, Petitioner fails to allege the

1 duty the City is required to perform under CEQA, or the action the City took, which
2 was specifically enjoined under CEQA. The “lead agency” has primary responsibility
3 under CEQA. Metro pleads that it “is the lead agency for the Project under CEQA...
4 (a)s lead agency, Metro has primary responsibility for conducting environmental
5 review of the Project, including preparation and certification of the EIR...” (Pet. ¶
6 31 (*emphasis added*)). Metro denies that the City is even a responsible agency for
7 purposes of CEQA analysis of this Project despite the City’s discretionary
8 permitting authority in its right of way. See Pet. ¶17 (“The City has ***held itself out***
9 as a responsible agency under CEQA with respect to the Project”).

10 Petitioner articulates no clear legal duty the City was required to undertake
11 under CEQA. Such fundamental facts describing any CEQA action the City was
12 required to undertake—or for which Petitioner seeks a Writ of Mandate to enjoin—
13 are fatally absent in the Petition. At most, the Petition suggests the City has certain
14 permitting “obligations” that are related to the underlying Project. However, a
15 municipal entity’s permitting is a matter of discretion not subject to a writ of
16 mandate as a mere “ministerial act.” See *Kern County Hospital Authority v.*
17 *Department of Corrections & Rehabilitation* (2023) 91 Cal.App.5th 1313, 1334.
18 Without a ministerial City action that the Court can compel, Petitioner’s first cause
19 of action fails as a matter of law.

20 Indeed, Public Resources Code §§ 21166(b) and (c) require supplemental or
21 subsequent environmental review to be undertaken by the “lead agency” (i.e.,
22 Metro) due to either substantial changes in the circumstances under which the
23 Project is to proceed or where new information becomes available that was not
24 previously available at the time of the EIR’s certification. The City’s request that
25 Petitioner comply with pre-existing legal obligations under CEQA cannot create a
26 City violation. (Pet. ¶101).

27 Petitioner’s second cause of action alleges the City’s “Failure to Perform
28 Ministerial Duties and Acting in Excess of Authority” under Code of Civil Procedure

1 section 1085 and the Cooperative Agreement. The term “ministerial” – as defined in
2 analogous CEQA provisions of the California Code of Regulations – “describes a
3 governmental decision involving little or no personal judgment by the public official
4 as to the wisdom or manner of carrying out the project.” (Cal. Code Regs., Title 14, §
5 15369). Beyond CEQA, “ministerial” suggests little to no exercise of discretion. Yet,
6 Petitioner fails to identify a “ministerial” or “clear” obligation under the Cooperative
7 Agreement which the City failed to meet. In ¶ 106 of the Petition, Metro lays out a
8 variety of purported obligations; however, none is “ministerial.” Commitments to
9 “reasonably streamline” permits and not “unreasonably withhold approval” do not
10 divest the City of its discretion and in fact belie any mandatory duty; in fact, the right
11 to “reasonably” withhold approval is a classic exercise of discretion. Nor does the
12 requirement to “reasonably streamline the permit process” mandate any ministerial
13 act but gives the City discretion as to what is “reasonabl[e] streamlining.”

14 Petitioner’s second cause of action also ignores the fundamental tenet that a
15 City cannot contract away its police power; hence, to the extent a term in the
16 agreement is said to have guaranteed an entitlement or approval it would *ipso facto*
17 be void. *See, e.g., County Mobilehome Positive Action Committee, Inc. v. County of San*
18 *Diego* (1998) 62 Cal.App.4th 727, 736 (“Specifically, a ‘municipality may not ‘contract
19 away’ its legislative and governmental functions.”); *Discovery Builders, Inc. v. City of*
20 *Oakland* (2023) 92 Cal.App.5th 799, 811 (“Any agreement that contracts away those
21 functions is invalid and unenforceable as contrary to public policy.”)

22 Petitioner claims that “(t)he City has acted in excess of its authority” because
23 the Cooperative Agreement allegedly does not “authorize the City to condition its
24 approval on Metro’s preparation of a subsequent EIR, to require removal of Project
25 features such as dedicated bus lanes, to demand amendments to the Project
26 Descriptions in Exhibits 1 and 3...or to predicate its performance on actions by third
27 parties outside Metro’s control.” (Pet. ¶109). Petitioner’s claims about the scope of
28 the Cooperative Agreement are overstated. That Agreement specifically permits the

1 City to review Burbank-portions of the bus route project under its normal permit
2 review process. (Comp. Ex. 1 at BUR-0009, § 2.5 (a). Although the City agrees to
3 “reasonably streamline” the permit process, this is still limited to the City doing this
4 “so far as reasonably practical.” (Comp. Ex. 1 at BUR-0009, § 2.5(b)(ii). Thus, Metro
5 misstates the terms of the Agreement.

