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15 Attorneys for Petitioner and Plaintiff
LOS ANGELES COUNTY METROPOLITAN
16 TRANSPORTATION AUTHORITY

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF LOS ANGELES**

19 LOS ANGELES COUNTY METROPOLITAN
20 TRANSPORTATION AUTHORITY, a public
entity,

21 Petitioner and Plaintiff,

22 v.

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

25 Respondents and Defendants.
26
27
28

Case No. 26STCP01904

**DECLARATION OF ANTHONY
DEFRENZA IN SUPPORT OF
PETITIONER AND PLAINTIFF'S
REPLY IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

ASSIGNED FOR ALL PURPOSES:
Hon. Stephen Morgan

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

Action filed: May 19, 2026 (CEQA)

1 I, Anthony DeFrenza, declare as follows:

2 1. I am the Deputy Executive Officer, Project Management, of the Los Angeles County
3 Metropolitan Transportation Authority (Metro), and I am the Project Manager for Metro's North
4 Hollywood to Pasadena Bus Rapid Transit Corridor Project (Project). I have been with Metro since
5 January 2023, and I have served as the Project Manager for the Project since the design phase. My
6 responsibilities include day-to-day management of the Project's construction schedule, coordination
7 with Myers-Shimmick Joint Venture (MSJV), the Project's construction manager/general contractor,
8 and construction coordination with the cities along the Project corridor, including the City of Burbank
9 (City). I submit this declaration in support of Metro's Motion for Preliminary Injunction and in
10 response to the City's opposition and its evidentiary objections to the Declaration of Michael
11 McKenna. The matters stated here are within my personal knowledge, and if called as a witness I could
12 and would testify competently to them.

13 2. I was present on March 26, 2024 at the Burbank City Council meeting. During that
14 meeting, David Kriske, the City's Assistant Community Development Director, displayed a slide
15 labeled "Project Description & Alignment," depicting Exhibit 3 of the Agreement. That slide appears at
16 "BUR-0209 in the City's Compendium of Exhibits ("City Comp"), within Exhibit 4. Mr. Kriske
17 described the orange designation on the slide as a "side-running" dedicated bus lane. Mr. Kriske also
18 displayed a slide appearing at BUR-0211. On that slide, Mr. Kriske made clear that the question before
19 the Council was whether the orange-marked segment on Olive Avenue would be changed to "mixed-
20 flow with cars until ridership goal met" or would remain as Metro had approved it, a side-running
21 dedicated bus lane that would result in the loss of a regular travel lane.

22 3. In the staff report for the March 26, 2024 City Council meeting, City staff raised the
23 question of whether the Agreement should include a more detailed Project Description, including
24 language specifying mixed-flow lanes on Olive Avenue between Buena Vista Street and Lake Street.
25 (City Comp. Ex. 4, BUR-0093–BUR0095.) City Staff proposed specific redline additions to Exhibit 1
26 of the Agreement, the Project Description, that would have described the Project on Olive Avenue
27 between Buena Vista Street and First Street as operating in mixed flow. Those proposed redlines appear
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1 at pages 1-32 to 1-33 of the staff report. (City Comp. Ex. 4, BUR-0127–BUR-0128.) The City Council
2 voted to approve the Agreement but to exclude the redline edits to the Project Description. (*Id.*, Ex. 5,
3 BUR-0229 at Motion 1.) The Council did not direct any change to Exhibit 3 of the Agreement, the
4 Project Site, which appears in color in the City’s March 26, 2024 staff report. (See *ibid.*; *id.* at Ex. 4,
5 BUR-0131 [City 3-26-24 Staff Report, p. 1-36 [draft Agreement, Exh. 3, Project Site].)

6 4. Following the City Council’s approval of the Agreement, counsel for the City and Metro
7 finalized the details. On September 9, 2024, Shmel Graham of Ashurst, counsel supporting Metro in the
8 negotiation of the Agreement, emailed Lisa Kurihara, Senior Assistant City Attorney, copying me
9 among others, transmitting an updated draft of the Agreement, a redline against the prior draft, and
10 responses to the City’s comments. A true and correct copy of that email is included in the email chain
11 attached hereto as **Exhibit A**. On October 1, 2024, Ms. Graham emailed Ms. Kurihara, transmitting the
12 execution version of the Agreement, in color, with a redline against the September 9, 2024 draft. Ms.
13 Graham’s October 1, 2024 email and its attachments are also included in Exhibit A. The Exhibit 3
14 Project Site graphic in that October 1, 2024 execution version is the same graphic that appears in the
15 executed Agreement.

16 5. On October 2, 2024, Ms. Kurihara responded that “[t]he City team is good with the final
17 clarifications to Exhibit 6,” and asked how many copies Metro needed so the City could begin
18 “printing/circulating for signatures.” A true and correct copy of Ms. Kurihara’s October 2, 2024 email
19 is attached hereto as **Exhibit B**.

20 6. On January 31, 2025, Mr. Kriske emailed Ferdinand Chan and others, copying me, in
21 response to a request for documentation of the Agreement’s execution date. Mr. Kriske wrote that the
22 City Council approved the Agreement on March 26, 2024, and that the parties routed the Agreement for
23 City Manager signature after Metro and City legal staff “finalized the agreement terms on October 2, as
24 documented in the attached email.” The email Mr. Kriske attached was Ms. Kurihara’s October 2, 2024
25 email. A true and correct copy of Mr. Kriske’s January 31, 2025 email with its attachment is attached
26 hereto as **Exhibit C**.

1 7. I participated in the negotiation of the Agreement and have reviewed the written
2 correspondence the parties exchanged during that negotiation, from April 2024 through October 2024.
3 At no time during the negotiation from April 2024 to the time the City executed the Agreement, did the
4 City request any changes to the side-running dedicated bus lanes shown on Exhibit 3 of the Agreement;
5 nor did the City request that additional detail be added to Exhibit 1. The parties finalized the terms of
6 the Agreement on October 2, 2024. The executed Agreement does not include the mixed-flow lane
7 changes to Exhibit 1 that the City's staff had proposed prior to the City Council's March 26, 2024
8 approval of the Agreement.

9 8. In my role as Project Manager, I have day-to-day responsibility for the plan-review and
10 submittal process with the City, including receipt of and response to the City's comments on Metro's
11 plan submittals. I personally received and reviewed the City's comments on the 100% Design submittal
12 and on the Approved-for-Construction submittal, and I directed and oversaw Metro's responses to those
13 comments. In the ordinary course of managing that process, Metro compiled the City's comments and
14 Metro's corresponding responses into a comment matrix, which Metro maintains for tracking and
15 response as the submittal review proceeds. Metro created and updated the matrix at or near the time it
16 received and addressed the City's comments. The matrix attached to the Declaration of Michael
17 McKenna as Exhibit T is a true and correct copy of Metro's compilation of the City's comments on the
18 100% Design submittal and Metro's responses.

19 9. Since September 2024, I have provided regular briefings on the Project, approximately
20 twice per month, to Michael McKenna, Metro's Deputy Chief Program Management Officer to whom I
21 report. Since April 2025, Mr. McKenna and I have attended Senior Project Group meetings concerning
22 the Project, held approximately every six weeks, together with senior executives of MSJV. Those
23 meetings address construction planning, the Project schedule, procurement, and project issues,
24 including the Burbank segment.

25 10. Metro and the City have held monthly Project Development Team (PDT) meetings
26 concerning the Project since July 9, 2024. I have attended these meetings. At the initial PDT meeting
27 on July 9, 2024, Metro provided the City a Burbank-specific final design development schedule
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1 showing the anticipated dates for the 30-, 60-, 85-, and 100-percent design submittals, and Metro
2 updated those submittal dates as necessary at subsequent PDT meetings. On July 28, 2025, Metro
3 provided the City a preliminary draft of a detailed Burbank construction schedule. That schedule
4 showed construction in Burbank beginning on July 27, 2026, with physical construction activities
5 completing on November 18, 2027. A true and correct copy of the July 28, 2025 transmittal email and
6 the attached construction schedule is attached hereto as **Exhibit D**.

7 11. On April 30, 2026, Metro provided the City an updated draft of the detailed Burbank
8 construction schedule, discussed below. Each of these schedule updates was transmitted by email from
9 the Metro project team to Jack McGregor of the Dorado Company, a construction consultant to the City
10 of Burbank designated by the City as its point of contact for Project-related matters.

11 12. On April 27, 2026, Jack McGregor emailed Kenyon Price, Metro's Senior Director of
12 Construction Management, requesting Metro's "latest project construction schedule" and stating that
13 "[w]e've had some requests for it internally from city staff and Warner Bros." Mr. McGregor's email
14 copied Mr. Kriske. On April 30, 2026, Mr. Price responded and transmitted the then-current
15 construction schedule for the Burbank segment. Mr. Price's response copied Mr. Kriske and me. A true
16 and correct copy of that email chain and the transmitted schedule is in the record as Exhibit 16 to the
17 City's Compendium of Exhibits, at BUR-0442–BUR-0466. The schedule attached to the Agreement as
18 Exhibit 2, Part B addressed construction across the entire 19-mile corridor at a higher level. The
19 detailed construction schedules Metro provided the City in July 2025 and April 2026 address the
20 Burbank segment specifically

21 13. As the Project Manager, I work with the current schedule and MSJV's schedule updates
22 in the ordinary course of managing the Burbank work. The construction start date for the Burbank
23 segment has not changed across the July 2025 and April 2026 schedule updates. Both the July 2025
24 schedule and the April 30, 2026 schedule provide for construction in Burbank to begin on July 27,
25 2026. The principal difference between the two schedules is that the April 2026 schedule shows
26 construction activities within Burbank completing approximately two weeks earlier, on November 5,
27 2027, rather than November 18, 2027.

1 14. The current construction schedule for the Burbank segment is the schedule prepared by
2 MSJV titled “LA Metro NoHo to Pasadena BRT – 85% Draft Burbank Schedule R1,” dated April 23,
3 2026—the schedule transmitted to the City on April 30, 2026 and filed by the City as Exhibit 16 to its
4 Compendium (BUR-0445–0466). Under that schedule: construction in Burbank begins July 27, 2026;
5 construction proceeds through seven sequential segments within the City, with the final segment (Olive
6 & Lake) completing by October 22, 2027 and overlay and striping activities completing by November
7 5, 2027; Substantial Completion of the Burbank segment occurs by November 15, 2027, following a
8 scheduled weather allowance; final completion, following a punchlist period, occurs by January 24,
9 2028; and revenue service begins in February 2028, before the 2028 Olympic and Paralympic Games.
10 (BUR-0445.)

11 15. MSJV has served as the Project’s construction manager/general contractor under its
12 Phase 1 preconstruction services contract since December 2024. Under that delivery method, MSJV
13 performs preconstruction services—including construction scheduling, constructability review, and
14 price estimating—and Metro and MSJV then negotiate and execute the Phase 2 construction contract
15 for each segment. The Burbank schedule described above, including the July 27, 2026 construction
16 start, was prepared by MSJV in that preconstruction role. Following the Metro Board’s May 28, 2026
17 approval of the Project’s Life-of-Project budget, Metro and MSJV have executed the construction
18 contract for the Burbank segment work package. As of the date of this declaration, MSJV has not
19 issued a revised Burbank construction schedule, and the milestone dates stated above remain the
20 current milestone dates for the Burbank segment. MSJV is ready to begin, subject to the City approving
21 the Approved-for-Construction plans and issuing an excavation permit.

22 16. The schedule reflects that these dates have no slack to absorb delay. (City Comp. Ex. 16,
23 BUR-0445.) The April 30, 2026 schedule was prepared before the Metro Board’s May 28, 2026
24 approval of the Project’s Life-of-Project budget and before negotiation of the construction contract for
25 the Burbank segment work package. Since then, Metro and MSJV have developed construction staging
26 and phasing strategies to recover the schedule and maintain the Burbank completion dates stated above.
27 Crews work more areas concurrently, and defined closeout activities in some segments and locations
28

1 overlap with continuing construction in others. The current schedule is aggressive but achievable if
2 construction begins as scheduled. A delay in the July 27, 2026 construction start would consume the
3 recovery that concurrent staging provides. Beyond that, delay would extend the Burbank completion
4 dates day for day or worse.

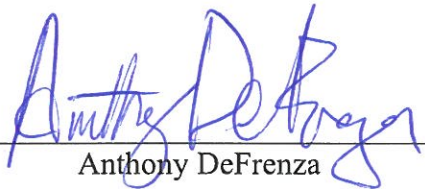
5 17. The construction sequence for the Burbank segment begins with traffic-control setup,
6 followed by demolition and utility work. Construction begins on July 27, 2026 with Stage 1 traffic-
7 control setup at the Olive Avenue/Hollywood Way intersection. (City Comp. Ex. 16, BUR-0447.) The
8 first demolition activities follow on July 28, 2026, and include demolition of hardscape, curb and
9 gutter, cutting and capping of irrigation lines, sawcutting, and adjustment of utility vaults. (*Ibid.*) Lane
10 striping and demarcation occur at a later stage of construction: the schedule's "Overlay & Striping"
11 activities run from March 2027 through November 2027 (*id.* at BUR-0456), and the segment-by-
12 segment "install signage and striping / open to traffic" activities run from November 2026 through
13 October 2027 (*id.*, at BUR-0449–BUR-0453).

