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Agenda Packet

**SEPTEMBER 22, 2020**

**CITY COUNCIL MEETING**

**CITY COUNCIL**

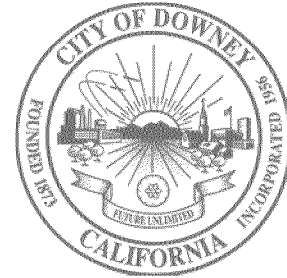
MAYOR  
BLANCA PACHECO

MAYOR PRO TEM  
CLAUDIA M. FROMETA

COUNCIL MEMBERS  
RICK RODRIGUEZ  
ALEX SAAB

Special Meeting – 5:30 p.m.  
Regular Meeting – 6:30 p.m.

Council Chambers  
11111 Brookshire Avenue  
Downey, CA 90241



**PARTICIPATING BY  
TELECONFERENCE:**

COUNCIL MEMBERS  
SEAN ASHTON

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**SEE ATTACHED SPECIAL NOTICE REGARDING PUBLIC PARTICIPATION AND ACCESSIBILITY  
FOR SEPTEMBER 22, 2020 SPECIAL AND REGULAR DOWNEY CITY COUNCIL MEETINGS**

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**CALL TO ORDER THE SPECIAL CITY COUNCIL MEETING – 5:30 P.M.**

**ROLL CALL:** Council Members Ashton, Rodriguez, Saab, Mayor Pro Tem Frometa, Mayor Pacheco

**APPROVE CLOSED SESSION MINUTES:** Special Meeting of September 8, 2020: Administration.

**PUBLIC COMMENT ON CLOSED SESSION AGENDA ITEMS**

*(Persons wishing to address the City Council on any item on the Closed Session Agenda may do so at this time. Please limit your comments to no more than three (3) minutes).*

**RECESS TO A CLOSED SESSION OF THE CITY COUNCIL UNDER THE FOLLOWING  
AUTHORITIES:**

1. Government Code Section 54956.9(d)(1) – Conference with Legal Counsel – Pending Litigation:  
Joseph Barreda v. City of Downey, et al., U.S. District Court, Central District of California, Case  
No. 2:19-cv-02508-DSF.

**ADJOURNMENT**

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**CALL TO ORDER THE REGULAR CITY COUNCIL MEETING – 6:30 P.M.**

**ROLL CALL:** Council Members Ashton, Rodriguez, Saab, Mayor Pro Tem Frometa, Mayor Pacheco

**INVOCATION:** Greg Welch, Downey Police Department Chaplain

**FLAG SALUTE:** Michael Calvert, Director, Downey Chamber of Commerce

## **PRESENTATIONS**

1. Certificates of Recognition to the Los Angeles County Library, Downey Police and Public Works Departments for their assistance in the Mega Food Drive 2020.
2. Presentation to the City Council regarding an update of the West Santa Ana Branch Transit Corridor Project by the Los Angeles County Metropolitan Transportation Authority.

## **CITY COUNCIL MEMBER ANNOUNCEMENTS; REQUESTS FOR FUTURE AGENDA ITEMS; CONFERENCE/MEETING REPORTS**

**PUBLIC HEARINGS:** None.

## **NON-AGENDA PUBLIC COMMENT**

*This portion provides an opportunity for the public to address the Council on items within the jurisdiction of the Council and not listed on the agenda. It is requested, but not required, that you state your name, address and subject matter upon which you wish to speak. Please limit your comments to no more than three (3) minutes. Pursuant to the Brown Act, no discussion or action, other than a brief response, referral to the City Manager/staff or schedule for a subsequent agenda, shall be taken by the Council/Agency on any issue brought forth under this section.*

## **CONSENT CALENDAR**

*All matters listed on the Consent Calendar are to be approved with one motion unless a Council Member requests an item be removed. Removed items will be considered following approval of the Consent Calendar.*

