

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

ALESHIRE & WYNDER, LLP
PAM K. LEE, State Bar No. 246369
plee@awattorneys.com
NORMAN A. DUPONT, State Bar No. 85008
ndupont@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
Telephone: (949) 223-1170
Facsimile: (949) 223-1180

Attorneys for Respondent and
Defendant CITY OF BURBANK

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

LOS ANGELES COUNTY
METROPOLITAN
TRANSPORTATION
AUTHORITY, a public entity,

Plaintiff,

v.

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

Defendants.

Case No. 26STCP01904

**ASSIGNED FOR ALL
PURPOSES TO:**

Hon. Stephen Morgan

**DEFENDANT CITY OF
BURBANK'S NOTICE OF
DEMURRER AND DEMURRER
TO WRIT AND COMPLAINT;
MEMORANDUM OF POINTS
AND AUTHORITIES**

*[Filed concurrently with
Declaration of Shukan A. Patel
and [Proposed] Order]*

Date: August 19, 2026

Time: 10:30 a.m.

Dept.: 416

Action Filed: May 19, 2026

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1 **TO LOS ANGELES COUNTY METROPOLITAN**
2 **TRANSPORTATION AUTHORITY (“Petitioner”) AND ITS**
3 **COUNSEL OF RECORD:**

4 **PLEASE TAKE NOTICE THAT** on August 19, 2026, at 10:30 a.m.,
5 or as soon thereafter as counsel may be heard, in Department 416 of the
6 above-captioned Court, located at 111 North Hill Street, Los Angeles, CA
7 90012, Respondent and Defendant CITY OF BURBANK (“Respondent”)
8 will and hereby does demur to the Complaint filed by Plaintiff pursuant
9 to Sections 430.10, et seq., of California Code of Civil Procedure.
10 Respondent demurrers to Petitioner and Plaintiff LOS ANGELES
11 COUNTY METROPOLITAN TRANSPORTATION AUTHORITY’S
12 (“Petitioner”), Petition for Writ of Mandate (“Petition”) and Complaint for
13 Declaratory and Injunctive Relief, Breach of Contract, Breach of Implied
14 Covenant of Good Faith and Fair Dealing and Damages (the “Complaint”)
15 and each cause of action therein, as follows:

16 1. **As to Each and Every Cause of Action in the Petition and**
17 **Complaint:**

18 a. Pursuant to Code Civ. Proc., § 430.10(f) the entire
19 Petition fails to state facts sufficient to constitute a cause
20 of action.

21 b. Pursuant to Code Civ. Proc., § 430.10 the entire
22 Petition fails because Petitioner has failed to timely join
23 as a respondent an indispensable party to this litigation.

24 2. **As to the First Cause of Action in the Petition and**
25 **Complaint:**

26 a. The First Cause of Action fails to state sufficient
27 facts to state a cause of action pursuant to Code Civ.
28 Proc., § 430.10(e).

1 3. **As to the Second Cause of Action in the Petition and**
2 **Complaint:**

3 a. The Second Cause of Action fails to state sufficient
4 facts to state a cause of action pursuant to Code Civ.
5 Proc., § 430.10(e).

6 4. **As to the Third Cause of Action in the Petition and**
7 **Complaint:**

8 a. The Third Cause of Action fails to state facts
9 sufficient to state a cause of action pursuant to Code Civ.
10 Proc., § 430.10(e).

11 5. **As to the Fourth Cause of Action in the Petition and**
12 **Complaint:**

13 a. The Fourth Cause of Action fails to state facts
14 sufficient to state a cause of action pursuant to Code Civ.
15 Proc., § 430.10(e).

16 6. **As to the Fifth Cause of Action in the Petition and**
17 **Complaint:**

18 a. The Fifth Cause of Action fails to state facts
19 sufficient to state a cause of action pursuant to Code Civ.
20 Proc., § 430.10(e).

21 The Parties were unable to reach an agreement following a meet and
22 confer conference pursuant to Code Civ. Proc., § 430.41 (Patel Decl., ¶¶ 3,
23 5).

24 Respondents' demurrer is based on this Notice, the attached
25 Memorandum of Points and Authorities, the Declaration of Shukan A.
26 Patel, and upon such further oral and documentary evidence as may be
27 presented at the hearing.