14 18. Construction of the Project is underway elsewhere in the corridor. Construction began
15 within the City of Pasadena on April 20, 2026, in time to meet the revenue-service date. Metro intends
16 to begin revenue service in February 2028, before the 2028 Olympic and Paralympic Games. As of the
17 date of this declaration, the City has not approved Metro's Approved-for-Construction plans or issued
18 an Excavation Permit for the Burbank segment of the Project. The Project is a single 19-mile corridor.
19 It cannot provide the through service it was approved to provide until all segments, including the
20 Burbank segment, are complete.

21 19. The planned markings, signage and planned use of the dedicated lanes for the Burbank
22 segment will allow cars and other vehicles to enter the dedicated bus lane to make right turns, including
23 to enter businesses and driveways along the route. Bicycles are allowed to use the dedicated lanes on
24 Olive, providing increased separation between cyclists and vehicles. Additionally other buses,
25 including those operated by BurbankBus a City of Burbank bus system, will be allowed to use the
26 dedicated lanes. Currently BurbankBus operates its "Pink Route" bus line along Hollywood Way, Olive
27 Avenue, turning on West Alameda, again on Buena Vista, then on Olive Avenue to Lake Street which
28

1 mirrors the Metro Project route on these same streets, and we expect the Pink Route bus will increase
2 its speed significantly due to the planned dedicated lanes. The allowance for cars using a dedicated lane
3 does not apply to the portion of the lanes on Glenoaks Boulevard which are median running and remain
4 separated from cars completely. Dedicated bus lanes may also be used by emergency vehicles and
5 create space for non-emergency vehicles to pull into to let an emergency vehicle pass. It would be
6 incorrect to state that the dedicated lanes on Hollywood Way, Olive Avenue, Buena Vista, and
7 Alameda are exclusively for Metro buses. The City is well aware of this benefit and use, see BUR-200
8 at 14 where we responded to Burbank stating 'the BurbankBus Pink Route will obtain travel time and
9 reliability benefits from the dedicated bus lanes implemented for the Proposed Project.'''

10 I declare under penalty of perjury under the laws of the State of California that the foregoing is
11 true and correct, and was executed this 9th day of July 2026, in Los Angeles, California.

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15 Anthony DeFrenza
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A	September 9, 2024, email from Shmel Graham to Lisa Kurihara, transmitting an updated draft of the Agreement, a redline against the prior draft, and responses to the City's comments. October 1, 2024, email from Shmel Graham to Lisa Kurihara, transmitting the execution version of the Agreement, in color, with a redline against the September 9, 2024 draft (including attachments).	10 – 157
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Declaration of Anthony DeFrenza

EXHIBIT A

From: Graham, Shmel 41431 <shmel.graham@ashurst.com>
Sent time: 10/01/2024 12:14:01 PM
To: LKurihara@burbankca.gov
Cc: Defrenza, Anthony <DefrenzaA@metro.net>; Low, Teddy <LowT@metro.net>; Hermelin, Anna 47092 <anna.hermelin@ashurst.com>; jmcgregor@doradocompany.com; KBerkman@burbankca.gov; PPrescott@burbankca.gov; Van Gessel, Mark <VanGesselM@metro.net>; DKriske@burbankca.gov; Eggers, Elena <EggersE@metro.net>; JMcDougall@burbankca.gov
Subject: RE: Final Burbank City Council Redline Cooperative Agreement
image001.png image002.png image003.jpg Litera Redline - Noho to Pasadena - City of Burbank CA - Execution Version
Attachments: (09092024)-415670022-v3 and Noho to Pasadena - City of Burbank CA - Execution Version (09302024).docx

Hi Lisa,

Attached please find an updated draft of the Cooperative Agreement between LACMTA and the City of Burbank and a redline against the last draft we circulated on September 9, 2024. We accepted the City's requested changes and made a minor tweak to the City's proposed language in Section 2 (City Standards) of Exhibit 6 (Design Requirements).

Thank you,

Shmel Graham

Counsel, admitted only in California

Ashurst LLP, 1299 Ocean Avenue, Suite 320, Santa Monica, CA 90401, USA
D: +1 424 416 5431 | M: +1 646 939 8120

Assistant/Secretary: Eliza Cardenas D: +1 424 416 5697

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From: Kurihara, Lisa <LKurihara@burbankca.gov>
Sent: Thursday, September 26, 2024 3:28 PM
To: Graham, Shmel 41431 <Shmel.Graham@ashurst.com>
Cc: DefrenzaA@metro.net; LowT@metro.net; Hermelin, Anna 41426 <Anna.Hermelin@Ashurst.com>; jmcgregor@doradocompany.com; Berkman, Ken <KBerkman@burbankca.gov>; Prescott, Patrick <PPrescott@burbankca.gov>; VanGesselM@metro.net; Kriske, David <DKriske@burbankca.gov>; EggersE@metro.net; McDougall, Joseph H. <JMcDougall@burbankca.gov>
Subject: RE: Final Burbank City Council Redline Cooperative Agreement

Caution: External email.

Hi Shmel,

Thank you for providing these updates and responding to the City's comments. We made a few minor edits to accurately reflect current City job titles as well as our referenced City Standards, and also correct a reference within the definitions section. Can you please review these final updates (attached in redline) and confirm Metro's acceptance?

Upon your confirmation, we will begin circulating for signature. Please let us know how many copies you need and we will print/execute accordingly.



LISA KURIHARA

SR. ASSISTANT CITY ATTORNEY

CITY ATTORNEY'S OFFICE

275 E. OLIVE AVE., BURBANK CA 91502

818-238-5702 | lkurihara@burbankca.gov

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From: Shmel.Graham@ashurst.com <Shmel.Graham@ashurst.com>

Sent: Monday, September 9, 2024 8:25 PM

To: Kurihara, Lisa <LKurihara@burbankca.gov>

Cc: DefrenzaA@metro.net; LowT@metro.net; Anna.Hermelin@Ashurst.com; jmcgregor@doradocompany.com; Berkman, Ken <KBerkman@burbankca.gov>; Prescott, Patrick <PPrescott@burbankca.gov>; VanGesselM@metro.net; Kriske, David <DKriske@burbankca.gov>; EggersE@metro.net

Subject: RE: Final Burbank City Council Redline Cooperative Agreement

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Lisa,

We have addressed the City's comments in the attached Cooperative Agreement and provided responses to the items you flagged in your cover email below. Please note the use of red font is for distinction, not emphasis. We have attached a redline of the updated draft against the last draft dated April 4, 2024.

- Section 2.3(g) – we don't believe the deleted language is covered by the addition of 2.3(i) or Section 3.4 to Exhibit 9 because those sections discuss clean-up following a Rearrangement. The language we previously added addressed clean-up/restoration following cancellation by Metro of a City Work Order. Therefore, if Metro insists on deleting the prior language, the City requests the clarification we added to Exhibit 9, Section 3.4.
 - LACMTA has revised Section 2.3(g)(Work Orders) to address the City's concern regarding reimbursement for the Costs to clean-up and restore a site to pre-existing conditions according to current City Standards, in the event the City (or City Contractor) has commenced Construction performed pursuant to Work Order that LACMTA subsequently terminates prior to the completion of the Construction work.
- Section 3.5(a) – City continues to request the addition of previously-added language, which confirms that nothing in 3.5(a) prohibits or restricts the City from adopting new, or amending generally applicable City Standards during the Term. Metro's concern should be addressed by the definition of "Betterment." City requests this language so there's no question that 3.5(a) does not place limitations on the City's general police powers.
 - The language in Section 3.5(b) addresses the City's concern, notwithstanding LACMTA has added additional clarifying language that the Agreement and Section 3.5(a) do not restrict the City from exercising its legal authority and legislative power to adopt new City Standards.
 - LACMTA added clarifying language to confirm the parties mutual understanding the adoption of new City Standards after the establishment of the Basis of Design constitutes a Betterment.
- Section 3.7 – new section regarding Value Engineering accepted, provided Metro accepts City's redlines. While the City will commit to participating in value engineering analysis, we need assurance that the project design continues to comply with applicable City & LACMTA design/construction standards and policies, as well as environmental mitigation measures.
 - LACMTA accepts the City's edits subject to a couple of minor changes.
- Section 4.3(a) – Metro previously approved this language, but the word "relating" was omitted from the last version Metro sent back. Please incorporate the word back in, as indicated in the City's redline.
 - Completed.
- Section 5.1(d) – City continues to request that the deleted language be added back in. While Section 3.3(c) provides that Metro will ensure the project design complies w/ Applicable Law, the language the City added to 5.1(d) addressed Applicable Law in the context of Betterments. This shouldn't affect Metro's costs, since the City is responsible for paying for Betterments. City needs assurance that to the extent Betterments are required due to Applicable Law or to preserve public health and safety, Metro will not deny City's request for the Betterment. –
 - LACMTA has not incorporated the proposed language for the following reasons:
 - As the City noted Section 3.3(c)(Design Development), LACMTA is responsible for ensuring the Design and Construction work for the NoHo to Pasadena Project comply with the Applicable Law and the FEIR. In the event the City requests a Betterment, LACMTA would work collaboratively with the City to accommodate the City's Betterment request as part of the NoHo to Pasadena Project. Any work that LACMTA (or LACMTA Contractor) would perform even in the case of Betterments would be performed in accordance with Applicable Law and does not think that needs to be expressly stated.
 - As it relates to the language that provides LACMTA may not refuse a Betterment request that results from changes in Applicable Law, LACMTA cannot agree to that language because as set out in Section 5.3 (Right to Refuse a Betterment), there are circumstances in which LACMTA may not be able to agree to perform a Betterment. LACMTA appreciates the efficiency in having LACMTA (or LACMTA Contractor) perform a Betterment when LACMTA is performing work for the NoHo to Pasadena Project, but LACMTA cannot agree to language that requires LACMTA to proceed with the Betterment request if the Betterment is incompatible with the NoHo to Pasadena Project or will affect the Project Schedule. Ultimately, the work the City may request through as a Betterment is the obligation of the City and does not require the desired work to be performed as part of the NoHo to Pasadena Project.
- Section 7.2(a)(iii) – Metro updated language accepted.
 - Noted.
- Exhibit 5, Sections 2.1, 2.2, 2.4, 3.2(a), & 3.3 – Metro modifications accepted.
 - Noted.
- Exhibit 6, Section 2 – Metro additions accepted, with City additions listed in redline.
 - LACMTA accepts the City's edits subject to the City's understanding that City Standards applicable to the NoHo to Pasadena Project are those City Standards that were in effect at the time the Basis of Design was

established and that any change to those City Standards and request by the City to comply with new City Standards would be deemed a Betterment pursuant to Section 3.4(a)(Design Development).

- City Standards is defined as "the City's design standards and ordinances 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) specified in EXHIBIT 6 (Design Requirements) which govern the design of all Rearrangements."
- Exhibit 9, Section 3.4 – Metro addition accepted, with City additions listed in redline. Again, the City's added language is to ensure that to the extent Metro terminates a City Work Order before completion, Metro will be responsible for clean-up and restoration costs resulting from that early-terminated work.
 - LACMTA proposes new language to address the City's concern in Section 2.3(g) (Work Orders).

Thank you,

Shmel Graham

Counsel, admitted only in California

Ashurst LLP, 1299 Ocean Avenue, Suite 320, Santa Monica, CA 90401, USA
D: +1 424 416 5431 | M: +1 646 939 8120

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From: Kurihara, Lisa <LKurihara@burbankca.gov>

Sent: Wednesday, August 14, 2024 1:14 PM

To: Graham, Shmel 41431 <Shmel.Graham@ashurst.com>

Cc: DefrenzaA@metro.net; LowT@metro.net; Hermelin, Anna 41426 <Anna.Hermelin@Ashurst.com>;

jmcgregor@doradocompany.com; Berkman, Ken <KBerkman@burbankca.gov>; Prescott, Patrick <PPrescott@burbankca.gov>;

VanGesselM@metro.net; Kiske, David <DKiske@burbankca.gov>

Subject: RE: Final Burbank City Council Redline Cooperative Agreement

Caution: External email.

Hi Shmel & Metro team,

Please find the City of Burbank's final responses to the Draft Cooperative Agreement we received from Metro on April 9, 2024 (Burbank changes reflected in redline on the attached document), as well as our comments relating to these changes outlined in this email, below.

If the attached redlines are accepted and no further changes are made, our City Manager is authorized to sign the Agreement. Please let us know how Metro would like to proceed.