1. **APPROVE MINUTES:** Special and Regular Meetings of September 8, 2020: City Clerk.
2. **WARRANTS ISSUED:** Warrant Nos. 346110 – 346409; EFT numbers 10125 – 10155; Payroll Wire Nos. 30004027, 30004030 & 30004033 – 30004035; and, Manual Wire numbers 2056 – 2057, total amount of \$2,739,621.35: Finance.
3. **AWARD A CONSTRUCTION CONTRACT IN THE AMOUNT OF \$2,245,893 TO THE R.J. NOBLE COMPANY FOR THE OLD RIVER SCHOOL RD. PAVEMENT REHABILITATION PROJECT; AUTHORIZE THE PUBLIC WORKS DIRECTOR/CITY ENGINEER TO EXECUTE ANY CHANGE ORDERS OR ADDITIONAL SCOPE OF WORK DEEMED NECESSARY OR DESIRABLE UP TO THE APPROVED PROJECT BUDGET; AND, AUTHORIZE TRANSFER OF \$53,103.50 IN MEASURE R LOCAL RETURN FUNDS FROM ACCOUNT NO. 56-16789 TO ACCOUNT NO. 56-16628 (CAPITAL IMPROVEMENT PROJECT NO. 16-20):** Public Works.
4. **ACCEPT WORK FOR TWEEDY LN. PAVEMENT REHABILITATION; APPROVE FINAL CONSTRUCTION CONTRACT AMOUNT OF \$353,541.87; AND, AUTHORIZE THE PUBLIC WORKS DIRECTOR/CITY ENGINEER TO FILE THE NOTICE OF COMPLETION (CAPITAL IMPROVEMENT PROJECT NO. 18-05):** Public Works.
5. **ACCEPT WORK FOR COLDBROOK AVE., CORRIGAN AVE., AND VULTEE AVE. WATER SYSTEM REPAIRS; APPROVE FINAL CONSTRUCTION CONTRACT AMOUNT OF \$37,500; AND, AUTHORIZE THE DIRECTOR OF PUBLIC WORKS/CITY ENGINEER TO FILE THE NOTICE OF COMPLETION (MISCELLANEOUS PROJECT NO. 346):** Public Works.
6. **APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH JOHN L. HUNTER AND ASSOCIATES, INC. IN THE TOTAL AMOUNT OF \$341,337 FOR MS4 NPDES PROGRAM SERVICES FOR A PERIOD OF THREE YEARS WITH AN OPTION TO RENEW FOR AN ADDITIONAL TWO YEARS; AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT; AND, AUTHORIZE THE CITY MANAGER TO EXECUTE ANY AND ALL AMENDMENTS TO THE AGREEMENT AS DEEMED NECESSARY WITHIN THE PROGRAM BUDGET:** Public Works.

7. APPROVE A MASTER COOPERATIVE AGREEMENT WITH THE LOS ANGELES METROPOLITAN TRANSPORTATION AUTHORITY FOR THE DESIGN, CONSTRUCTION, OPERATION AND MAINTENANCE OF A PORTION OF THE WEST SANTA ANA BRANCH TRANSIT CORRIDOR PROJECT; AND, AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT, SUBJECT TO APPROVAL BY THE LOS ANGELES METROPOLITAN TRANSPORTATION AUTHORITY BOARD AT A LATER DATE: Administration.
8. AUTHORIZE STAFF TO EXECUTE AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP TO PROVIDE OCCUPATIONAL HEALTH AND SAFETY SERVICES FOR THE CITY OF DOWNEY: Human Resources.
9. ADOPT RESOLUTION NO. 20-\_\_\_\_\_, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DOWNEY APPROVING THE APPOINTMENT OF MICHAEL MURRAY TO THE INDEPENDENT CITIZENS OVERSIGHT BOARD FOR COUNCIL DISTRICT 1: Mayor Pacheco.
10. ELECTRIC VEHICLE CHARGING SYSTEMS MUNICIPAL CODE AMENDMENT: Community Development.