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DATED: June 22, 2026

ALESHIRE & WYNDER, LLP
PAM K. LEE
NORMAN A. DUPONT
JOHN E. BAUMAN
SHUKAN A. PATEL
CODY S. PARKER

By: Shukan Patel
SHUKAN A. PATEL
Attorneys for Respondent and
Defendant CITY OF BURBANK

1 **DEMURRER**

2 Pursuant to Sections § 430.10, et seq., of the California Code of Civil
3 Procedure, Respondent City of Burbank generally demurs to the
4 Complaint filed by Petitioner Los Angeles County Metropolitan Authority
5 (“LA Metro or Petitioner) on the following grounds:

6 **DEMURRER TO FIRST CAUSE OF ACTION**

7 1. The first cause of action against the City of Burbank for alleged
8 Violation of and Acting in Excess of Authority under CEQA fails as a
9 matter of law, fails to plead a specific ministerial act that the City of
10 Burbank is required to perform under CEQA, fails to allege an adequate
11 statutory basis for this claim against the City.

12 **DEMURRER TO SECOND CAUSE OF ACTION**

13 2. The second cause of action against the City of Burbank for
14 alleged violation of the City’s “Failure to Perform Ministerial Duties and
15 Acting in Excess of Authority” under Code of Civil Procedure § 1085 and
16 the Cooperative Agreement fails as a matter of law, fails to identify a
17 ministerial obligation under the Cooperative Agreement which the City
18 failed to follow, fails to identify how the Cooperative Agreement limits the
19 City’s ability to demand additional environmental review.

20 **DEMURRER TO THIRD CAUSE OF ACTION**

21 3. The third cause of action against the City of Burbank for
22 Breach of Contract fails as a matter of law, fails to plead recoverable
23 damages, fails to allege damages that are not purely remote or unripe
24 because the alleged damage has yet to occur and is speculative.

25 **DEMURRER TO FOURTH CAUSE OF ACTION**

26 4. The fourth cause of action against the City of Burbank for
27 Breach of the Implied Covenant of Good Faith and Fair Dealing fails as a
28 matter of law, fails to allege damages or injury separate from its third

1 cause of action, and fails to allege violations of the explicit terms of the
2 Cooperative Agreement that form the basis for this cause of action.

3 **DEMURRER TO FIFTH CAUSE OF ACTION**

4 5. The fifth cause of action against the City of Burbank for
5 Declaratory Relief fails as a matter of law, fails to allege how the
6 construction project at issue is ripe for any final decision, fails to allege
7 how the construction project including any modifications of cost or
8 otherwise is expressly contingent upon a discretionary approval by Metro's
9 Board.

10 **WHEREFORE**, Moving Party prays that:

- 11 1. The Demurrer be sustained without leave to amend;
12 2. The Court enter an order dismissing the Petition;
13 3. Moving Party be awarded the costs of this action; and
14 4. The Court grant such other and further relief as the Court may
15 deem proper.

16
17 DATED: June 22, 2026

ALESHIRE & WYNDER, LLP
PAM K. LEE
NORMAN A. DUPONT
JOHN E. BAUMAN
SHUKAN A. PATEL
CODY S. PARKER

21
22 By: Shukan Patel

23 SHUKAN A. PATEL
24 Attorneys for Respondent and
25 Defendant, CITY OF BURBANK
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The City of Burbank (“Burbank” or the “City”)) demurs to each cause
4 of action in the Los Angeles County Metropolitan Transportation
5 Authority’s (“Petitioner” or “Metro”) Verified Petition and Complaint
6 because Petitioner fails to allege facts sufficient to constitute any claim,
7 including its CEQA-based mandate theory, purported ministerial-duty
8 claim, contract claims, and causes of action for declaratory relief.

9 **II. FACTUAL SUMMARY**

10 Petitioner’s North Hollywood to Pasadena Bus Rapid Transit
11 Corridor Project (“Project”) is at the crux of this litigation. (Pet. ¶ 1). The
12 Project is a 19-miles of bus rapid transit (“BRT”) connecting Los Angeles
13 County. (Petition, ¶ 2). On April 28, 2022, the Metro Board certified the
14 Project’s Final EIR. (Pet. ¶ 6). The Final EIR concluded that, with
15 mitigation, the Project’s potentially significant impacts would be reduced
16 to less-than-significant levels. (Pet. ¶ 35). In January 2025, the City and
17 Petitioner, respectively, executed the Cooperative Agreement for the
18 Design and Construction of the North Hollywood to Pasadena Bus Rapid
19 Transit Corridor Project (Coop. Ag.) noting the Parties’ Project obligations.
20 (Pet. Ex. C).