Burbank's comments relating to Metro redlines furnished on April 9, 2024

- Section 1.1(e) & (f) – Metro modifications accepted.
- Section 2.3(g) – we don't believe the deleted language is covered by the addition of 2.3(i) or Section 3.4 to Exhibit 9 because those sections discuss clean-up following a Rearrangement. The language we previously added addressed clean-up/restoration following cancellation by Metro of a City Work Order. Therefore, if Metro insists on deleting the prior language, the City requests the clarification we added to Exhibit 9, Section 3.4.
- Section 2.3(i) – Metro addition accepted
- Section 3.5(a) – City continues to request the addition of previously-added language, which confirms that nothing in 3.5(a) prohibits or restricts the City from adopting new, or amending generally applicable City Standards during the Term. Metro's concern should be addressed by the definition of "Betterment." City requests this language so there's no question that 3.5(a) does not place limitations on the City's general police powers.
- Section 3.7 – new section regarding Value Engineering accepted, provided Metro accepts City's redlines. While the City will commit to participating in value engineering analysis, we need assurance that the project design continues to comply with applicable City & LACMTA design/construction standards and policies, as well as environmental mitigation measures.
- Section 4.3(a) – Metro previously approved this language, but the word "relating" was omitted from the last version Metro sent back. Please incorporate the word back in, as indicated in the City's redline.
- Section 5.1(d) – City continues to request that the deleted language be added back in. While Section 3.3(c) provides that Metro will ensure the project design complies w/ Applicable Law, the language the City added to 5.1(d) addressed Applicable Law in the context of Betterments. This shouldn't affect Metro's costs, since the City is responsible for paying for Betterments. City needs assurance that to the extent Betterments are required due to Applicable Law or to preserve public health and safety, Metro will not deny City's request for the Betterment.
- Section 7.2(a)(iii) – Metro updated language accepted.
- Exhibit 5, Sections 2.1, 2.2, 2.4, 3.2(a), & 3.3 – Metro modifications accepted.
- Exhibit 6, Section 2 – Metro additions accepted, with City additions listed in redline.
- Exhibit 9, Section 3.4 – Metro addition accepted, with City additions listed in redline. Again, the City's added language is to ensure that to the extent Metro terminates a City Work Order before completion, Metro will be responsible for clean-up and restoration costs resulting from that early-terminated work.



LISA KURIHARA
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From: Shmel.Graham@ashurst.com <Shmel.Graham@ashurst.com>
Sent: Tuesday, April 9, 2024 4:20 PM
To: Kriske, David <DKriske@burbankca.gov>
Cc: DefrenzaA@metro.net; Kurihara, Lisa <LKurihara@burbankca.gov>; LowT@metro.net; Anna.Hermelin@Ashurst.com; jmcgregor@doradocompany.com; Berkman, Ken <KBerkman@burbankca.gov>; Prescott, Patrick <PPrescott@burbankca.gov>; VanGesselM@metro.net
Subject: RE: Final Burbank City Council Redline Cooperative Agreement

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi David,

We have made additional revisions to the Cooperative Agreement. Attached please find an updated Working Draft of the City of Burbank Cooperative Agreement and a redline against the last draft circulated to the City on March 19, 2024. Below please find an overview of the edits included in this updated draft agreement and responses to the items flagged in your email dated March 28, 2024:

- **Section 1.1(e)(Scope of Agreement)** –We made the edit adding the reference to Exhibit 1(Project Description). As it relates to the requested edit to add "City Approvals", we proposed additional language in Section 1.1(f)(Scope of Agreement) to the edits we made in Version 3 (response to Comment 85) to address this concern.
- **Section 2.3(g)(Work Orders)** –To address the City's concern, we added two new sections to the Agreement: Section 2.3(i)(Work Orders) and Section 3.4 of Exhibit 9 (Inspection and Acceptance Procedure).
- **Section 3.5(a)(City Standards)** – We acknowledge the Parties discussed this comment on March 11, 2024. On the call we explained any changes in City Standards made after the Basis of Design would constitute a Betterment. Lisa said that my explanation was consistent with the City's understanding, which led us to believe a change was not required. The definition of Betterment subparagraph (b) addresses the City's comment.
- **Section 5.1(d)(Notice of Betterments)** – We think the language in Section 3.3(c)(Design Review Procedure) and the definition of Betterment exception (i) addresses the City's comment. Section 3.3(c)(Design Review Procedure) provides that LACMTA is responsible for ensuring the Design and Construction of the NoHo to Pasadena Project complies with Applicable Law and the definition of Betterment includes an exception whereby the Parties could agree to an upgrade that is a direct and principal benefit to the construction, operation and/or maintenance of the project (i.e., a change necessary to preserve public health, safety, or welfare).
- **Section 7.2 (Reimbursements and Credits to LACMTA)** – As Anthony mentioned, we added Value Engineering language to the Agreement and included a broad list of exclusions to the Expired Service Life language that exclude anything related to the NoHo to Pasadena Project.
- **Exhibit 5 (Utility Adjustments)** – We made the additional edits requested by the City to clarify the City will not self-perform Utility Adjustments for the City-owned water Utility.

Thank you,

Shmel Graham
Counsel, admitted only in California

Ashurst LLP, 1299 Ocean Avenue, Suite 320, Santa Monica, CA 90401, USA
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Assistant/Secretary: Eliza Cardenas D: +1 424 416 5697

From: Defrenza, Anthony <DefrenzaA@metro.net>
Sent: Tuesday, April 9, 2024 8:45 AM
To: Kriske, David <DKriske@burbankca.gov>; Van Gessel, Mark <VanGesselM@metro.net>
Cc: Kurihara, Lisa <LKurihara@burbankca.gov>; Low, Teddy <LowT@metro.net>; Graham, Shmel 41431 <Shmel.Graham@ashurst.com>; Hermelin, Anna 41426 <Anna.Hermelin@Ashurst.com>; Jack McGregor <mcmgregor@doradocompany.com> <jmcgregor@doradocompany.com>; Berkman, Ken <KBerkman@burbankca.gov>; Prescott, Patrick <PPrescott@burbankca.gov>
Subject: RE: Final Burbank City Council Redline Cooperative Agreement

Caution: External email.

David,

Metro has reviewed the provided document and Shmel will send our detailed responses shortly.

As previously indicated, eliminating the Expired Service Life language is not acceptable to Metro. In consideration of the City's position, we've added additional items to the list of exclusions which we believe should adequately address City concerns without requiring the language be deleted from the document. This approach is like the approach taken with City of LA. Additionally, we've included Value Engineering language to further emphasizes our desire to work collaboratively with the City to design and build the highest quality, most efficient, best value project for the region.

After reviewing Metro's responses and the updated working document (to be provided by Shmel), please let me know what you believe the correct next step is.

Thanks,

Anthony DeFrenza
213.220.0583 (cell)
213.922.7107 (office)

From: Kriske, David <DKriske@burbankca.gov>
Sent: Thursday, March 28, 2024 9:42 AM
To: Defrenza, Anthony <DefrenzaA@metro.net>; Van Gessel, Mark <VanGesselM@metro.net>
Cc: Kurihara, Lisa <LKurihara@burbankca.gov>; Low, Teddy <LowT@metro.net>; Graham, Shmel 41431 <shmel.graham@ashurst.com>; Hermelin, Anna 47092 <anna.hermelin@ashurst.com>; Jack McGregor <mcmgregor@doradocompany.com> <jmcgregor@doradocompany.com>; Berkman, Ken <KBerkman@burbankca.gov>; Prescott, Patrick <PPrescott@burbankca.gov>
Subject: Final Burbank City Council Redline Cooperative Agreement

Anthony,

Thank you for your help in finalizing the Cooperative Agreement and assisting at the City Council meeting on Tuesday. Attached is the version of the Cooperative Agreement with the City redlines that City Council considered and approved on Tuesday.

The redlines in the following Sections were included in the City's draft to Metro on 3/1/24. We do not see them accounted for in Metro's review matrix, and they weren't addressed on the redline we received back from Metro last week. These were presented to the Burbank City Council as outstanding issues since we have not heard back from Metro on these items, and Council directed us to seek Metro's incorporation of these changes. Therefore, please include these in your final review:

- Section 1.1(e)
- Section 2.3(g)
- Section 3.5(a) – we discussed this during the Metro/Burbank calls the week of 3/11/24, and it was Burbank's impression that Metro agreed with this statement and planned to incorporate it but we didn't see it in the last round of redlines received back from Metro. This was discussed in conjunction with City's acknowledgement of reimbursements for Betterments.
- Section 5.1(d)

Pursuant to emails exchanged with Metro's legal counsel on 3/20/24 and 3/21/24, we incorporated agreed-upon changes into the following Sections. Since both parties have agreed to these changes, they are not marked here as redlines:

- Section 2.4(c)
- Section 2.5(a)
- Section 4.3(a)
- Section 4.3(b)
- Section 8.1(a)

Finally, following review of Metro's latest updates to Exhibit 5 regarding City-owned utility infrastructure, the City's water utility is requesting minor changes to clarify design/construction work responsibility between the parties as to City-owned water Utility Adjustments.

Please let me know if you have any questions and what the next step would be to finalize and execute the agreement.

Thank you,

David



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 ASST. COMMUNITY DEVELOPMENT DIRECTOR
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**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

2024

EFFECTIVE DATE

EXECUTION VERSION

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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 3 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:

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- (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).

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- (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

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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

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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

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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

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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.

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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 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.

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- (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

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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 Section ~~3.5(a)~~ 3.5(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:

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- (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).

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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

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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;

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- (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;

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- (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

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- (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

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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

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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

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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

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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

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Los Angeles, CA 90012
Facsimile No.: (213) 922-7447
potts@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

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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.

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"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

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- (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 ~~EXHIBIT 6 (Design Requirements)~~ 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.

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"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.

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"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.

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"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.

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"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

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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);

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- (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.

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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
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: _____
Its: _____

APPROVED AS TO FORM

_____,
City Attorney

By: _____
Name: _____
City Attorney

"CITY"

CITY OF BURBANK,
a California municipal corporation

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

ATTEST

By: _____
Name: _____
City Clerk

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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.

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

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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).

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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. 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 <u>3.1(b) (Design Responsibilities)</u> and <u>4.1(b) (Construction Responsibilities)</u> of this Agreement. Preparing the procurement documents and managing the procurement of the LACMTA Contractors for the Design work and the Construction work. In the case of the LACMTA Contractor responsible for the Design work: - defining its design management plan; and - 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. Monitoring the performance of the LACMTA	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 <u>3.1(b) (Design Responsibilities)</u> and <u>4.1(b) (Construction Responsibilities)</u> of this Agreement. 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. Reviewing and approving Designs submitted to it in accordance with agreed procedures. Performing any other Design-related obligations under any Work Orders. Providing assistance to LACMTA in procuring any right-of-way necessary for the City Portion to the extent set out in this Agreement.

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Phase	LACMTA / LACMTA Contractors	City
	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. Monitoring the performance of the LACMTA Contractors.	Performing its Construction-related obligations under any Work Orders. 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 <u>Article 6</u> (<i>Operation and Maintenance</i>)).	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 <u>Article 6</u> (<i>Operation and Maintenance</i>)) 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 Engagement Development	Spearhead council approvals. 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. Provide overall leadership in timely resolution of Design, Construction, plan review, and related administrative matters. CA Professional Engineer Registration Level 1 decision makers for the purposes of the issue resolution ladder described below.	LACMTA Senior Executive Officer or designated LACMTA Project Manager.
Deputy City Engineer or City designated Project Manager or equivalent designated representative(s)	Provide Construction support as specified in this Agreement. Manage assigned resources and coordinate interactions between the City and LACMTA and the LACMTA Contractors as it relates to Construction support. Provide independent quality assurance (IQA) functions.	LACMTA designated Project Manager (Executive Officer or Deputy Executive Officer) or designated Construction Manager (Deputy Executive Officer or Senior

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City Team	Partial List of Key Functions for Decision or Approval	LACMTA Team
		Director).
City Public Works Permit Division Head or equivalent designated representative(s)	Oversee and coordinate all plan reviews as specified in this Agreement. Manage and coordinate interaction of the City with LACMTA and the LACMTA Contractors as it relates to Design review and comment resolution. 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. 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

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- 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.

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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

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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.

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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;

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- (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:

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- (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.

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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) ~~(i)~~ Complete Streets Objective Design Standards;
- (b) ~~(ii)~~ Burbank Water and Power Rules and Regulations;
- (c) ~~(iii)~~ City of Burbank Public Works ~~Standards~~ Standard Plans;
- (d) ~~(iv)~~ Objective standards codified in the City Municipal Code;
- (e) ~~(v)~~ Standard ~~Plans and~~ Specifications for Public Works ~~and~~ Construction 2012 Edition ("Greenbook-"), 2012 Edition (unless otherwise specified by the City) and related Standard Plans;
- (f) ~~(vi)~~ California Manual on Uniform Traffic Control Devices – latest edition (unless otherwise specified by the City); and
- (g) ~~(vii)~~ Caltrans ~~Standards~~ 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

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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.