INTRODUCE ORDINANCE NO. 20-\_\_\_\_\_, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DOWNEY ADDING SECTION 8986 (“ELECTRIC VEHICLE CHARGING SYSTEMS”) TO CHAPTER 11 (DOWNEY GREEN BUILDING STANDARDS CODE) OF ARTICLE VIII (“BUILDING REGULATIONS”) OF THE DOWNEY MUNICIPAL CODE.

11. GRADING REGULATIONS AND MUNICIPAL CODE UPDATES: Community Development.

INTRODUCE ORDINANCE NO. 20-\_\_\_\_\_, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DOWNEY AMENDING IN ITS ENTIRETY SECTION 8730 (“GRADING REGULATIONS”) OF ARTICLE VIII (“BUILDING REGULATIONS”) OF CHAPTER 8 (“FLOODPLAIN MANAGEMENT, GRADING AND PAVING”) BY ADOPTING BY REFERENCE THE 2019 CALIFORNIA BUILDING CODE APPENDIX J WITH LOCAL AMENDMENTS; ADDING SECTION 8999.18 TO ARTICLE VIII (“BUILDING REGULATIONS”), CHAPTER 13 (“DOWNEY RESIDENTIAL CODE”) OF THE DOWNEY MUNICIPAL CODE AMENDING SECTION R401.4 OF THE 2019 EDITION OF THE CALIFORNIA RESIDENTIAL CODE; AND ADDING SUBSECTION 8999.44.5 TO SECTION 8999.44 (“VIOLATIONS”) OF ARTICLE VIII (“BUILDING REGULATIONS”), CHAPTER 14 (“DOWNEY ADMINISTRATIVE BUILDING AND HOUSING CODE”) OF THE DOWNEY MUNICIPAL CODE.

12. RECEIVE AND FILE THE 2020 LOCAL AGENCY BIENNIAL NOTICE: City Clerk/City Attorney.

#### ADMINISTRATIVE REPORTS

13. ADOPT A VETERANS MEMORIAL POLICY FOR THE LISTING OF VETERAN NAMES ON THE CITY’S VETERANS MEMORIAL OUTSIDE OF CITY HALL: Administration.
14. PROVIDE DIRECTION TO STAFF REGARDING THE CLOSURE OF DOWNEY AVE. BETWEEN 2<sup>ND</sup> AND 3<sup>RD</sup> ST.: Community Development.
15. EXTENSION OF URGENCY ORDINANCE ESTABLISHING A TEMPORARY MORATORIUM ON EVICTIONS OF COMMERCIAL TENANTS IMPACTED BY COVID-19 PANDEMIC AND RENT REPAYMENT PERIOD: City Manager/City Attorney.

**ADOPT ORDINANCE NO. 20-\_\_\_\_\_, AN UNCODIFIED URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DOWNEY PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 8634 AND DOWNEY CITY CHARTER SECTIONS 511 AND 514 EXTENDING THE TEMPORARY MORATORIUM ON EVICTIONS OF COMMERCIAL TENANTS FOR NONPAYMENT OF RENT RESULTING FROM LOSS OF INCOME DUE TO THE COVID-19 PANDEMIC AND RENT REPAYMENT PERIOD; AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY.**

**16. URGENCY ORDINANCE TO MAKE THE REQUIRED FINDINGS CONSISTENT WITH ASSEMBLY BILL 3088 TO PRESERVE RENT REPAYMENT PERIOD FOR RESIDENTIAL TENANTS IMPACTED BY COVID-19 FINANCIAL IMPACTS:** City Manager/City Attorney.

**ADOPT ORDINANCE NO. 20-\_\_\_\_\_, AN UNCODIFIED URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DOWNEY PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 8634 AND DOWNEY CITY CHARTER SECTIONS 511 AND 514 AMENDING THE RENT REPAYMENT PERIOD SET FORTH IN ORDINANCE NO. 20-1445 BY MAKING THE REQUIRED FINDINGS CONSISTENT WITH ASSEMBLY BILL 3088; AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY.**

### **STAFF MEMBER COMMENTS**

**ADJOURNMENT:** In memory of Senior Airman Jason Khai Phan, 26, of Anaheim who was supporting Operation Inherent Resolve.