21 Some nine months later the Legislature enacted Senate Bill 79 (“SB
22 79”) which authorizes higher-density development near qualifying transit
23 stops. (Gov. Code, §§ 65912.155-65912.162.) (Pet. ¶ 9). SB 79 authorizes
24 high-density residential and mixed-use development within one-half and
25 one-quarter mile of qualifying public transit stops despite underlying local
26 zoning and without consideration for local infrastructure capacity. (Pet. ¶
27 55). Though the City’s full-time dedicated lane BRT stops will result in
28 exponentially more density through SB 79, neither the Final EIR nor the

1 Coop. Ag. considered such impacts. The City cited the newly enacted law
2 attaching planning densities to the BRT to demand that Metro undertake
3 additional CEQA review. (Pet. ¶ 10). The City maintains that Metro must
4 prepare a subsequent EIR or remove full-time dedicated bus lanes in the
5 route where the impact of SB 79 would have the most likely impact on
6 infrastructure. (Pet. ¶ 10).

7 Petitioner is the lead agency for the Project under CEQA and, as
8 alleged in the Petition, “[a]s lead agency, Metro has primary responsibility
9 for conducting environmental review of the Project...” (Pet. ¶ 31) and is
10 “responsible for ensuring that the design of construction work for the
11 Project complies with applicable law and the Final EIR.” (Pet. ¶ 44).

12 With the enactment of SB 79, the City sent Petitioner a letter
13 explaining the City’s position that “[SB 79’s] mandatory upzoning
14 constitutes new information that changes the circumstances under which
15 the BRT was proposed and renders its Final [EIR] legally inadequate.”
16 (Pet. ¶ 61). The letter requested that “Metro conduct subsequent
17 environmental review under [CEQA] to analyze, publicly disclose and
18 mitigate potential significant environmental impacts of any BRT stations
19 that qualify for SB 79 density increases.” (Pet. ¶ 61). Specifically, noting
20 that “. . . increased residential density resulting from SB 79 would
21 exacerbate previously identified environmental impacts on the City’s
22 wastewater conveyance and treatment system and on the City’s electrical
23 interconnection capacity, which the City had analyzed in its 2021-2029
24 Housing Element and related specific plans.” (Pet. ¶ 62).

25 **III. PROCEDURAL HISTORY**

26 On May 19, 2026, Petitioner filed the operative Verified Petition for
27 Writ of Mandate and Complaint for Declaratory and Injunctive Relief
28 against the City. The Verified Petition was served on May 20, 2026. The

1 City conducted a meet-and-confer via an initial detailed letter sent to
2 Metro's counsel followed by two separate meet-and-confer
3 videoconferences held on June 5 and June 12. The parties were unable to
4 agree. (Declaration of Shukan A. Patel in support of Demurrer, ¶¶ 4-5).

5 Without even waiting a formal response to the Petition, LA Metro
6 rushed in a motion for Preliminary Injunction now set for July 16, 2026 in
7 this Court. Burbank will oppose that motion in separate documents.

8 **IV. LEGAL STANDARD**

9 A demurrer "tests the sufficiency of a complaint as a matter of law
10 and raises only questions of law." *Schmidt v. Foundation Health* (1995) 35
11 Cal.App.4th 1702, 1706. For the purpose of testing the sufficiency of the
12 cause of action, the demurrer admits the truth of all material facts
13 properly pleaded, but not contentions, deductions, or conclusions of fact or
14 law. *See Serrano v. Priest* (1987) 5 Cal.3d 584, 591. A demurrer may lie
15 because the complaint alleges either too little, or too much, or it can be
16 used where the complaint is incomplete, or it can be used where the
17 plaintiff has included allegations that clearly disclose some defense or bar
18 to recovery. *Crosstalk Productions, Inc. v. Jacobsen* (1998) 65 Cal.App.4th
19 631, 635.

20 **V. ARGUMENT**

21 **A. Petitioner's First Cause of Action Fails to State a Claim** 22 **Under CEQA.**

23 Petitioner's First Cause of Action alleges that the City is acting in
24 violation of and in excess of its authority under CEQA. However,
25 Petitioner invokes two statutory provisions, neither of which provide a
26 substantive basis for the claim: Code of Civil Procedure § 1085 and Public
27 Resources Code §21168.5. Code of Civil Procedure § 1085 allows for a writ
28 of mandate to be issued for "...the performance of an act which the law

1 specifically enjoins, as a duty resulting from an office, trust, or station...”