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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):

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- - (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.

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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

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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

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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 Public 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

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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 Section 4.3(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

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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.

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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

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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.

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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.

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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.

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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	

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38.			0%		\$0.00
39.	TOTAL FEE				
40.	\$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).				

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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	

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Part B - City Betterment Request Form¹

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.

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.

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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: _____

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: _____

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1.

Part C – LACMTA Notice of Potential Betterment²

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: _____

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.

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-
Name: _____

Title: _____

Date: _____

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: _____

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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

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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:

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- (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.

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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**

2024

EFFECTIVE DATE

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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

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- (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.

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- (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

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- (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.

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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

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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:

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- (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).

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- (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).

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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.

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- (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 Section 3.5(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

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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

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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

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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;

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- (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):

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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

EXECUTION VERSION

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.

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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).

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"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);

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- (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

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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.

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"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.

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"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.

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"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.

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"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

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- (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.

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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
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: _____
Its: _____

APPROVED AS TO FORM

_____,
City Attorney

By: _____
Name: _____
City Attorney

"CITY"

CITY OF BURBANK,
a California municipal corporation

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

ATTEST

By: _____
Name: _____
City Clerk

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

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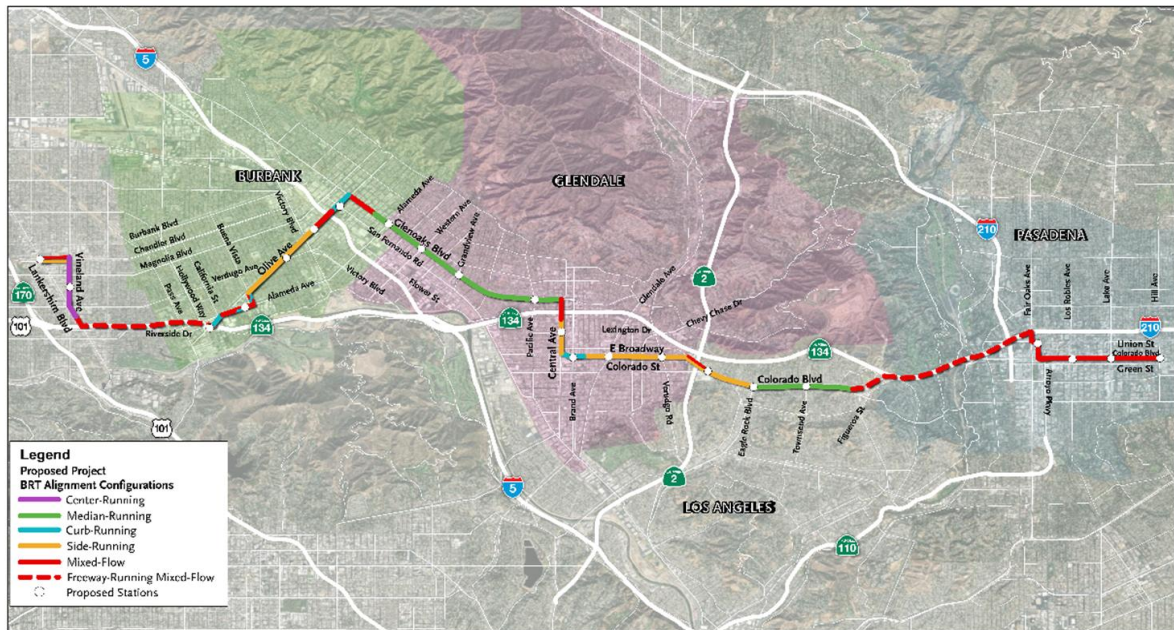
Part B: Project Schedule

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.

	FY 2023												FY 2024												FY 2025												FY 2026												FY 2027												FY 2028											
	CY 2023												CY 2024												CY 2025												CY 2026												CY 2027												CY 2028											
	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12																								
Noth Hollywood to Pasadena BRT																																																																								
Planning	PRELIM ENGINEERING																																																																							
Procure PMCS													RFP												DUE												AWRD																																			
PMCS Support Services																																																																								
MCA - Los Angeles																																																																								
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MCA - Pasadena																																																																								
Caltrans Permit																																																																								
Procure A&E													RFP												DUE												AWRD																																			
Final Design																									68%												85%												AFD																							
Design Svcs During Const																																																																								
Procure CMGC													RFP												DUE												AWRD																																			
CMGC Phase 1 (Pre Construction)																									GMPLS																																															
CMGC Early Works (Scope TBD)																									EARLY WORKS																																															
CMGC Phase 2 (Construction)																																					PHASE 2																																			
CMGC Closeout																																																	CLOSEOUT																							

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*)**.

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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. 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 <u>Sections 3.1(b) (Design Responsibilities)</u> and <u>4.1(b) (Construction Responsibilities)</u> of this Agreement. Preparing the procurement documents and managing the procurement of the LACMTA Contractors for the Design work and the Construction work. In the case of the LACMTA Contractor responsible for the Design work: - defining its design management plan; and - 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 <u>Sections 3.1(b) (Design Responsibilities)</u> and <u>4.1(b) (Construction Responsibilities)</u> of this Agreement. 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. Reviewing and approving Designs submitted to it in accordance with agreed procedures. Performing any other Design-related obligations under any Work Orders. Providing assistance to LACMTA in procuring any right-of-way necessary for the City Portion to the extent set out in this Agreement.

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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. Monitoring the performance of the LACMTA Contractors.	Performing its Construction-related obligations under any Work Orders. 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 <u>Article 6 (Operation and Maintenance)</u>).	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 <u>Article 6 (Operation and Maintenance)</u>) 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. 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. Provide overall leadership in timely resolution of Design, Construction, plan review, and related administrative matters. CA Professional Engineer Registration 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. Manage assigned resources and coordinate interactions between the City and LACMTA and the LACMTA Contractors as it relates to Construction support. Provide independent quality assurance (IQA) functions.	LACMTA designated Project Manager (Executive Officer or Deputy Executive Officer) or designated Construction Manager (Deputy Executive

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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. Manage and coordinate interaction of the City with LACMTA and the LACMTA Contractors as it relates to Design review and comment resolution. 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. 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

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- 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

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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:

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- (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

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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:
 - (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.

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- 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.

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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

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- (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.

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- (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 Section 4.3(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.

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- 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

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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.

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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

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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						

EXECUTION VERSION

4	
1	Schedule in which Scope of Work is based on:
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 Form¹

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.

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.

EXECUTION VERSION

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: _____

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: _____

EXECUTION VERSION

Part C – LACMTA Notice of Potential Betterment²

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.

EXECUTION VERSION

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.

Declaration of Anthony DeFrenza

EXHIBIT B

From: Kurihara, Lisa <LKurihara@burbankca.gov>
Sent time: 10/02/2024 02:23:04 PM
To: Graham, Shmel 41431 <shmel.graham@ashurst.com>
Defrenza, Anthony <DefrenzaA@metro.net>; Low, Teddy <LowT@metro.net>; Hermelin, Anna 47092 <anna.hermelin@ashurst.com>; jmcgregor@doradocompany.com; Berkman, Ken <KBerkman@burbankca.gov>; Prescott, Patrick <PPrescott@burbankca.gov>; Van Gessel, Mark <VanGesselM@metro.net>; Kriske, David <DKriske@burbankca.gov>; Eggers, Elena <EggersE@metro.net>; McDougall, Joseph H. <JMcDougall@burbankca.gov>
Cc:
Subject: RE: Final Burbank City Council Redline Cooperative Agreement
Attachments: image002.png image004.png image005.jpg

Thank you Shmel. The City team is good with the final clarifications to Exhibit 6. Can you please let me know how many copies LACMTA needs, and we will begin printing/circulating for City signatures.



LISA KURIHARA
SR. ASSISTANT CITY ATTORNEY
CITY ATTORNEY'S OFFICE
275 E. OLIVE AVE., BURBANK CA 91502
818-238-5702 | lkurihara@burbankca.gov

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From: Shmel.Graham@ashurst.com <Shmel.Graham@ashurst.com>
Sent: Tuesday, October 1, 2024 12:14 PM
To: Kurihara, Lisa <LKurihara@burbankca.gov>
Cc: DefrenzaA@metro.net; LowT@metro.net; Anna.Hermelin@Ashurst.com; jmcgregor@doradocompany.com; Berkman, Ken <KBerkman@burbankca.gov>; Prescott, Patrick <PPrescott@burbankca.gov>; VanGesselM@metro.net; Kriske, David <DKriske@burbankca.gov>; EggersE@metro.net; McDougall, Joseph H. <JMcDougall@burbankca.gov>
Subject: RE: Final Burbank City Council Redline Cooperative Agreement

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Lisa,

Attached please find an updated draft of the Cooperative Agreement between LACMTA and the City of Burbank and a redline against the last draft we circulated on September 9, 2024. We accepted the City's requested changes and made a minor tweak to the City's proposed language in Section 2 (City Standards) of Exhibit 6 (Design Requirements).

Thank you,

Shmel Graham

Counsel, admitted only in California

Ashurst LLP, 1299 Ocean Avenue, Suite 320, Santa Monica, CA 90401, USA
D: +1 424 416 5431 | M: +1 646 939 8120

Assistant/Secretary: Eliza Cardenas D: +1 424 416 5697
www.ashurst.com

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From: Kurihara, Lisa <LKurihara@burbankca.gov>
Sent: Thursday, September 26, 2024 3:28 PM
To: Graham, Shmel 41431 <Shmel.Graham@ashurst.com>
Cc: DefrenzaA@metro.net; LowT@metro.net; Hermelin, Anna 41426 <Anna.Hermelin@Ashurst.com>; jmcgregor@doradocompany.com; Berkman, Ken <KBerkman@burbankca.gov>; Prescott, Patrick <PPrescott@burbankca.gov>; VanGesselM@metro.net; Kriske, David <DKriske@burbankca.gov>; EggersE@metro.net; McDougall, Joseph H. <JMcDougall@burbankca.gov>
Subject: RE: Final Burbank City Council Redline Cooperative Agreement

Caution: External email.

Hi Shmel,

Thank you for providing these updates and responding to the City's comments. We made a few minor edits to accurately reflect current City job titles as well as our referenced City Standards, and also correct a reference within the definitions section. Can you please review these final updates (attached in redline) and confirm Metro's acceptance?

Upon your confirmation, we will begin circulating for signature. Please let us know how many copies you need and we will print/execute accordingly.



LISA KURIHARA
SR. ASSISTANT CITY ATTORNEY
CITY ATTORNEY'S OFFICE
275 E. OLIVE AVE., BURBANK CA 91502
818-238-5702 | lkurihara@burbankca.gov

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From: Shmel.Graham@ashurst.com <Shmel.Graham@ashurst.com>
Sent: Monday, September 9, 2024 8:25 PM
To: Kurihara, Lisa <LKurihara@burbankca.gov>
Cc: DefrenzaA@metro.net; LowT@metro.net; Anna.Hermelin@Ashurst.com; jmcgregor@doradocompany.com; Berkman, Ken <KBerkman@burbankca.gov>; Prescott, Patrick <PPrescott@burbankca.gov>; VanGesselM@metro.net; Kriske, David <DKriske@burbankca.gov>; EggersE@metro.net
Subject: RE: Final Burbank City Council Redline Cooperative Agreement

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Lisa,

We have addressed the City's comments in the attached Cooperative Agreement and provided responses to the items you flagged in your cover email below. Please note the use of red font is for distinction, not emphasis. We have attached a redline of the updated draft against the last draft dated April 4, 2024.

- Section 2.3(g) – we don't believe the deleted language is covered by the addition of 2.3(i) or Section 3.4 to Exhibit 9 because those sections discuss clean-up following a Rearrangement. The language we previously added addressed clean-up/restoration following cancellation by Metro of a City Work Order. Therefore, if Metro insists on deleting the prior language, the City requests the clarification we added to Exhibit 9, Section 3.4.
 - LACMTA has revised **Section 2.3(g)(Work Orders)** to address the City's concern regarding reimbursement for the Costs to clean-up and restore a site to pre-existing conditions according to current City Standards, in the event the City (or City Contractor) has commenced Construction performed pursuant to Work Order that LACMTA subsequently terminates prior to the completion of the Construction work.
- Section 3.5(a) – City continues to request the addition of previously-added language, which confirms that nothing in 3.5(a) prohibits or restricts the City from adopting new, or amending generally applicable City Standards during the Term. Metro's concern should be addressed by the definition of "Betterment." City requests this language so there's no question that 3.5(a) does not place limitations on the City's general police powers.
 - The language in Section 3.5(b) addresses the City's concern, notwithstanding LACMTA has added additional clarifying language that the Agreement and Section 3.5(a) do not restrict the City from exercising its legal authority and legislative power to adopt new City Standards.
 - LACMTA added clarifying language to confirm the parties mutual understanding the adoption of new City Standards after the establishment of the Basis of Design constitutes a Betterment.
- Section 3.7 – new section regarding Value Engineering accepted, provided Metro accepts City's redlines. While the City will commit to participating in value engineering analysis, we need assurance that the project design continues to comply with applicable City & LACMTA design/construction standards and policies, as well as environmental mitigation measures.
 - LACMTA accepts the City's edits subject to a couple of minor changes.