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Supporting documents are available at: [www.downeyca.org](http://www.downeyca.org); City Hall-City Clerk's Department, 11111 Brookshire Avenue, Monday – Friday, 7:30 a.m. – 5:30 p.m. Video streaming of the meeting is available on the City's website. In compliance with the Americans with Disabilities Act (ADA), if special assistance is needed to participate in this meeting, complete the City's Title II ADA Reasonable Accommodation Form located on the City's website and at City Hall - City Clerk's Department, 11111 Brookshire Avenue, Monday – Friday, 7:30 a.m. – 5:30 p.m., and submit to the City Clerk's Department or contact **(562) 904-7280** or TTY 7-1-1, **48 business hours prior to the City Council meeting.**

The City of Downey prohibits discrimination on the basis of disability in any of its program and services. For questions, concerns, complaints, or for additional information regarding the ADA, contact the City's ADA/Section 504 Coordinator at [ADACoordinator@downeyca.org](mailto:ADACoordinator@downeyca.org): Phone: (562) 299-6619; or TTY at 7-1-1.

In compliance with Title VI of the Civil Rights Act, the City of Downey prohibits discrimination of any person in any of its program and services. If written language translation of City agendas or minutes, or for oral language interpretation at a City meeting is needed, contact the City Clerk's Office at (562) 904-7280, or (562) 299-6619, **48 business hours prior to the meeting.**

En cumplimiento con el Título VI de la Ley de Derechos Civiles, la Ciudad de Downey prohíbe la discriminación de cualquier persona en todos sus programas y servicios. En caso de necesitar una traducción escrita de las órdenes del día o las actas de las reuniones de la ciudad, o para solicitar un intérprete oral para una reunión de la ciudad, comuníquese a la oficina de la Secretaria de la Ciudad al (562) 904-7280, o al (562) 299-6619, en el horario de atención comercial, **48 horas antes de la reunión.**

I, Maria Alicia Duarte, CMC, City Clerk, City of Downey, do hereby certify, under penalty of perjury under the laws of the State of California that the foregoing notice was posted pursuant to Government Code Section 54950 Et. Seq., at the following locations: Downey City Hall, Downey City Library, and Barbara J. Riley Community and Senior Center.

Dated this 17<sup>th</sup> day of September, 2020.

*Maria Alicia Duarte, CMC, City Clerk*

**Scan QR Code to view the City of Downey City Accomplishments 2019-2020**





## SPECIAL NOTICE

### **Public Participation and Accessibility for the September 22, 2020 Downey Regular City Council Meetings**

Pursuant to Paragraph 3 of Executive Order N-29-20, executed by the Governor of California on March 17, 2020, and the County of Los Angeles Department of Public Health Order of the Health Officer Revised Order issued June 11, 2020 as a response to mitigating the spread of Coronavirus known as COVID-19 and providing direction for moving the County through Stage 3 of California's Pandemic Resilience Roadmap, the Special and Regular City Council Meetings scheduled for Tuesday, September 22, 2020 at 5:30 p.m. and 6:30 p.m. will allow members of the public to participate and address the City Council during the public comment portion of the meetings via teleconference as well as a limited number, 10, of in person attendees within the City Hall Council Chambers on a first come, first serve basis.

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#### **Below are the ways to participate in the Special Meeting at 5:30 p.m.**

- 1. Call Toll-Free (audio):** (877) 853-5247 or (888) 788-0099

Enter Meeting ID: **940 5990 3212** Enter Password: **128553**

**Public Comment shall be on Closed Session Items Only**

- 2. E-mail:** [ccpubliccomment@downeyca.org](mailto:ccpubliccomment@downeyca.org)

**In order to effectively accommodate public participation, participants are asked to provide their public comments via e-mail by 4:00 p.m. on the day of the meeting.**

- 3. Tele-conference phone number:** (562) 299-6622

Calls will be placed on hold in queue and participants will provide their public comments via speaker phone. Persons speaking are limited to a maximum of three (3) minutes.