6 Moreover, the Cooperative Agreement is not the **sole** source of the City’s rights
7 and obligations, and the City is not so limited; indeed, Petitioner alleges no such
8 restriction in the Cooperative Agreement. Like any agreement, the Cooperative
9 Agreement is but one piece of the relationship and obligations between Metro and the
10 City as the Agreement itself states (Comp. Ex. 1, BUR-0004, Recital C). Like any
11 interested party, the City, which is a “responsible party” under CEQA, may challenge
12 Metro’s environmental assessment, particularly when the underlying environmental
13 assessment failed to adequately analyze new circumstances that have since arisen.
14 Additionally, the City can negotiate and demand changes to Metro’s proposed Project,
15 particularly where the Cooperative Agreement was signed amid contemplation of
16 such future negotiations or amendments (Comp. Ex. 1, BUR-0005). Hence,
17 Petitioner’s second cause of action fails to state a cause of action as a matter of law.

18 **2. Petitioner’s arguments about “standing” lack merit**

19 Petitioner advances two CEQA-related arguments to suggest it will prevail.
20 Neither argument has merit.

21 First, Petitioner suggests that the City “lacks discretion” to change the Final
22 EIR and therefore it somehow lacks standing to request a supplemental EIR. (Pet.
23 at pp.17-18). Petitioner advances a classic strawman argument: It suggests that the
24 City is somehow ordering a supplemental EIR, and then seeks to challenge the
25 City’s authority to issue such an order. In fact, the City argues that Metro must
26 conduct a supplemental EIR, and therefore Metro has sufficient discretionary
27 authority to modify the FEIR. (Comp. Ex. 6—Jan. 30, 2026 letter, p.2).

28 Second, Petitioner attempts to argue the merits of supplemental

1 environmental analysis by suggesting that the changes wrought by SB 79 do not
2 constitute a “change in the Project.” (Pet. at pp.18-19). This is, however, an
3 argument on the merits and cannot be determined based on a set of conclusory
4 allegations in a Preliminary Injunction hearing. Petitioner’s argument also fails on
5 the merits. The City has made a prima facie showing that: (a) SB 79 requires
6 housing density within ½ mile of qualified TOD (Transit-Oriented Development)
7 stops; (b) this higher density requirement contradicts the City’s General Plan and
8 permit standards (including its approved Housing Element); and (c) that currently
9 the maps prepared by SCAG of TOD areas include five of the six planned Metro bus
10 stops in the City. (Kriske Dec. ¶ 41; Comp. Ex. 6 (Jan. 30, 2026 Ltr at 1-2).
11 Petitioner’s claim that all this depends upon a third party (a future developer
12 building around a TOD) simply ignores the immediate statutory impact that
13 effectively demolishes part of the City’s General Plan limiting high density growth
14 in certain areas, and requires density with unstudied yet inevitably substantial
15 environmental impacts. Metro claims to control the frequency of bus stops which
16 trigger a TOD determination. Unstudied SB 79 densities are a direct injury, not a
17 speculative one, and the City’s General Plan is part of the “City Standards” that
18 govern the design requirements for this project. (Comp. Ex. 1 at BUR-0026, Sec.
19 11.1; *id.* at BUR-0046 Ex. 6-Design Requirements).

20 **3. Metro Cannot Establish a Breach of Contract in its**
21 **Third or Fourth Causes of Action**

22 Metro third and fourth causes of action claim breach of contract or,
23 alternatively, breach of the implied covenant of fair dealing in a contract. Metro is
24 not likely to prevail under either count.

25 At its core, Metro complains that Burbank’s requests for a supplemental EIR
26 are delaying Metro’s timely performance of the construction phase of the Project.
27 (Pet. ¶13-14). Yet the complaint rings hollow given its own continued delays in
28 starting the construction phase of work as set forth in the Project Schedule (a

1 defined term). The Project Schedule called for commencement of the “Early Work”
2 phase of the construction in Q4 2024. (Comp. Ex. 1 at BUR-0036). This did not
3 happen. The Project Schedule then called for commencement of the “Phase 2”
4 portion of construction starting in the second quarter of 2025. (Comp. Ex. 1 at BUR-
5 0036; Kriske Dec. ¶ 11). This did not happen.

6 Instead Metro took until almost until the end of the second quarter of 2026 to
7 get its own Board to approve a “Life of Project” funding authorization. This funding
8 approval is a necessary pre-requisite for the commencement of any Metro
9 construction. (Comp. Ex. No. 14, p.1).

10 Project Schedule aside, there is a further reason why Plaintiff’s breach of
11 contract claim cannot succeed. The Agreement has a direct and clear “Resolution of
12 Disputes” provision that requires a party such as Metro to “make good faith efforts
13 to resolve the Dispute through negotiation....” (Comp. Ex. 1 at BUR-0020-Article 9).
14 Even assuming *arguendo* that the City’s letter of May 18, 2026 constituted a
15 “dispute,” then Metro’s recourse, per the Agreement, was to engage in good faith
16 negotiations. Filing a lawsuit on May 19, 2026 does not constitute good faith
17 negotiations.