- Section 4.3(a) – Metro previously approved this language, but the word “relating” was omitted from the last version Metro sent back. Please incorporate the word back in, as indicated in the City’s redline.
 - **Completed.**
- Section 5.1(d) – City continues to request that the deleted language be added back in. While Section 3.3(c) provides that Metro will ensure the project design complies w/ Applicable Law, the language the City added to 5.1(d) addressed Applicable Law in the context of Betterments. This shouldn’t affect Metro’s costs, since the City is responsible for paying for Betterments. City needs assurance that to the extent Betterments are required due to Applicable Law or to preserve public health and safety, Metro will not deny City’s request for the Betterment. –
 - LACMTA has not incorporated the proposed language for the following reasons:
 - As the City noted Section 3.3(c)(Design Development), LACMTA is responsible for ensuring the Design and Construction work for the NoHo to Pasadena Project comply with the Applicable Law and the FEIR. In the event the City requests a Betterment, LACMTA would work collaboratively with the City to accommodate the City’s Betterment request as part of the NoHo to Pasadena Project. Any work that LACMTA (or LACMTA Contractor) would perform even in the case of Betterments would be performed in accordance with Applicable Law and does not think that needs to be expressly stated.
 - As it relates to the language that provides LACMTA may not refuse a Betterment request that results from changes in Applicable Law, LACMTA cannot agree to that language because as set out in Section 5.3 (Right to Refuse a Betterment), there are circumstances in which LACMTA may not be able to agree to perform a Betterment. LACMTA appreciates the efficiency in having LACMTA (or LACMTA Contractor) perform a Betterment when LACMTA is performing work for the NoHo to Pasadena Project, but LACMTA cannot agree to language that requires LACMTA to proceed with the Betterment request if the Betterment is incompatible with the NoHo to Pasadena Project or will affect the Project Schedule. Ultimately, the work the City may request through as a Betterment is the obligation of the City and does not require the desired work to be performed as part of the NoHo to Pasadena Project.
- Section 7.2(a)(iii) – Metro updated language accepted.
 - **Noted.**
- Exhibit 5, Sections 2.1, 2.2, 2.4, 3.2(a), & 3.3 – Metro modifications accepted.
 - **Noted.**
- Exhibit 6, Section 2 – Metro additions accepted, with City additions listed in redline.
 - LACMTA accepts the City’s edits subject to the City’s understanding that City Standards applicable to the NoHo to Pasadena Project are those City Standards that were in effect at the time the Basis of Design was established and that any change to those City Standards and request by the City to comply with new City Standards would be deemed a Betterment pursuant to Section 3.4(a)(Design Development).
 - City Standards is defined as “the City’s design standards and ordinances 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) specified in EXHIBIT 6 (Design Requirements) which govern the design of all Rearrangements.”
- Exhibit 9, Section 3.4 – Metro addition accepted, with City additions listed in redline. Again, the City’s added language is to ensure that to the extent Metro terminates a City Work Order before completion, Metro will be responsible for clean-up and restoration costs resulting from that early-terminated work.
 - LACMTA proposes new language to address the City’s concern in Section 2.3(g) (Work Orders).

Thank you,

Shmel Graham

Counsel, admitted only in California

Ashurst LLP, 1299 Ocean Avenue, Suite 320, Santa Monica, CA 90401, USA
D: +1 424 416 5431 | M: +1 646 939 8120

Assistant/Secretary: Eliza Cardenas D: +1 424 416 5697

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From: Kurihara, Lisa <LKurihara@burbankca.gov>

Sent: Wednesday, August 14, 2024 1:14 PM

To: Graham, Shmel 41431 <Shmel.Graham@ashurst.com>

Cc: DefrenzaA@metro.net; LowT@metro.net; Hermelin, Anna 41426 <Anna.Hermelin@Ashurst.com>; jmcgregor@doradocompany.com; Berkman, Ken <KBerkman@burbankca.gov>; Prescott, Patrick <PPrescott@burbankca.gov>; VanGesselM@metro.net; Kriske, David <DKriske@burbankca.gov>

Subject: RE: Final Burbank City Council Redline Cooperative Agreement

Caution: External email.

Hi Shmel & Metro team,

Please find the City of Burbank’s final responses to the Draft Cooperative Agreement we received from Metro on April 9, 2024

(Burbank changes reflected in redline on the attached document), as well as our comments relating to these changes outlined in this email, below.

If the attached redlines are accepted and no further changes are made, our City Manager is authorized to sign the Agreement. Please let us know how Metro would like to proceed.

Burbank's comments relating to Metro redlines furnished on April 9, 2024

- Section 1.1(e) & (f) – Metro modifications accepted.
- Section 2.3(g) – we don't believe the deleted language is covered by the addition of 2.3(i) or Section 3.4 to Exhibit 9 because those sections discuss clean-up following a Rearrangement. The language we previously added addressed clean-up/restoration following cancellation by Metro of a City Work Order. Therefore, if Metro insists on deleting the prior language, the City requests the clarification we added to Exhibit 9, Section 3.4.
- Section 2.3(i) – Metro addition accepted
- Section 3.5(a) – City continues to request the addition of previously-added language, which confirms that nothing in 3.5(a) prohibits or restricts the City from adopting new, or amending generally applicable City Standards during the Term. Metro's concern should be addressed by the definition of "Betterment." City requests this language so there's no question that 3.5(a) does not place limitations on the City's general police powers.
- Section 3.7 – new section regarding Value Engineering accepted, provided Metro accepts City's redlines. While the City will commit to participating in value engineering analysis, we need assurance that the project design continues to comply with applicable City & LACMTA design/construction standards and policies, as well as environmental mitigation measures.
- Section 4.3(a) – Metro previously approved this language, but the word "relating" was omitted from the last version Metro sent back. Please incorporate the word back in, as indicated in the City's redline.
- Section 5.1(d) – City continues to request that the deleted language be added back in. While Section 3.3(c) provides that Metro will ensure the project design complies w/ Applicable Law, the language the City added to 5.1(d) addressed Applicable Law in the context of Betterments. This shouldn't affect Metro's costs, since the City is responsible for paying for Betterments. City needs assurance that to the extent Betterments are required due to Applicable Law or to preserve public health and safety, Metro will not deny City's request for the Betterment.
- Section 7.2(a)(iii) – Metro updated language accepted.
- Exhibit 5, Sections 2.1, 2.2, 2.4, 3.2(a), & 3.3 – Metro modifications accepted.
- Exhibit 6, Section 2 – Metro additions accepted, with City additions listed in redline.
- Exhibit 9, Section 3.4 – Metro addition accepted, with City additions listed in redline. Again, the City's added language is to ensure that to the extent Metro terminates a City Work Order before completion, Metro will be responsible for clean-up and restoration costs resulting from that early-terminated work.



LISA KURIHARA
SR. ASSISTANT CITY ATTORNEY
CITY ATTORNEY'S OFFICE
275 E. OLIVE AVE., BURBANK CA 91502
818-238-5702 | lkurihara@burbankca.gov

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From: Shmel.Graham@ashurst.com <Shmel.Graham@ashurst.com>
Sent: Tuesday, April 9, 2024 4:20 PM
To: Kriske, David <DKriske@burbankca.gov>
Cc: DefrenzaA@metro.net; Kurihara, Lisa <LKurihara@burbankca.gov>; LowT@metro.net; Anna.Hermelin@Ashurst.com; jmcgregor@doradocompany.com; Berkman, Ken <KBerkman@burbankca.gov>; Prescott, Patrick <PPrescott@burbankca.gov>; VanGesselM@metro.net
Subject: RE: Final Burbank City Council Redline Cooperative Agreement

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi David,

We have made additional revisions to the Cooperative Agreement. Attached please find an updated Working Draft of the City of Burbank Cooperative Agreement and a redline against the last draft circulated to the City on March 19, 2024. Below please find an overview of the edits included in this updated draft agreement and responses to the items flagged in your email dated March 28, 2024:

- **Section 1.1(e)(Scope of Agreement)** –We made the edit adding the reference to Exhibit 1(Project Description). As it relates to the requested edit to add "City Approvals", we proposed additional language in Section 1.1(f)(Scope of Agreement) to the edits we made in Version 3 (response to Comment 85) to address this concern.

- **Section 2.3(g)(Work Orders)** –To address the City's concern, we added two new sections to the Agreement: Section 2.3(i) (Work Orders) and Section 3.4 of Exhibit 9 (Inspection and Acceptance Procedure).
- **Section 3.5(a)(City Standards)** – We acknowledge the Parties discussed this comment on March 11, 2024. On the call we explained any changes in City Standards made after the Basis of Design would constitute a Betterment. Lisa said that my explanation was consistent with the City's understanding, which led us to believe a change was not required. The definition of Betterment subparagraph (b) addresses the City's comment.
- **Section 5.1(d)(Notice of Betterments)** – We think the language in Section 3.3(c)(Design Review Procedure) and the definition of Betterment exception (i) addresses the City's comment. Section 3.3(c)(Design Review Procedure) provides that LACMTA is responsible for ensuring the Design and Construction of the NoHo to Pasadena Project complies with Applicable Law and the definition of Betterment includes an exception whereby the Parties could agree to an upgrade that is a direct and principal benefit to the construction, operation and/or maintenance of the project (i.e., a change necessary to preserve public health, safety, or welfare).
- **Section 7.2 (Reimbursements and Credits to LACMTA)** – As Anthony mentioned, we added Value Engineering language to the Agreement and included a broad list of exclusions to the Expired Service Life language that exclude anything related to the NoHo to Pasadena Project.
- **Exhibit 5 (Utility Adjustments)** – We made the additional edits requested by the City to clarify the City will not self-perform Utility Adjustments for the City-owned water Utility.

Thank you,

Shmel Graham

Counsel, admitted only in California

Ashurst LLP, 1299 Ocean Avenue, Suite 320, Santa Monica, CA 90401, USA
D: +1 424 416 5431 | M: +1 646 939 8120

Assistant/Secretary: Eliza Cardenas D: +1 424 416 5697
www.ashurst.com

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From: Defrenza, Anthony <DefrenzaA@metro.net>

Sent: Tuesday, April 9, 2024 8:45 AM

To: Kriske, David <DKriske@burbankca.gov>; Van Gessel, Mark <VanGesselM@metro.net>

Cc: Kurihara, Lisa <LKurihara@burbankca.gov>; Low, Teddy <LowT@metro.net>; Graham, Shmel 41431

<Shmel.Graham@ashurst.com>; Hermelin, Anna 41426 <Anna.Hermelin@Ashurst.com>; Jack McGregor

(<mcgregor@doradocompany.com> <jmcgregor@doradocompany.com>; Berkman, Ken <KBerkman@burbankca.gov>; Prescott,

Patrick <PPrescott@burbankca.gov>

Subject: RE: Final Burbank City Council Redline Cooperative Agreement

Caution: External email.

David,

Metro has reviewed the provided document and Shmel will send our detailed responses shortly.

As previously indicated, eliminating the Expired Service Life language is not acceptable to Metro. In consideration of the City's position, we've added additional items to the list of exclusions which we believe should adequately address City concerns without requiring the language be deleted from the document. This approach is like the approach taken with City of LA. Additionally, we've included Value Engineering language to further emphasizes our desire to work collaboratively with the City to design and build the highest quality, most efficient, best value project for the region.

After reviewing Metro's responses and the updated working document (to be provided by Shmel), please let me know what you believe the correct next step is.

Thanks,

Anthony DeFrenza
213.220.0583 (cell)
213.922.7107 (office)

From: Kriske, David <DKriske@burbankca.gov>

Sent: Thursday, March 28, 2024 9:42 AM

To: Defrenza, Anthony <DefrenzaA@metro.net>; Van Gessel, Mark <VanGesselM@metro.net>
Cc: Kurihara, Lisa <LKurihara@burbankca.gov>; Low, Teddy <LowT@metro.net>; Graham, Shmel 41431 <shmel.graham@ashurst.com>; Hermelin, Anna 47092 <anna.hermelin@ashurst.com>; Jack McGregor <mcgregor@doradocompany.com> <jmcgregor@doradocompany.com>; Berkman, Ken <KBerkman@burbankca.gov>; Prescott, Patrick <PPrescott@burbankca.gov>
Subject: Final Burbank City Council Redline Cooperative Agreement

Anthony,

Thank you for your help in finalizing the Cooperative Agreement and assisting at the City Council meeting on Tuesday. Attached is the version of the Cooperative Agreement with the City redlines that City Council considered and approved on Tuesday.