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#### **Below are the ways to participate in the Regular Meeting at 6:30 p.m.**

- 1. View the City Council meeting live stream at:**

**YouTube Channel:** <https://www.youtube.com/channel/UCjWsuwVjG13PI3UugptpRg/live>

- 2. Call Toll-Free (audio):** (877) 853-5247 or (888) 788-0099

Enter Meeting ID: **980 1845 5152** Enter Password: **742554**

**Members of the public wishing to address the City Council, during public comment or for a specific agenda item, or both, may do so by the following methods:**

- 3. E-mail:** [ccpubliccomment@downeyca.org](mailto:ccpubliccomment@downeyca.org)

**In order to effectively accommodate public participation, participants are asked to provide their public comments via e-mail by 4:00 p.m. on the day of the meeting.**

Participants addressing the City Council by email are encouraged to provide the following information:

- a) Full Name;
- b) City of Residence;
- c) Subject or Agenda Item No.;
- d) Written Comments.

**4. Teleconference phone number: (562) 299-6622**

Calls will be placed on hold in queue and participants will provide their public comments via speaker phone. **Persons speaking are limited to a maximum of three (3) minutes.** Please be mindful that the teleconference call will be recorded as any other person is recorded when appearing before the City Council, and all other rules of procedure and decorum will apply when addressing the City Council by teleconference.

Participants addressing the City Council by teleconference are encouraged to provide the following information:

- a) Full Name;
- b) City of Residence;
- c) Subject or Agenda Item No.;
- d) Public Comment.

**5. In Person Attendance at City Hall Council Chambers**

Members of the public attending the City Council Meetings in person will be required to comply with the City of Downey's Emergency Order No. 2 – Non-Contact Temperature Screening and Face Coverings at City Facilities to help prevent the spread of COVID-19.

Prior to entering the building, attendees will be required to:

- 1) Participate in a non-contact temperature screening; and,
- 2) Wear a face covering at all times while inside city facilities.

Although public meetings will re-open for in person attendance, participants are encouraged to continue accessing the City Council meetings by utilizing the participation methods listed above, as there will be a limited number of attendees permitted, 10, in the building due to reduced seating capacity to maintain social distancing standards.

**For any questions contact the City Clerk's Office at (562) 904-7280.**



**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** OFFICE OF THE CITY MANAGER  
**BY:** VANIAH DE ROJAS, ASSISTANT TO THE CITY MANAGER

**DATE:** SEPTEMBER 22, 2020

**SUBJECT:** MASTER COOPERATIVE AGREEMENT WITH THE LOS ANGELES METROPOLITAN TRANSPORTATION AUTHORITY

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**RECOMMENDATION**

That the City Council:

1. Approve the attached Master Cooperative Agreement with the Los Angeles Metropolitan Transportation Authority for the design, construction, operation and maintenance of a portion of the West Santa Ana Branch Transit Corridor project.
2. Authorize the City Manager to execute the agreement, subject to approval by the Los Angeles Metropolitan Transportation Authority Board at a later date.

**BACKGROUND**

The Los Angeles Metropolitan Transportation Authority (Metro) is preparing for the development of a new light rail transit line, the West Santa Ana Branch (WSAB) Transit Corridor project. The main goals of the WSAB Project are to: 1. Provide mobility improvements, 2. Support local and regional land-use plans and policies, 3. Minimize environmental impacts, 4. Ensure cost effectiveness and financial feasibility, and 5. Promote equity.