2 Petitioner fails to allege the duty the City is required to perform
3 under CEQA, or the action the City took, which was specifically enjoined.
4 The “lead agency” has primary responsibility under CEQA. . Metro
5 expressly pleads it “is the **lead agency** for the Project under CEQA ...(a)s
6 lead agency, Metro has **primary responsibility** for conducting
7 environmental review of the Project, including preparation and
8 certification of the EIR...” (Pet. ¶16 (*emphasis added*)). Indeed, Metro
9 denies that the City is even a responsible agency for purposes of CEQA
10 analysis of this Project. *See* Pet. ¶ 17 (“The City has **held itself out** as a
11 responsible agency under CEQA with respect to the Project.”); ¶ 36
12 (“...including the City as a **potential responsible agency.**” (*emphasis*
13 *added*)).

14 Therefore, Petitioner fails to articulate a clear legal (and ministerial)
15 duty that the City was required to undertake under CEQA. Indeed, Public
16 Resources Code § 21166(b) and (c) require supplemental or subsequent
17 environmental review be undertaken by the “lead agency” due to either
18 substantial changes in the circumstances under which the Project is to
19 proceed or where new information becomes available that was not
20 previously available at the time of the EIR’s certification. That the City
21 requests Petitioner comply with such pre-existing legal obligations under
22 CEQA does not create a purported City violation of CEQA. (Pet. ¶ 101).
23 Under Petitioner’s theory, any party requesting a lead agency comply with
24 its obligations under CEQA would seemingly be running afoul of CEQA by
25 requesting such compliance¹. This is not the law.

26
27 ¹ To impose CEQA liability, the law requires more: “CEQA does not apply to an
28 agency decision simply because the agency may exercise some discretion in

1 Petitioner’s second cited statutory reference for the First Cause of
2 Action – Public Resources Code § 21168.5 is similarly inadequate. Section
3 21168.5 does not delineate **any duty or legal action** that the City was
4 required to take under CEQA: it simply provides a “prejudicial abuse of
5 discretion” standard of review for actions that are brought “...on the
6 grounds of noncompliance with this division (Division 13. Environmental
7 Quality).” Fundamental facts describing the CEQA action the City was
8 required to undertake – or for which Petitioner seeks a Writ of Mandate
9 to enjoin are fatally absent in the Petition. At most, the Petition suggests
10 that the City has certain “obligations” related to permitting that are
11 related to the underlying BRT. However, permitting by a municipal entity
12 is a matter of discretion not subject to a writ of mandate as a mere
13 “ministerial act.” *See Kern County Hospital Authority v. Department of*
14 *Corrections & Rehabilitation* (2023) 91 Cal.App.5th 1313, 1325 (“Since
15 mandamus is a remedy to compel a public agency to comply with a
16 ministerial duty, not to compel it to exercise its discretion in a particular
17 manner, an action’s classification as ministerial or discretionary is crucial
18 to the ultimate question whether mandate lies.”) Petitioner’s failure to
19 identify a ministerial City action that the Court can compel is fatal to
20 Petitioner’s First Cause of Action, which fails as a matter of law.

21 Petitioner’s first cause of action contradicts its own pleadings related
22 to CEQA. Petitioner claims that the Final EIR is completed and further
23

24 approving the project or undertaking. Instead[,] to trigger CEQA compliance,
25 the discretion must be of a certain kind; it must provide the agency with the
26 ability and authority to “mitigate ... environmental damage” to some degree.”
27 *Sierra Club v. County of Sonoma* (2017) 11 Cal.App.5th 11, 23. (*internal citations*
28 *omitted*).

1 asserts no further supplemental EIR is needed. If this were so (which the
2 City disputes), then (per Petitioner) neither party has any further CEQA
3 “duties” for this Project.