18 Metro’s third cause of action is the subject of a detailed legal analysis showing
19 it cannot be maintained as a matter of law. (City Demurrer at 17-19).

20 Metro’s fourth cause of action for breach of the implied covenant of good faith
21 in a contractual setting is merely a redundant restatement of its breach of contract
22 claim. It cannot succeed for all the reasons set forth in the City’s demurrer to this
23 cause of action. (City Demurrer at 19-20). Accordingly, Metro cannot establish a
24 reasonable probability of success on the merits for either of these claims.

25 **4. Metro’s Fifth Cause of Action for Declaratory Relief**
26 **Ignores its Own Failure to Invoke Dispute Resolution**
27 **Under the Agreement**

28 Petitioner’s fifth cause of action seeks a declaration of rights under the

1 Agreement. (Pet. ¶ 152). It claims that it seeks “judicial declarations” resolving
2 these controversies. (Pet. ¶ 156). Metro, however, ignores the fact that after the May
3 18, 2026 letter from the City (Comp. Ex. 11) it did not invoke the Dispute Resolution
4 provisions of the Agreement.

5 Code of Civil Procedure section 1061 allows the Court to decline to “exercise
6 the power granted by this chapter” where the declaration is not necessary or proper
7 at the time under all the circumstances. The Court should exercise its discretion to
8 decline to make a declaratory judgment where: (a) the party seeking the declaration
9 has not completed its contractual obligation to complete dispute resolution; (b) the
10 party seeking the declaration has not spelled out specifically what terms it wants the
11 Court to determine (other than a complete ban on a request for a supplemental EIR).

12 **B. Petitioner Cannot Establish that the Balance of Interim**
13 **Harms Tips in its Favor**

14 Petitioner’s claim that the balance of harms (and public interest) tip in its favor
15 rests heavily on its assertion that: “the current Project schedule achieves a February
16 2028 revenue service date before the 2028 Olympics.” For this proposition, Petitioner
17 rests on the McKenna Declaration at Paragraph 26. (Mot. at 20:15-19). That
18 Paragraph (and others) reference a potential *delay* to an unstated “current project
19 schedule.” (McKenna Dec. ¶24 [referencing “current construction schedule”]). In fact,
20 the governing construction schedule is contained in Ex. 2 to the Agreement, which
21 shows a 26-month period between the start of “early work” on construction and
22 completion of construction. (Kriske Dec. ¶ 11). In short, under the official schedule
23 governing the Project Schedule (a defined term), the start of construction, which was
24 to have begun in Q4 of 2024 (Kriske Dec. ¶ 10) is some 14 months behind schedule.

25 Even if Metro has a “current construction schedule” different than the Project
26 Schedule, it matters not. The Agreement requires while Metro may amend the
27 Project Schedule, it must do so by a “notice from LACMTA to the City or otherwise
28 by an amendment to this Agreement.” (Comp. Ex. 1 at BUR-0030). Petitioner does

1 not allege any amendment to the Agreement. Petitioner also does not allege that it
2 has sent a Notice to the City (with specific notice recipients pursuant to Section 10.4
3 of the Agreement). In fact, the City has demonstrated that the contrary is true.
4 (Comp. Ex. 16 [email to various individuals of then existing schedule “subject to
5 revision”]; Kriske Dec. ¶ 13-14). Petitioner’s apparent “current construction
6 schedule” has no force and effect under the express terms of the Agreement defining
7 the Project Schedule. (Comp. Ex. 1 BUR-0030 [Sec. 11.1-definitions]).

8 **C. Metro cannot invoke “public interest” when it has Ignored**
9 **its Own Project Schedule in the Agreement**

10 Metro pleads that public interest is in having the new bus line ready for the
11 2028 Olympics. It cites to “corridor-wide” benefits including estimated ridership and
12 associated air quality/greenhouse gas benefits. (Mot. at 21:3-8). These putative
13 benefits are at best speculation—the number of actual riders is uncertain and air
14 quality benefits may vary depending in part on other mass-transit alternatives and
15 growth of non-polluting EVs.