The 19-mile WSAB Transit Corridor project intends to connect southeast Los Angeles County to downtown Los Angeles, serving the cities and communities of downtown Los Angeles, unincorporated Florence-Graham, Vernon, Huntington Park, Bell, Cudahy, South Gate, Downey, Paramount, Bellflower, Cerritos and Artesia. Additionally, in the City of Downey, a new park and ride station will be developed, The Gardendale Station. The Station is located within the Ports-owned, UPRR-operated San Pedro Subdivision right-of-way (ROW) which runs through the southwestern corner of Downey. The future station presents an opportunity to provide convenient access for future Los Angeles County employees traveling to the planned Rancho Los Amigos South Campus which is being developed to accommodate approximately 4,000 jobs. Attached is the current project map along with the four Local Preferred Alternative (LPA) options being considered by Metro.

The overall project area is home to 1.2 million residents and is a job center to approximately 584,000 employees. Projections show the resident population increasing to 1.5 million and jobs increasing to 670,000 by 2040. Population and employment densities are five times higher than the Los Angeles County average. This rail corridor is anticipated to serve commuters in a high

travel demand corridor by providing relief to the limited transportation systems currently available to these communities. In addition, the project is expected to provide a direct connection to Metro's Green and Blue lines.

The WSAB is being partially funded by Measure M. Per Measure M and Metro's Long Range Transportation Plan (LRTP) financial forecast, as amended, the project has a \$4 billion (B) (2015\$) allocation of funding (comprised of Measure M and other local, state, and federal sources). Measure M funding becomes available in two cycles:

- FY 2028 - \$1B
- FY 2041 - \$3B

The current project cost is estimated to be \$6.5-\$6.6 billion (in 2018\$), contingent upon further project design, coordination with freight railroad and the Ports on Right-of-Way (ROW), and development of First/Last Mile plans and costs.

Measure M indicates that an early project delivery may be made possible with a Public-Private Partnership (P3) delivery method. A P3 with a comprehensive delivery approach is being pursued as part of a strategy for accelerating a significantly increased project scope by 2028 in preparation of the 2028 Summer Olympics being held in Los Angeles.

Currently the WSAB Project is undergoing an Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) process to prepare the corridor for Light Rail Transit. The following is the current WSAB Project Schedule:

Draft EIS/R Release:	Early 2021
LPA Selection:	Mid 20221
First/Last Mile (FLM) Planning:	Following LPA Selection
P3 RFQ:	Following LPA Selection
Final EIR Certification:	Late 2021
Record of Decision (ROD):	Late 2021
P3 RFP:	Following Final EIR
Groundbreaking:	2023

## DISCUSSION

The construction of the WSAB Light Rail Project will require extensive review by the City. As such, a Master Cooperative Agreement (MCA) is needed between Metro and Corridor cities on how they will work together to deliver the WSAB Project before groundbreaking in 2023. The MCA establishes the:

- Process for cities to be paid for project-related work
- Basis to start construction of enabling works, which will expedite project construction and reduce construction risk
- Process to provide review and approval of design documents



Additionally, areas of the MCA address construction activities including:

- Project description
- Scope, phases and schedule
- Roles and responsibilities
- Contractual packages
- City facility rearrangements
- Betterments
- Reimbursements and credits
- Resolution of disputes
- Metro and P3 roles and responsibilities
- Definitions and interpretations

It is important to note that the MCA does not relieve Metro or its contractor from the requirements of submitting all plans, documents, and reports for review and comment before obtaining City approval prior to the start of any construction activity within the public right-of-way. Under this MCA, the City agrees to waive all permit fees, however, all costs incurred by City staff and its consultants for design review and permit coordination among others, would be reimbursed by Metro through a work plan authorization process specified in the MCA.

Metro staff met with City staff in April 2020 to review the MCA and discuss City concerns. The attached final MCA for the City Council's approval has been reviewed by the City Manager, City Attorney, Community Development Director/Deputy City Manager, Public Works Director/City Engineer, and the Assistant to the City Manager.

To ensure we keep the project timeline, cities are being asked to agree to the terms of the MCA by October 2020 in order to provide the Metro Board enough time to approve and execute the MCAs by December 2020.