4 **B. Petitioner’s Second Cause of Action fails to State a**
5 **Claim for Failure to Perform Ministerial Duties.**

6 Petitioner’s Second Cause of Action alleges the City’s “Failure to
7 Perform Ministerial Duties and Acting in Excess of Authority” under Code
8 of Civil Procedure § 1085 and the Cooperative Agreement. Petitioner
9 alleges that “. . . (t)he City’s duties under the Cooperative Agreement are
10 clear and ministerial.” Pet. ¶ 106. The term “ministerial” – as defined in
11 analogous CEQA provisions of the California Code of Regulations –
12 “describes a governmental decision involving little or no personal
13 judgment by the public official as to the wisdom or manner of carrying out
14 the project.” (Cal. Code Regs., Title 14, § 15369). Beyond CEQA, the term
15 “ministerial” suggests little to no exercise of discretion. Yet, Petitioner
16 fails to identify a “ministerial” or “clear” obligation under the Cooperative
17 Agreement which the City failed to meet. In ¶ 106 of the Petition, Metro
18 lays out a variety of these purported obligations:

19 “(t)he City must ‘provide (Metro) with expedited review and approval
20 procedures’ for design, permitting and related functions. (Coop.
21 Agmt., § 1.1(a).) It must coordinate to identify required permits,
22 agree on applicable fees, and ‘reasonably streamline the permit
23 process’ to support timely delivery of the Project. (*Id.*, § 2.5(b)(iii).)
24 The City may not ‘unreasonably withh(o)ld, condition(s), or delay(s)’
25 any approval.” (*Id.* § 2.10) It must complete review of design
26 submittals within 30 days, after which they are deemed approved.”
27 (*Id.*, Exh. 7, § 2.4; *id.*, § 10.13(c).) Its authority to reject submittals is
28 linked to “Compliance Comments,” and during Final Design it may

1 not raise any new or inconsistent issues. (*Id.*, Exh. 7, §§ 3.1, 3.3; *id.*,
2 Art 11.).”

3 None of these obligations is “ministerial.” Commitments to
4 “reasonably streamline” permits and not “unreasonably withhold
5 approval” do not divest the City of its discretion. The phrase
6 “unreasonably withhold approval” belies a mandatory duty, in fact the
7 right to “reasonably” withhold approval is a classic exercise of discretion.
8 Nor does the requirement to “reasonably streamline the permit process”
9 mandate any ministerial act but gives the City discretion as to what is
10 “reasonably streamlining.”

11 The Cooperative Ag., demonstrates a vast number of discretionary
12 actions left to the City. For example, Metro agreed to allow the City to
13 issue permits for the Project. (*See* Ex. C, §2.5 (a)).

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

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

1 control.” (Pet. ¶ 109). However, the Cooperative Agreement is not the **sole**
2 source of the City’s rights and obligations, and the City is not so limited;
3 indeed, Petitioner alleges no such restriction by the Cooperative
4 Agreement². Like any agreement, the Cooperative Agreement is but one
5 part of the relationship and obligations between Metro and the City. The
6 City did not – and legally cannot – contract away its rights and obligations
7 under CEQA. Like any interested party, the City may challenge Metro’s
8 environmental assessment, particularly when the underlying
9 environmental analysis failed to adequately analyze new circumstances
10 that have since arisen. Additionally, the City can negotiate and demand
11 changes to Metro’s proposed Project, particularly where the Cooperative
12 Agreement was signed amid contemplation of such future negotiations.
13 Hence, Petitioner’s Second Cause of Action fails to state a cause of action
14 as a matter of law.

15 **C. Petitioner’s Third Cause of Action fails to State a Claim**
16 **for Breach of Contract.**

17 Petitioner’s third Cause of Action for Breach of Contract also fails as
18 a matter of law, particularly because it fails to plead recoverable damages.
19 Under California law “[n]o damages can be recovered for a breach of
20 contract which are not clearly ascertainable in both their nature and
21 origin.” Civ. Code § 3301. Furthermore, “[d]amages which are remote,
22 contingent, or merely possible cannot serve as a legal basis for recovery.”
23 *Copenbarger v. Morris Cerullo World Evangelism, Inc.* (2018) 29
24 Cal.App.5th 1, 11.

25 _____
26 ² Petitioner cannot read into the Cooperative Agreement restrictions that do not
27 exist: “A contract extends to only those things as to which it appears the parties
28 intended to contract.” *ML Direct, Inc. v. TIG Specialty Insurance Co.* (2000) 79
Cal.App.4th 137, 142

1 Petitioner improperly seeks purely remote and speculative damages.
2 In ¶ 135, Petitioner alleges that “Metro *will* execute an Early Works
3 Package with the CM/GC for the Project, anticipated in June
4 2026...[d]elays in resolving the City’s position threaten Metro’s ability to
5 perform under those commitments and *will* result in delay damages owed
6 to contractors and consultants...” (emphasis added). Petitioner seeks
7 damages for a contract (Early Works package) that is yet to be executed
8 and for which “commitments” and alleged “delay damages” cannot so
9 accrue. Without a tangible agreement, let alone concrete obligations and
10 a real prospect for delay damages, Petitioner asks this Court to
11 prematurely grant contingent damages. This must be disallowed as a
12 matter of law³.