The redlines in the following Sections were included in the City's draft to Metro on 3/1/24. We do not see them accounted for in Metro's review matrix, and they weren't addressed on the redline we received back from Metro last week. These were presented to the Burbank City Council as outstanding issues since we have not heard back from Metro on these items, and Council directed us to seek Metro's incorporation of these changes. Therefore, please include these in your final review:

- Section 1.1(e)
- Section 2.3(g)
- Section 3.5(a) – we discussed this during the Metro/Burbank calls the week of 3/11/24, and it was Burbank's impression that Metro agreed with this statement and planned to incorporate it but we didn't see it in the last round of redlines received back from Metro. This was discussed in conjunction with City's acknowledgement of reimbursements for Betterments.
- Section 5.1(d)

Pursuant to emails exchanged with Metro's legal counsel on 3/20/24 and 3/21/24, we incorporated agreed-upon changes into the following Sections. Since both parties have agreed to these changes, they are not marked here as redlines:

- Section 2.4(c)
- Section 2.5(a)
- Section 4.3(a)
- Section 4.3(b)
- Section 8.1(a)

Finally, following review of Metro's latest updates to Exhibit 5 regarding City-owned utility infrastructure, the City's water utility is requesting minor changes to clarify design/construction work responsibility between the parties as to City-owned water Utility Adjustments.

Please let me know if you have any questions and what the next step would be to finalize and execute the agreement.

Thank you,

David



DAVID L. KRISKE, AICP
ASST. COMMUNITY DEVELOPMENT DIRECTOR
TRANSPORTATION DIVISION

818-238-5269 | BURBANKCA.GOV | BURBANKBUS.ORG
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LISA KURIHARA

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Declaration of Anthony DeFrenza

EXHIBIT C

From: Kriske, David <DKriske@burbankca.gov>
Sent time: 01/31/2025 01:56:03 PM
To: Chan, Ferdinand <ChanF@metro.net>; Jack McGregor <jmcgregor@doradocompany.com>; Yu, Edward <EYu@burbankca.gov>
Cc: Defrenza, Anthony <DefrenzaA@metro.net>; Kerk, Sandra (Consultant) <KerkS@metro.net>; Cervantes, Eduardo <CervantesE@metro.net>; Bootorabi, Bijan <BootorabiBi@metro.net>
Subject: RE: N2P BRT - MCA with City of Burbank
Attachments: Final Burbank City Council Redline Cooperative Agreement

Ferdy,

The City Council's took action to approve the agreement on March 26, 2024 (see agenda #9 in these minutes: https://burbank.granicus.com/DocumentViewer.php?file=burbank_22fcd124236a6e192b7f34a4696fe1d.pdf&view=10).

Once we finally negotiated all the final legal terms, we routed the agreement for City Manager signature after Metro and City legal staff finalized the agreement terms on October 2, as documented in the attached email.

David

From: Chan, Ferdinand <ChanF@metro.net>
Sent: Friday, January 31, 2025 10:10 AM
To: Jack McGregor <jmcgregor@doradocompany.com>; Kriske, David <DKriske@burbankca.gov>; Yu, Edward <EYu@burbankca.gov>
Cc: Defrenza, Anthony <DefrenzaA@metro.net>; Kerk, Sandra (Consultant) <KerkS@metro.net>; Cervantes, Eduardo <CervantesE@metro.net>; Bootorabi, Bijan <BootorabiBi@metro.net>
Subject: RE: N2P BRT - MCA with City of Burbank

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Thanks Jack.

Do you have any documents to substantiate that date? Such as Council Calendar, Mayor Action plan, ... etc.
Ferdy

From: Jack McGregor <jmcgregor@doradocompany.com>
Sent: Thursday, January 30, 2025 7:01 PM
To: Chan, Ferdinand <ChanF@metro.net>; Kriske, David <DKriske@burbankca.gov>; Yu, Edward <EYu@burbankca.gov>
Cc: Defrenza, Anthony <DefrenzaA@metro.net>; Kerk, Sandra (Consultant) <KerkS@metro.net>; Cervantes, Eduardo <CervantesE@metro.net>; Bootorabi, Bijan <BootorabiBi@metro.net>
Subject: RE: N2P BRT - MCA with City of Burbank

Hi Ferdy,

The date the City signed the document was October 3, 2024.

Thanks,
Jack

From: Chan, Ferdinand <ChanF@metro.net>
Sent: Tuesday, January 28, 2025 9:10 AM
To: Jack McGregor <jmcgregor@doradocompany.com>; Kriske, David <DKriske@burbankca.gov>; Yu, Edward <EYu@burbankca.gov>
Cc: Defrenza, Anthony <DefrenzaA@metro.net>; Kerk, Sandra (Consultant) <KerkS@metro.net>; Cervantes, Eduardo <CervantesE@metro.net>; Bootorabi, Bijan <BootorabiBi@metro.net>
Subject: RE: N2P BRT - MCA with City of Burbank

Hi Jack,

The WO will reflect the date the City signed on the MCA so that Burbank's review efforts will be reimbursed. BTW, what's the date of Burbank's signature?

Ferdy

From: Jack McGregor <jmcgregor@doradocompany.com>
Sent: Tuesday, January 28, 2025 8:41 AM
To: Kriske, David <DKriske@burbankca.gov>; Chan, Ferdinand <ChanF@metro.net>; Yu, Edward <EYu@burbankca.gov>
Cc: Defrenza, Anthony <DefrenzaA@metro.net>; Kerk, Sandra (Consultant) <KerkS@metro.net>; Cervantes, Eduardo <CervantesE@metro.net>; Bootorabi, Bijan <BootorabiBi@metro.net>

Subject: RE: N2P BRT - MCA with City of Burbank

Hi Ferdy,

My understanding was that the effective date would be determined by the date the City signed and returned the document (early/mid November).

Please confirm when you have a chance, and we will send the completed Form 60's to you this week.

Thanks,
Jack

From: Kriske, David <DKriske@burbankca.gov>

Sent: Monday, January 27, 2025 5:57 PM

To: Chan, Ferdinand <ChanF@metro.net>; Jack McGregor <jmcgregor@doradocompany.com>; Yu, Edward <EYu@burbankca.gov>

Cc: Defrenza, Anthony <DefrenzaA@metro.net>; Kerk, Sandra (Consultant) <KerkS@metro.net>; Cervantes, Eduardo <CervantesE@metro.net>; Bootorabi, Bijan <BootorabiBi@metro.net>

Subject: RE: N2P BRT - MCA with City of Burbank

Hi Ferdy,

Thanks for sending this over. The Effective Date is blank. What date shall we set the effective date to be, which is defined as the date that both parties signed?

David

From: Chan, Ferdinand <ChanF@metro.net>

Sent: Monday, January 27, 2025 4:15 PM

To: Jack McGregor <jmcgregor@doradocompany.com>; Kriske, David <DKriske@burbankca.gov>; Yu, Edward <EYu@burbankca.gov>

Cc: Defrenza, Anthony <DefrenzaA@metro.net>; Kerk, Sandra (Consultant) <KerkS@metro.net>; Cervantes, Eduardo <CervantesE@metro.net>; Bootorabi, Bijan <BootorabiBi@metro.net>

Subject: N2P BRT - MCA with City of Burbank

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Hi Jack,

We got it 😊😊 Attached herein, for your file, is the executed MCA between Metro and Burbank for the subject N2P BRT project. Let's finalize on number of Form60s and corresponding Work Orders..

Pls contact me if you need additional information..

Ferdy

Ferdinand (Ferdy) Chan, PE

3rd Party Manager

Metro

(Cell): 213-392-4580

image005.jpg



image004.png

Ashurst



LISA KURIHARA

SR. ASSISTANT CITY ATTORNEY

CITY ATTORNEY'S OFFICE

275 E. OLIVE AVE., BURBANK CA 91502

818-238-5702 | lkurihara@burbankca.gov

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From: Kurihara, Lisa <LKurihara@burbankca.gov>
Sent time: 10/02/2024 02:23:04 PM
To: Graham, Shmel 41431 <shmel.graham@ashurst.com>
 Defrenza, Anthony <DefrenzaA@metro.net>; Low, Teddy <LowT@metro.net>; Hermelin, Anna 47092 <anna.hermelin@ashurst.com>; jmcgregor@doradocompany.com; Berkman, Ken <KBerkman@burbankca.gov>; Prescott, Patrick <PPrescott@burbankca.gov>; Van Gessel, Mark <VanGesselM@metro.net>; Kriske, David <DKriske@burbankca.gov>; Eggers, Elena <EggersE@metro.net>; McDougall, Joseph H. <JMcDougall@burbankca.gov>
Cc:
Subject: RE: Final Burbank City Council Redline Cooperative Agreement
Attachments: image002.png image004.png image005.jpg

Thank you Shmel. The City team is good with the final clarifications to Exhibit 6. Can you please let me know how many copies LACMTA needs, and we will begin printing/circulating for City signatures.



LISA KURIHARA
 SR. ASSISTANT CITY ATTORNEY
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From: Shmel.Graham@ashurst.com
Sent: Tuesday, October 1, 2024 12:14 PM
To: Kurihara, Lisa
Cc: DefrenzaA@metro.net; LowT@metro.net; Anna.Hermelin@Ashurst.com; jmcgregor@doradocompany.com; Berkman, Ken ; Prescott, Patrick ; VanGesselM@metro.net; Kriske, David ; EggersE@metro.net; McDougall, Joseph H.
Subject: RE: Final Burbank City Council Redline Cooperative Agreement

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Hi Lisa,
 Attached please find an updated draft of the Cooperative Agreement between LACMTA and the City of Burbank and a redline against the last draft we circulated on September 9, 2024. We accepted the City's requested changes and made a minor tweak to the City's proposed language in Section 2 (City Standards) of Exhibit 6 (Design Requirements).
 Thank you,

Shmel Graham

Counsel, admitted only in California

Ashurst LLP, 1299 Ocean Avenue, Suite 320, Santa Monica, CA 90401, USA
 D: +1 424 416 5431 | M: +1 646 939 8120

Assistant/Secretary: Eliza Cardenas D: +1 424 416 5697
www.ashurst.com

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From: Kurihara, Lisa <LKurihara@burbankca.gov>
Sent: Thursday, September 26, 2024 3:28 PM
To: Graham, Shmel 41431 <Shmel.Graham@ashurst.com>
Cc: DefrenzaA@metro.net; LowT@metro.net; Hermelin, Anna 41426 <Anna.Hermelin@Ashurst.com>; jmcgregor@doradocompany.com; Berkman, Ken <KBerkman@burbankca.gov>; Prescott, Patrick <PPrescott@burbankca.gov>; VanGesselM@metro.net; Kriske, David <DKriske@burbankca.gov>; EggersE@metro.net; McDougall, Joseph H. <JMcDougall@burbankca.gov>
Subject: RE: Final Burbank City Council Redline Cooperative Agreement

Caution: External email.

Hi Shmel,

Thank you for providing these updates and responding to the City's comments. We made a few minor edits to accurately reflect current City job titles as well as our referenced City Standards, and also correct a reference within the definitions section. Can you please review these final updates (attached in redline) and confirm Metro's acceptance?
 Upon your confirmation, we will begin circulating for signature. Please let us know how many copies you need and we will print/execute accordingly.



LISA KURIHARA
 SR. ASSISTANT CITY ATTORNEY
 CITY ATTORNEY'S OFFICE
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 818-238-5702 | lkurihara@burbankca.gov

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From: Shmel.Graham@ashurst.com <Shmel.Graham@ashurst.com>

Sent: Monday, September 9, 2024 8:25 PM

To: Kurihara, Lisa <LKurihara@burbankca.gov>

Cc: DefrenzaA@metro.net; LowT@metro.net; Anna.Hermelin@Ashurst.com; jmcgregor@doradocompany.com; Berkman, Ken <KBerkman@burbankca.gov>; Prescott, Patrick <PPrescott@burbankca.gov>; VanGesselM@metro.net; Kiske, David <DKiske@burbankca.gov>; EggersF@metro.net

Subject: RE: Final Burbank City Council Redline Cooperative Agreement

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Hi Lisa,

We have addressed the City's comments in the attached Cooperative Agreement and provided responses to the items you flagged in your cover email below. Please note the use of red font is for distinction, not emphasis. We have attached a redline of the updated draft against the last draft dated April 4, 2024.