## **CITY COUNCIL PRIORITIES**

Fiscal Responsibility  
Efficiency & Adaptability

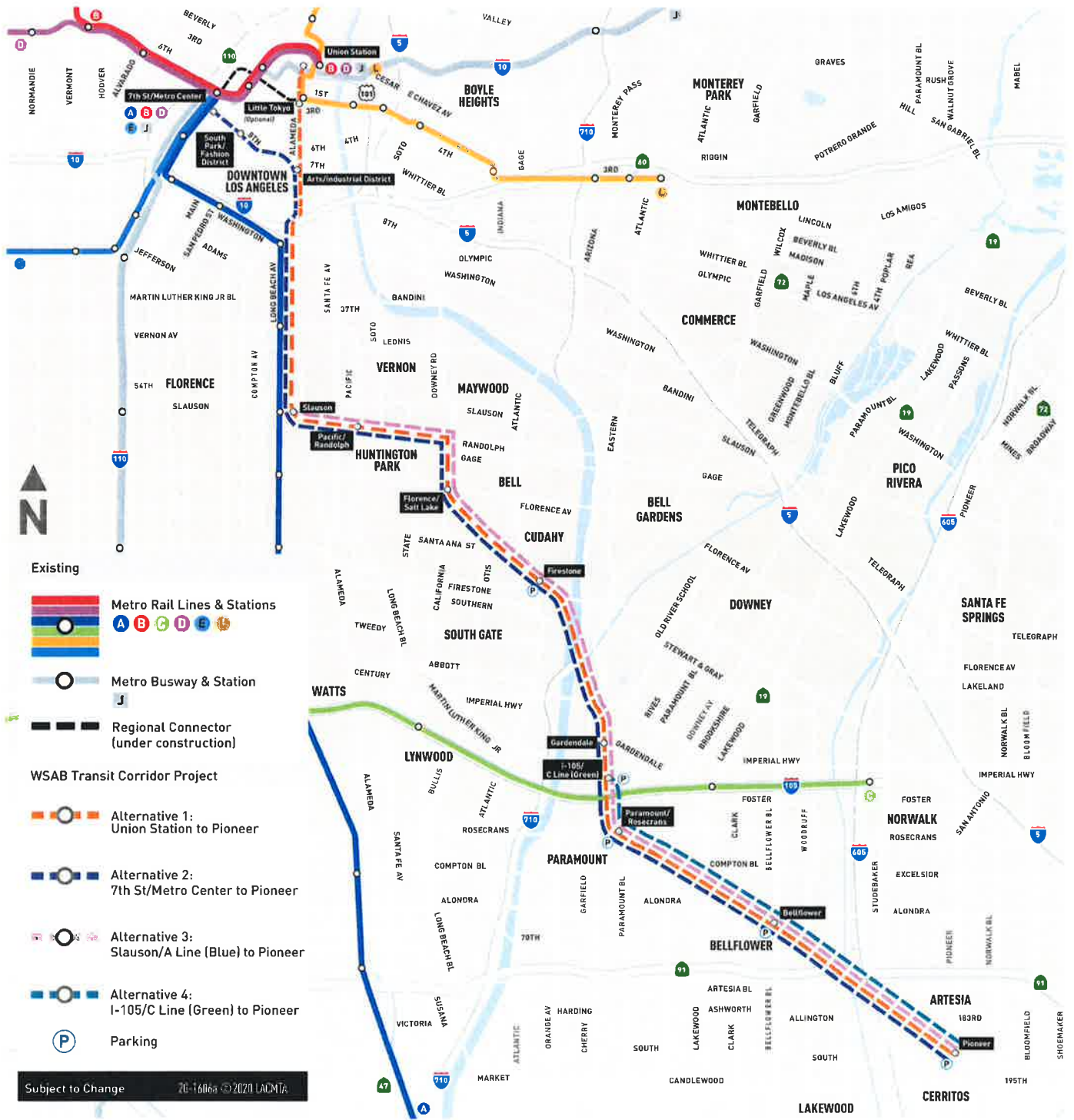
## **FISCAL IMPACT**

There is no financial impact associated with this action.