13 Similarly, in ¶ 137, Petitioner alleges that “[d]elay of the entire
14 Project will cause Metro to lose anticipated bus fare and ridership-related
15 revenue during the period of delay. Anticipated loss of bus fare revenue is
16 currently estimated at approximately \$61,250 (gross) per workday.”
17 Again, a loss of “bus fare revenue” is contingent on the successful
18 completion of this Project and an accurate projection of future ridership
19 for an unbuilt project. —⁴. Without any evidence or analysis, such
20 speculative damage claims fail as a matter of law. The closest that
21 Petitioner gets to facts is the assertion in ¶ 135 that “(a)s of March 18,

22
23 ³ “It is the generally accepted rule, in order to recover damages projected into
24 the future, that a plaintiff must show with reasonable certainty that detriment
25 from the breach of contract will accrue to him in the future. Damages which are
26 remote, contingent, or merely possible cannot serve as a legal basis for
recovery.” *California Shoppers, Inc. v. Royal Globe Ins. Co.* (1985) 175
Cal.App.3d 1, 62. (*internal citations omitted*).

27 ⁴ ¶ 136 also contains these speculative damages in stating that “(t)he city’s breaches
28 have caused, and continue to cause, damages to Metro.”

1 2026, Metro incurred at least \$43.7 million in design and procurement
2 costs in reliance on the Cooperative Agreement and parallel cooperative
3 agreements with other corridor cities.” However, such ordinary project
4 costs do not constitute recoverable breach of contract damages⁵, making
5 Metro’s Third Cause of Action inapposite as a matter of law.

6 **D. Petitioner’s Fourth Cause of Action fails to state a claim**
7 **for Breach of the Implied Covenant of Good Faith and**
8 **Fair Dealing**

9 Petitioner’s Fourth Cause of Action fails to state a claim for Breach
10 of the Implied Covenant of Good Faith and Fair Dealing. If Petitioner’s
11 allegations “do not go beyond the statement of a mere contract breach,
12 and, relying on the same alleged acts, simply seek the same damages or
13 other relief already claimed in a companion contract cause of action, they
14 may be disregarded as superfluous as no additional claim is actually
15 stated.” *Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222
16 Cal.App.3d 1371, 1395. ¶ 142 and ¶ 143 fatally incorporate and reference
17 Petitioner’s prior breach of contract allegations. ¶ 144 and ¶ 144 attempt
18 to go beyond the contract by alleging that the City breached a “cooperative
19 framework” by objecting to Metro’s demand for exclusive permanent use
20 of half of Olive Avenue’s travel lanes. However, the covenant of good faith
21 does not extend the obligations agreed to in the underlying agreement.⁶

22
23 ⁵ See, e.g., *Troyk v. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305, 1352 (“Causation
24 of damages in contract cases requires that the damages be proximately caused by the
defendant’s breach.”) (*internal citations omitted*).

25 ⁶ Neither can the implied covenant be used to insert terms that the parties never
26 negotiated: “(t)he covenant of good faith is limited to assuring compliance with the
27 express terms of the contract, and cannot be extended to create obligations not
28 contemplated in the contract.” *Racine & Laramie, Ltd. v. Dep’t of Parks & Recreation*
(1992) 11 Cal.App.4th 1026, 1032.

1 See, e.g. *Racine & Laramie, Ltd. v. Dep't of Parks & Recreation* (1992) 11
2 Cal.App.4th 1026, 1032.

3 Further, Petitioner seeks the same damages to those alleged in the
4 third cause of action, no independent claim is stated. *Careau, supra*, 222
5 Cal.App.3d at p. 1395. While Petitioner includes a vague demand for an
6 order requiring the City to “resume performance...consistent with the
7 City’s duty of good faith” (Pet. ¶ 147), that simply restates Petitioner’s
8 demand for specific performance from the breach of contract cause of
9 action. Indeed, Petitioner’s formal prayer for relief bundles these two
10 causes of action together (Pet. pp. 40 – 41), further demonstrating the
11 claims are duplicative.