16 Speculation aside, Metro cannot invoke equity or public interest to fix a problem
17 of its own creation—its own repeated delays. Metro told the public (and its own Board)
18 in 2022 that this project had an “anticipated opening date of 2024.” (Comp. Ex. 3).
19 Metro later told the public and the City that the Project Schedule would show a
20 completion of construction by the second quarter of 2027. (Comp. Ex. 4, first
21 attachment). Metro now tells this Court (without even a Gantt chart) that Metro
22 “must” complete the “Burbank portion” of the “current” schedule by October 2027.
23 (Mot. at 20:19-22). Given Metro’s past delays, this putative schedule is itself
24 speculation. Moreover, Metro’s own email dated April 30, 2026 states that there will
25 be a further schedule revision—one that Mr. Kriske has not seen. (Comp. Ex. 16, BUR-
26 0443; Kriske Decl. 14). This Court is left without any admissible evidence of a “final”
27 schedule by which to evaluate the so-called “pressing nature” of a start of construction.

28 Finally, Metro misleads this Court regarding the Olympics and a “regional

1 transit system” that is expected to carry some “one million additional riders.” (Mot.
2 at 20:17-19). The “regional transit system” is far greater than just the NoHo-
3 Pasadena Project, it involves bus, Metrolink trains, subways, and other mass transit
4 systems. To suggest that this particular Project is key to carrying one million riders
5 (or even some significant portion thereof) in the 2028 Olympics is misleading—
6 especially when over eighty percent of the events for the 2028 Olympics will take
7 place in venues that are not even close to the NoHo-Pasadena Project.

8 **D. Petitioner’s Claim that the City will Suffer No Comparable**
9 **Harm from “Complying with the Agreement” Is Misplaced**

10 Metro claims that the City faces “no cognizable harm” from the Project’s
11 dedicated bus lanes. This is so, per Metro, because SB 79 consequences arise from
12 the Legislature’s housing policy decision, not from Metro’s final plans. (Mot. at 21).
13 This is misdirection. It is Metro’s final plans, not the Legislature, that determine
14 TOD bus stops in Burbank. SCAG simply follows Metro’s lead. (Comp. Ex. 15). As a
15 direct consequence of Metro’s plans, any developer can “build up” within ½ mile of
16 that Metro determined TOD.

17 Metro’s attempt to distance its Project from the likely SB 79 consequences
18 drastically revising the City’s General Plan violates both the Agreement (which
19 respects City Standards) and ignores pertinent Supreme Court precedent. The
20 Supreme Court in *Diamond Alternative Energy, LLC v. EPA* (2025) 606 U.S. 100, 145
21 S.Ct. 2121 considered the standing of fossil-fuel manufacturers challenging EPA’s
22 approval of a California state statute requiring production of more electric vehicles.
23 California, and others, challenged this suit, saying that the outcome depended on an
24 outside third party, car manufacturers, who might choose to make more EV cars even
25 without the California regulation. This, California argued, rendered the claims of the
26 fossil-fuel producers speculative. The Supreme Court decisively rejected California’s
27 standing argument. The majority noted that: “When a plaintiff is the ‘object’ of a
28 governmental regulation, there should ‘ordinarily’ be ‘little question’ that the

1 regulation causes injury to the plaintiff. ..” (*Id.* at 145 S.Ct. 2135). So too here.
2 Burbank is the “object” of Metro’s determination of TODs qualifying for SB 79
3 density. (See Comp. Ex. 15). A supplemental EIR to understand the environmental
4 consequences of Metro’s actions establishing these stops is necessary.

5 **III. CONCLUSION**

6 This case involves a very dense and complicated Agreement, an Agreement
7 further complicated by accepting the City’s right to review under “City Standards.”
8 Petitioner’s effort to leapfrog ahead and determine all these issues without a merits
9 hearing (as to the writ) or a full jury trial (as to the contract breach claims) is both
10 premature and evidentiarily infirm. This Court cannot pre-determine the merits
11 based on the evidentiarily infirm McKenna Declaration. (See Evidentiary
12 Objections to McKenna Declaration). Nor can this Court make a determination
13 based on a purported “current schedule” alleged but never produced by Mr.
14 McKenna in his Declaration. Petitioner cannot succeed on a claim of “interim”
15 hardships given its nearly two-year delay in starting construction based on its own
16 Project Schedule.

17 The motion for Preliminary Injunction should be *denied*.

18
19 DATED: July 2, 2026

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PROOF OF SERVICE

**Los Angeles County Metropolitan Transportation Authority v. City of
Burbank
Case No. 26STCP01904**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3701 Wilshire Blvd., Suite 725, Los Angeles, CA 90010.

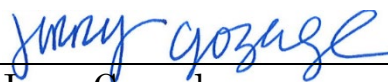
On July 2, 2026, I served true copies of the following document(s) described as **CITY OF BURBANK'S OPPOSITION TO LOS ANGELES COUNTY METROPOLITAN TRANSIT AUTHORITY'S MOTION FOR PRELIMINARY INJUNCTION** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address ggonzalez@awattorneys.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 2, 2026, at Los Angeles, California.



Jerry Gonzalez

SERVICE LIST
Los Angeles County Metropolitan Transportation Authority v. City of
Burbank
Case No. 26STCP01904

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