- Section 2.3(g) – we don't believe the deleted language is covered by the addition of 2.3(i) or Section 3.4 to Exhibit 9 because those sections discuss clean-up following a Rearrangement. The language we previously added addressed clean-up/restoration following cancellation by Metro of a City Work Order. Therefore, if Metro insists on deleting the prior language, the City requests the clarification we added to Exhibit 9, Section 3.4.
 - LACMTA has revised **Section 2.3(g)(Work Orders)** to address the City's concern regarding reimbursement for the Costs to clean-up and restore a site to pre-existing conditions according to current City Standards, in the event the City (or City Contractor) has commenced Construction performed pursuant to Work Order that LACMTA subsequently terminates prior to the completion of the Construction work.
- Section 3.5(a) – City continues to request the addition of previously-added language, which confirms that nothing in 3.5(a) prohibits or restricts the City from adopting new, or amending generally applicable City Standards during the Term. Metro's concern should be addressed by the definition of "Betterment." City requests this language so there's no question that 3.5(a) does not place limitations on the City's general police powers.
 - The language in Section 3.5(b) addresses the City's concern, notwithstanding LACMTA has added additional clarifying language that the Agreement and Section 3.5(a) do not restrict the City from exercising its legal authority and legislative power to adopt new City Standards.
 - LACMTA added clarifying language to confirm the parties mutual understanding the adoption of new City Standards after the establishment of the Basis of Design constitutes a Betterment.
- Section 3.7 – new section regarding Value Engineering accepted, provided Metro accepts City's redlines. While the City will commit to participating in value engineering analysis, we need assurance that the project design continues to comply with applicable City & LACMTA design/construction standards and policies, as well as environmental mitigation measures.
 - LACMTA accepts the City's edits subject to a couple of minor changes.
- Section 4.3(a) – Metro previously approved this language, but the word "relating" was omitted from the last version Metro sent back. Please incorporate the word back in, as indicated in the City's redline.
 - **Completed.**
- Section 5.1(d) – City continues to request that the deleted language be added back in. While Section 3.3(c) provides that Metro will ensure the project design complies w/ Applicable Law, the language the City added to 5.1(d) addressed Applicable Law in the context of Betterments. This shouldn't affect Metro's costs, since the City is responsible for paying for Betterments. City needs assurance that to the extent Betterments are required due to Applicable Law or to preserve public health and safety, Metro will not deny City's request for the Betterment. –
 - LACMTA has not incorporated the proposed language for the following reasons:
 - As the City noted **Section 3.3(c)(Design Development)**, LACMTA is responsible for ensuring the Design and Construction work for the NoHo to Pasadena Project comply with the Applicable Law and the FEIR. In the event the City requests a Betterment, LACMTA would work collaboratively with the City to accommodate the City's Betterment request as part of the NoHo to Pasadena Project. Any work that LACMTA (or LACMTA Contractor) would perform even in the case of Betterments would be performed in accordance with Applicable Law and does not think that needs to be expressly stated.
 - As it relates to the language that provides LACMTA may not refuse a Betterment request that results from changes in Applicable Law, LACMTA cannot agree to that language because as set out in **Section 5.3 (Right to Refuse a Betterment)**, there are circumstances in which LACMTA may not be able to agree to perform a Betterment. LACMTA appreciates the efficiency in having LACMTA (or LACMTA Contractor) perform a Betterment when LACMTA is performing work for the NoHo to Pasadena Project, but LACMTA cannot agree to language that requires LACMTA to proceed with the Betterment request if the Betterment

is incompatible with the NoHo to Pasadena Project or will affect the Project Schedule. Ultimately, the work the City may request through as a Betterment is the obligation of the City and does not require the desired work to be performed as part of the NoHo to Pasadena Project.

- Section 7.2(a)(iii) – Metro updated language accepted.
 - **Noted.**
- Exhibit 5, Sections 2.1, 2.2, 2.4, 3.2(a), & 3.3 – Metro modifications accepted.
 - **Noted.**
- Exhibit 6, Section 2 – Metro additions accepted, with City additions listed in redline.
 - LACMTA accepts the City's edits subject to the City's understanding that City Standards applicable to the NoHo to Pasadena Project are those City Standards that were in effect at the time the Basis of Design was established and that any change to those City Standards and request by the City to comply with new City Standards would be deemed a Betterment pursuant to Section 3.4(a)(Design Development).
 - City Standards is defined as *"the City's design standards and ordinances 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) specified in EXHIBIT 6 (Design Requirements) which govern the design of all Rearrangements."*
- Exhibit 9, Section 3.4 – Metro addition accepted, with City additions listed in redline. Again, the City's added language is to ensure that to the extent Metro terminates a City Work Order before completion, Metro will be responsible for clean-up and restoration costs resulting from that early-terminated work.
 - LACMTA proposes new language to address the City's concern in Section 2.3(g) (Work Orders).

Thank you,

Shmel Graham

Counsel, admitted only in California

Ashurst LLP, 1299 Ocean Avenue, Suite 320, Santa Monica, CA 90401, USA
D: +1 424 416 5431 | M: +1 646 939 8120

Assistant/Secretary: Eliza Cardenas D: +1 424 416 5697

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From: Kurihara, Lisa <LKurihara@burbankca.gov>

Sent: Wednesday, August 14, 2024 1:14 PM

To: Graham, Shmel 41431 <Shmel.Graham@ashurst.com>

Cc: DefrenzaA@metro.net; LowT@metro.net; Hermelin, Anna 41426 <Anna.Hermelin@Ashurst.com>; jmcgregor@doradocompany.com; Berkman, Ken <KBerkman@burbankca.gov>; Prescott, Patrick <PPrescott@burbankca.gov>; VanGesselM@metro.net; Kiske, David <DKiske@burbankca.gov>

Subject: RE: Final Burbank City Council Redline Cooperative Agreement

Caution: External email.

Hi Shmel & Metro team,

Please find the City of Burbank's final responses to the Draft Cooperative Agreement we received from Metro on April 9, 2024 (Burbank changes reflected in redline on the attached document), as well as our comments relating to these changes outlined in this email, below.

If the attached redlines are accepted and no further changes are made, our City Manager is authorized to sign the Agreement. Please let us know how Metro would like to proceed.

Burbank's comments relating to Metro redlines furnished on April 9, 2024

- Section 1.1(e) & (f) – Metro modifications accepted.
- Section 2.3(g) – we don't believe the deleted language is covered by the addition of 2.3(i) or Section 3.4 to Exhibit 9 because those sections discuss clean-up following a Rearrangement. The language we previously added addressed clean-up/restoration following cancellation by Metro of a City Work Order. Therefore, if Metro insists on deleting the prior language, the City requests the clarification we added to Exhibit 9, Section 3.4.
- Section 2.3(i) – Metro addition accepted
- Section 3.5(a) – City continues to request the addition of previously-added language, which confirms that nothing in 3.5(a) prohibits or restricts the City from adopting new, or amending generally applicable City Standards during the Term. Metro's concern should be addressed by the definition of "Betterment." City requests this language so there's no question that 3.5(a) does not place limitations on the City's general police powers.
- Section 3.7 – new section regarding Value Engineering accepted, provided Metro accepts City's redlines. While the City will commit to participating in value engineering analysis, we need assurance that the project design continues to comply with applicable City & LACMTA design/construction standards and policies, as well as environmental mitigation measures.
- Section 4.3(a) – Metro previously approved this language, but the word "relating" was omitted from the last version Metro sent back. Please incorporate the word back in, as indicated in the City's redline.
- Section 5.1(d) – City continues to request that the deleted language be added back in. While Section 3.3(c) provides that Metro will ensure the project design complies w/ Applicable Law, the language the City added to 5.1(d) addressed Applicable Law in the context of Betterments. This shouldn't affect Metro's costs, since the City is responsible for paying for Betterments. City needs assurance that to the extent Betterments are required due to Applicable Law or to preserve public health and safety, Metro will not deny City's request for the Betterment.
- Section 7.2(a)(iii) – Metro updated language accepted.
- Exhibit 5, Sections 2.1, 2.2, 2.4, 3.2(a), & 3.3 – Metro modifications accepted.
- Exhibit 6, Section 2 – Metro additions accepted, with City additions listed in redline.
- Exhibit 9, Section 3.4 – Metro addition accepted, with City additions listed in redline. Again, the City's added language is to ensure that to the extent Metro terminates a City Work Order before completion, Metro will be responsible for clean-up and restoration costs resulting from that early-terminated work.



LISA KURIHARA
 SR. ASSISTANT CITY ATTORNEY
 CITY ATTORNEY'S OFFICE
 275 E. OLIVE AVE., BURBANK CA 91502
 818-238-5702 | lkurihara@burbankca.gov

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From: Shmel.Graham@ashurst.com <Shmel.Graham@ashurst.com>

Sent: Tuesday, April 9, 2024 4:20 PM

To: Kriske, David <DKriske@burbankca.gov>

Cc: DefrenzaA@metro.net; Kurihara, Lisa <LKurihara@burbankca.gov>; LowT@metro.net; Anna.Hermelin@Ashurst.com; jmcgregor@doradocompany.com; Berkman, Ken <KBerkman@burbankca.gov>; Prescott, Patrick <PPrescott@burbankca.gov>; VanGesselM@metro.net

Subject: RE: Final Burbank City Council Redline Cooperative Agreement

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi David,

We have made additional revisions to the Cooperative Agreement. Attached please find an updated Working Draft of the City of Burbank Cooperative Agreement and a redline against the last draft circulated to the City on March 19, 2024. Below please find an overview of the edits included in this updated draft agreement and responses to the items flagged in your email dated March 28, 2024:

- **Section 1.1(e)(Scope of Agreement)** –We made the edit adding the reference to Exhibit 1(Project Description). As it relates to the requested edit to add "City Approvals", we proposed additional language in Section 1.1(f)(Scope of Agreement) to the edits we made in Version 3 (response to Comment 85) to address this concern.
- **Section 2.3(g)(Work Orders)** –To address the City's concern, we added two new sections to the Agreement: Section 2.3(i)(Work Orders) and Section 3.4 of Exhibit 9 (Inspection and Acceptance Procedure).
- **Section 3.5(a)(City Standards)** – We acknowledge the Parties discussed this comment on March 11, 2024. On the call we explained any changes in City Standards made after the Basis of Design would constitute a Betterment. Lisa said that my explanation was consistent with the City's understanding, which led us to believe a change was not required. The definition of Betterment subparagraph (b) addresses the City's comment.
- **Section 5.1(d)(Notice of Betterments)** – We think the language in Section 3.3(c)(Design Review Procedure) and the definition of Betterment exception (i) addresses the City's comment. Section 3.3(c)(Design Review Procedure) provides that LACMTA is responsible for ensuring the Design and Construction of the NoHo to Pasadena Project complies with Applicable Law and the definition of Betterment includes an exception whereby the Parties could agree to an upgrade that is a direct and principal benefit to the construction, operation and/or maintenance of the project (i.e., a change necessary to preserve public health, safety, or welfare).
- **Section 7.2 (Reimbursements and Credits to LACMTA)** – As Anthony mentioned, we added Value Engineering language to the Agreement and included a broad list of exclusions to the Expired Service Life language that exclude anything related to the NoHo to Pasadena Project.
- **Exhibit 5 (Utility Adjustments)** – We made the additional edits requested by the City to clarify the City will not self-perform Utility Adjustments for the City-owned water Utility.

Thank you,

Shmel Graham

Counsel, admitted only in California

Ashurst LLP, 1299 Ocean Avenue, Suite 320, Santa Monica, CA 90401, USA
D: +1 424 416 5431 | M: +1 646 939 8120

Assistant/Secretary: Eliza Cardenas D: +1 424 416 5697

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From: Defrenza, Anthony <DefrenzaA@metro.net>

Sent: Tuesday, April 9, 2024 8:45 AM

To: Kriske, David <DKriske@burbankca.gov>; Van Gessel, Mark <VanGesselM@metro.net>

Cc: Kurihara, Lisa <LKurihara@burbankca.gov>; Low, Teddy <LowT@metro.net>; Graham, Shmel 41431 <Shmel.Graham@ashurst.com>; Hermelin, Anna 41426 <Anna.Hermelin@Ashurst.com>; Jack McGregor (mcmgregor@doradocompany.com) <jmcgregor@doradocompany.com>; Berkman, Ken <KBerkman@burbankca.gov>; Prescott, Patrick <PPrescott@burbankca.gov>

Subject: RE: Final Burbank City Council Redline Cooperative Agreement

Caution: External email.

David,

Metro has reviewed the provided document and Shmel will send our detailed responses shortly.

As previously indicated, eliminating the Expired Service Life language is not acceptable to Metro. In consideration of the City's position, we've added additional items to the list of exclusions which we believe should adequately address City concerns without requiring the language be deleted from the document. This approach is like the approach taken with City of LA. Additionally, we've included Value Engineering language to further emphasizes our desire to work collaboratively with the City to design and build the highest quality, most efficient, best value project for the region.

After reviewing Metro's responses and the updated working document (to be provided by Shmel), please let me know what you believe the correct next step is.