12 Petitioner’s theory is both inadequately pled and internally
13 inconsistent with its prior allegations. While the Covenant of Good Faith
14 and Fair Dealing is implied in every contract, it “finds particular
15 application in situations where one party is invested with a discretionary
16 power affecting the rights of another.” *Carma Devs. (Cal.) Inc. v. Marathon*
17 *Dev. California, Inc.* (1992) 2 Cal.4th 342, 372. Yet, Petitioner’s core
18 position is that the City possesses no discretion under the Cooperative
19 Agreement and must perform on an expedited basis. Assuming *arguendo*,
20 as Petitioner contends, the City lacks discretionary power under the
21 Cooperative Agreement, then the implied covenant has no application..

22 **E. Petitioner’s Fifth Cause of Action fails to state a claim**
23 **for Declaratory Relief**

24 Petitioner requests that this Court grant it Declaratory Relief (Pet.
25 ¶¶ 148 – 157) and claims that the controversy at issue is “concrete and
26 ripe” (*Id.* at ¶ 153). However, Petitioner’s own allegations reflect the
27 reality that many of the underlying agreements and obligations to be
28 performed are contingent and are due to be executed at a future date.

1 Petitioner alleges that it “**will** execute” an “Early Works Package” with
2 the CM/GC for the Project” (Pet. ¶ 135) (*emphasis added*). This potential
3 future action is “contingent on the Metro Board approval of the life-of-
4 project budget.” (*Id.*)

5 The proposed project, like other construction projects, has seen
6 delays due to numerous events beyond the City’s discretionary review of
7 permitting. Indeed the Coop. Ag. itself in its Exhibits A and B expressly
8 set for a schedule “subject to change.” (Pet. Exs. A—B [top legend]). Thus,
9 there is no basis for this Court to issue a ruling on a construction project
10 that is not ripe for a final judicial decision because, among other reasons,
11 the construction project remains expressly contingent upon discretionary
12 approval by Metro’s Board.

13 **VI. CONCLUSION**

14 For the foregoing reasons, the City respectfully requests that the
15 Court grant this Demurrer and dismiss the Petition without leave to
16 amend. As to the CEQA-related claim (First Cause of Action) there can be
17 no leave to amend, because Petitioner has already claimed (in its Verified
18 Petition) that it is the lead agency, it cannot amend around that
19 fundamental allegation of fact and law.

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DATED: June 22, 2026

ALESHIRE & WYNDER, LLP
PAM K. LEE
NORMAN A. DUPONT
JOHN E. BAUMAN
SHUKAN A. PATEL
CODY S. PARKER

By: Shukan Patel
SHUKAN A. PATEL
Attorneys for Respondent and
Defendant, CITY OF BURBANK

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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 RIVERSIDE

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 Riverside, State of California. My business address is 3550 Vine Street, Suite 200, Riverside, CA 92507.

On June 22, 2026, I served true copies of the following document(s) described as **DEFENDANT CITY OF BURBANK'S NOTICE OF DEMURRER AND DEMURRER TO WRIT AND COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES** 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 cgonzalez@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 June 22, 2026, at Riverside, California.



Cecilia Gonzalez

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

DAWYN R. HARRISON County Counsel QUINN TANG, Assistant County Counsel RONALD W. STAMM, Principal Deputy County Counsel JOSHUA A. COHEN, Senior Deputy County Counsel LOS ANGELES COUNTY COUNSEL One Gateway Plaza Los Angeles, CA 90012 Tel: (213) 922-2525 Fax: (213) 922-2530 stammr@metro.net qtang@counsel.lacounty.gov dharrisond@counsel.lacounty.gov	Attorneys for Petitioner and Plaintiff, LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
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TIFFANY K. WRIGHT NATHAN O. GEORGE LAURA M. MIDDLETON BLAINE R. DYAS REMY MOOSE MANLEY, LLP 555 Capitol Mall, Ste 800 Sacramento, CA 95814 Tel.: (916) 443-2745 Fax: (916) 443-9017 twright@rmmenvirolaw.com ngeorge@rmmenvirolaw.com lmiddleton@rmmenvirolaw.com bdvas@rmmenvirolaw.com	Attorneys for Petitioner and Plaintiff, LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
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