Thanks,

Anthony DeFrenza

213.220.0583 (cell)

213.922.7107 (office)

From: Kriske, David <DKriske@burbankca.gov>

Sent: Thursday, March 28, 2024 9:42 AM

To: Defrenza, Anthony <DefrenzaA@metro.net>; Van Gessel, Mark <VanGesselM@metro.net>

Cc: Kurihara, Lisa <LKurihara@burbankca.gov>; Low, Teddy <LowT@metro.net>; Graham, Shmel 41431 <shmel.graham@ashurst.com>; Hermelin, Anna 47092 <anna.hermelin@ashurst.com>; Jack McGregor (mcmgregor@doradocompany.com) <jmcgregor@doradocompany.com>; Berkman, Ken <KBerkman@burbankca.gov>; Prescott, Patrick <PPrescott@burbankca.gov>

Subject: Final Burbank City Council Redline Cooperative Agreement

Anthony,

Thank you for your help in finalizing the Cooperative Agreement and assisting at the City Council meeting on Tuesday.

Attached is the version of the Cooperative Agreement with the City redlines that City Council considered and approved on Tuesday.

The redlines in the following Sections were included in the City's draft to Metro on 3/1/24. We do not see them accounted for in Metro's review matrix, and they weren't addressed on the redline we received back from Metro last week. These were presented to the Burbank City Council as outstanding issues since we have not heard back from Metro on these items, and Council directed us to seek Metro's incorporation of these changes. Therefore, please include these in your final review:

- Section 1.1(e)
- Section 2.3(g)
- Section 3.5(a) – we discussed this during the Metro/Burbank calls the week of 3/11/24, and it was Burbank's impression that Metro agreed with this statement and planned to incorporate it but we didn't see it in the last round of redlines received back from Metro. This was discussed in conjunction with City's acknowledgement of reimbursements for Betterments.
- Section 5.1(d)

Pursuant to emails exchanged with Metro's legal counsel on 3/20/24 and 3/21/24, we incorporated agreed-upon changes into the following Sections. Since both parties have agreed to these changes, they are not marked here as redlines:

- Section 2.4(c)
- Section 2.5(a)
- Section 4.3(a)
- Section 4.3(b)
- Section 8.1(a)

Finally, following review of Metro's latest updates to Exhibit 5 regarding City-owned utility infrastructure, the City's water utility is requesting minor changes to clarify design/construction work responsibility between the parties as to City-owned water Utility Adjustments.

Please let me know if you have any questions and what the next step would be to finalize and execute the agreement.

Thank you,

David



DAVID L. KRISKE, AICP
ASST. COMMUNITY DEVELOPMENT DIRECTOR
TRANSPORTATION DIVISION
818-238-5269 | BURBANKCA.GOV | BURBANKBUS.ORG
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Declaration of Anthony DeFrenza

EXHIBIT D

RE: Pas - Cons ruc i n S aging and Phasing Appr ach

r m ete Weiss pete @ eund g.co >

Da e Mon 7/28/2025 8:38 M

T Jack McG ego j cg ego @do adoco pany.co >; Radhak ishnan, Ka thik Radhak ishnanK@ et o.net>;
De enza, nthony De enza @ et o.net>

Cc Ch istian La ba th ch istian.la ba th@stct a ic.co >; Joseph acheco jpacheco@shi ick.co >; Hani
likhwan halikhwan@ ye s-sons.co >; Ro an, Ignacio (Consultant) Ro anl@ et o.net>; De la uente,
Ca l Dela uenteC@ et o.net>; Ch istina Jeon cjeon@do adoco pany.co >; B ian La sen
b ian.la sen@shi ick.co >

 1 attach ent (221 KB)

23-Jul-25 Bu bank Su a y hase 2 with hase and Staging R01.pd ;

Jack,

An h ny said h ld he mee ing wi h u him if y u are available. We're available mee his
week Tuesday r Thursday af ern ns if y u are available. Nex week c uld als w rk.

A ached is a draf schedule ha lines up wi h he draf plans An h ny previ usly sen y u.

Peter Wei PE, DBI , E V SP

Depu y Prec ns ruc i n Manager

Myers Shimmick, A J in Ven ure

ell .6 .9 96

MYERS SHIMMICK
A JOINT VENTURE

From: Jack McGregor jmcgregor@ ora ocompa y com>

S t: r ay July 5 5 :4 PM

To: Ra hakr sh a Karth k ra hakr sh a k@metro et>; Defre za A tho y Defre zaA@metro et>

Cc: Chr stia Lambarth chr stia lambarth@stctraffic com>; Peter We ss peter@freu mg com>; Joseph
Pacheco jpacheco@sh mm ck com>; Ha Al khwa hal khwa @myers-so s com>; Roma lg ac o (Co sulta t)
Roma l@metro et>; De la fue te Carl Delafue teC@metro et>; Chr sti a Jeo
cjeo @ ora ocompa y com>

Subj ct: RE: NoHo to Pas - Co structio Stag g a Phas g Approach

Hi Kar hik,

Pu ing his back n he radar, w uld y u like schedule a mee ing f r nex week r w uld y u
prefer wai un il An h ny's back in he ffice?

Thanks,

Jack

From: Def e A tho y <Def e A@met o. et>
Sent: Tue d y uly 2025 : M
To: k M G e o <jm_e_o@do_domp_y.om>
Cc: Ch i ti L mb th <h i ti .l mb th@t t ffi . om>; pete <pete @f eu dm . om>; o eph he o
<jp_he_o@himmi.k.om>; H i Alikhw <h likhw @mye - o . om>; Rom io (Co ult t)
<Rom @met o. et>; De l fue te C l <Del fue teC@met o. et>
Subject: NoHo to -Co t u tio St i d h i App o h

Jack,

Can you share your team's availability next week for a meetin durin which the contractor will resent a draft ro osal for construction sta in and hasin at the different locations within City of Burbank. We want the City's in ut as we continue to refine our a roach and develo the details associated with Traffic Control Plans to accommodate the work.

Attached lease find a draft Phasin and Sta in lan that we would resent durin the meetin for in ut.

We could discuss either before or after the 7/10 PDT, but I dont ex ect we'll have enou h time durin the 1 hour PDT to review the draft hasin and sta in a roach.

Thanks,

Anthony DeFrenza

LA Met o

No th Hollywood to de BRT oje t M e

2 3.220.0583

LA Metro NoHo to Pasadena BRT - W\Phasing and Staging		Burbank Phase 2 w/Phase Staging					23-Jul-25 10:01																							
Activity ID	Activity Name	Original Duration	Start	Finish	Total Float							2027												2028						
						Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May		
LA Metro NoHo to Pasadena BRT - W\Phasing and Staging		334	27-Jul-26	18-Nov-27	27	18-Nov-27, LA Metro NoHo to Pasadena BRT - W\Phasing and Staging																								
Construction		334	27-Jul-26	18-Nov-27	27	18-Nov-27, Construction																								
Burbank Package		334	27-Jul-26	18-Nov-27	27	18-Nov-27, Burbank Package																								
Burbank		334	27 Jul 26	18 Nov 27	27	18-Nov-27, Burbank																								
Olive / Hollywood Way Phase A		67	27 Jul 26	28 Oct 26	115	28-Oct-26, Olive / Hollywood Way - Phase A																								
Stage 1		10	27-Jul-26	07-Aug-26	27	07-Aug-26, Stage 1																								
Civil		10	27-Jul-26	07-Aug-26	27	07-Aug-26, Civil																								
Stage 2		36	10-Aug-26	29-Sep-26	116	29-Sep-26, Stage 2																								
Civil		28	10-Aug-26	17-Sep-26	27	17-Sep-26, Civil																								
Bus & Landscape		26	24-Aug-26	29-Sep-26	116	29-Sep-26, Bus & Landscape																								
Stage 3		29	18-Sep-26	28-Oct-26	115	28-Oct-26, Stage 3																								
Civil		22	18-Sep-26	19-Oct-26	27	19-Oct-26, Civil																								
Bus & Landscape		21	30-Sep-26	28-Oct-26	115	28-Oct-26, Bus & Landscape																								
Buena Vista & Alameda Phase B		59	20 Oct 26	14 Jan 27	98	14-Jan-27, Buena Vista & Alameda- Phase B																								
Stage 1		29	20-Oct-26	01-Dec-26	108	01-Dec-26, Stage 1																								
Civil		26	20-Oct-26	24-Nov-26	27	24-Nov-26, Civil																								
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Stage 2		33	25-Nov-26	14-Jan-27	98	14-Jan-27, Stage 2																								
Civil		24	25-Nov-26	31-Dec-26	27	31-Dec-26, Civil																								
Bus & Landscape		23	11-Dec-26	14-Jan-27	98	14-Jan-27, Bus & Landscape																								
Olive and Verdugo Phase C		54	04 Jan 27	22 Mar 27	83	22-Mar-27, Olive and Verdugo- Phase C																								
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Civil		25	04-Jan-27	08-Feb-27	27	08-Feb-27, Civil																								
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Civil		24	09-Feb-27	15-Mar-27	27	15-Mar-27, Civil																								
Bus & Landscape		18	23-Feb-27	18-Mar-27	85	18-Mar-27, Bus & Landscape																								
Stage 3		5	16-Mar-27	22-Mar-27	27	22-Mar-27, Stage 3																								
Civil		5	16-Mar-27	22-Mar-27	27	22-Mar-27, Civil																								
Olive and Lake Phase D		52	23 Mar 27	03 Jun 27	61	03-Jun-27, Olive and Lake Phase D																								
Stage 1		28	23-Mar-27	29-Apr-27	70	29-Apr-27, Stage 1																								
Civil		25	23-Mar-27	26-Apr-27	27	26-Apr-27, Civil																								
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Civil		25	27-Apr-27	01-Jun-27	27	01-Jun-27, Civil																								
Bus & Landscape		18	10-May-27	03-Jun-27	61	03-Jun-27, Bus & Landscape																								
Olive and San Fernando Phase E		61	02 Jun 27	26 Aug 27	35	26-Aug-27, Olive and San Fernando Phase E																								
Stage 1		27	02-Jun-27	09-Jul-27	49	09-Jul-27, Stage 1																								
Civil		27	02-Jun-27	09-Jul-27	27	09-Jul-27, Civil																								
Bus & Landscape		16	16-Jun-27	08-Jul-27	50	08-Jul-27, Bus & Landscape																								
Stage 2		34	12-Jul-27	26-Aug-27	35	26-Aug-27, Stage 2																								
Civil		25	12-Jul-27	13-Aug-27	27	13-Aug-27, Civil																								
Bus & Landscape		20	30-Jul-27	26-Aug-27	35	26-Aug-27, Bus & Landscape																								
Glenoaks and Providencia Phase F		7	18 Aug 27	26 Aug 27	35	26-Aug-27, Glenoaks and Providencia Phase F																								
Stage 1		7	18-Aug-27	26-Aug-27	35	26-Aug-27, Stage 1																								

Actual Work

Remaining Work

Critical Remaining Work

Milestone

Summary

NORTH HOLLYWOOD TO PASADENA BUS RAPID TRANSIT

Myers Shimmick, A Joint Venture

Burbank Phase 2 w/Phase Staging 23-Jul-25

MYERS SHIMMICK

A JOINT VENTURE

Page 1 of 2

LA Metro NoHo to Pasadena BRT - W\Phasing and Staging				Burbank Phase 2 w/Phase Staging												23-Jul-25 10:01													
Activity ID	Activity Name	Original Duration	Start	Finish	Total Float							2027												2028					
						Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	
	Civil	7	18-Aug-27	26-Aug-27	35	▼ 26-Aug-27, Civil																							
	Glenoaks and Alameda Phase G	68	16 Aug 27	18 Nov 27	27	▼ 18-Nov-27, Glenoaks and Alameda																							
	Stage 1	36	16-Aug-27	05-Oct-27	59	▼ 05-Oct-27, Stage 1																							
	Civil	32	16-Aug-27	29-Sep-27	27	▼ 29-Sep-27, Civil																							
	Bus & Landscape	26	30-Aug-27	05-Oct-27	59	▼ 05-Oct-27, Bus & Landscape																							
	Stage 2	23	30-Sep-27	01-Nov-27	27	▼ 01-Nov-27, Stage 2																							
	Civil	23	30-Sep-27	01-Nov-27	27	▼ 01-Nov-27, Civil																							
	Stage 3	6	02-Nov-27	09-Nov-27	27	▼ 09-Nov-27, Stage 3																							
	Civil	6	02-Nov-27	09-Nov-27	27	▼ 09-Nov-27, Civil																							
	Stage 4	3	10-Nov-27	12-Nov-27	31	▼ 12-Nov-27, Stage 4																							
	Civil	3	10-Nov-27	12-Nov-27	31	▼ 12-Nov-27, Civil																							
	Stage 5	7	10-Nov-27	18-Nov-27	27	▼ 18-Nov-27, Stage 5																							
	Civil	7	10-Nov-27	18-Nov-27	27	▼ 18-Nov-27, Civil																							

Working Document
Subject to Change