## **ATTACHMENTS**

Attachment A – WSAB Project Map  
Attachment B – Master Cooperative Agreement

# West Santa Ana Branch Transit Corridor Project Alternatives Overview



Northern endpoint for Alternative 1 would be located at the LA Union Station Forecourt or behind the Metropolitan Water District Building on the east side of LA Union Station.

**MASTER COOPERATIVE AGREEMENT FOR THE DESIGN,  
CONSTRUCTION AND OPERATION AND MAINTENANCE OF A  
PORTION OF THE WSAB PROJECT**

**BETWEEN**

**THE CITY OF DOWNEY**

**AND**

**THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY**

**[INSERT DATE]**

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**EFFECTIVE DATE**

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

**RECITALS**

- (A) LACMTA proposes to develop and open a new light rail transit line known as the West Santa Ana Branch Transit Corridor Project (as more fully defined in Article 11 (Definitions and Interpretation), the "**WSAB Project**"). As at the date of this Agreement, the WSAB Project is undergoing an Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) process.
- (B) The WSAB 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 WSAB Project and in particular the City Portion of the WSAB Project.
- (C) 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 WSAB 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 has acknowledged the WSAB Project as a high priority public works project to provide LACMTA with expedited review and approval procedures in connection with design, design reviews, permitting, property acquisition, and other authority to be exercised by the City relating to the WSAB Project and/or this Agreement.
- (b) The Parties have entered into this Agreement to:
  - (i) acknowledge the intended scope, schedule and site for the WSAB 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 WSAB Project as it relates to the City Portion and any Rearrangements.
- (c) LACMTA may procure the design, construction, operation and maintenance of the WSAB 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 WSAB Project, including the City Portion. As at the date of this Agreement, LACMTA contemplates:
  - (i) procuring the performance of the Enabling Works by one or more LACMTA Contractors under one or more contractual packages;
  - (ii) procuring the P3 Project Scope by a LACMTA Contractor under a design, build, finance, operate and maintain agreement; and
  - (iii) retaining responsibility for performance by LACMTA or LACMTA Contractors of the LACMTA Retained Scope.
- (d) The City acknowledges and agrees that LACMTA may: (i) engage the 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 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 WSAB Project, including the City Portion, described in Section 1.1(c) (Scope of Agreement) in its sole discretion. The City further acknowledges that as at the date of this Agreement, the WSAB Project is in the Planning and Procurement Phase and LACMTA may elect: (i) not to proceed with the WSAB Project; or (ii) to amend the scope of the WSAB Project, each in its sole discretion.
- (f) LACMTA shall promptly notify the City of any changes to its contracting and procurement strategy or to the scope of the WSAB Project 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.

## 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 WSAB 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).
- (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 five Business Days' prior Notice to the other Party.
- (c) LACMTA may establish Working Groups in relation to the WSAB Project or particular aspects of the WSAB Project for the purposes of providing a non-binding forum for LACMTA, the LACMTA Contractors and other attendees to monitor the progress of the WSAB Project, to consider issues, or potential issues, and to present, understand and discuss proposed solutions with respect to the WSAB Project. On LACMTA's written request, the City shall ensure the attendance ((in person or via videoconference or teleconference) of the City Representative (or a delegate) at any Working Group meeting held with respect to the City Portion during normal business hours and upon reasonable notice. Any Working Group meeting attended by the City Representative (or a delegate) is consultative and advisory only and nothing which occurs during any such Working Group meeting and no information that is presented during any such Working Group 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) 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 February 28 of each LACMTA Fiscal Year during the Term (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 upcoming 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 30 days after the City's receipt of the required information from LACMTA pursuant to Section 2.2(a)(i) (Annual Work Plan), 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 ten Business Days after LACMTA receives the preliminary annual work plan from the City pursuant to Section 2.2(a)(ii) (Annual Work Plan), 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 April 30 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) Upon LACMTA's approval of a Form 60 submitted to it by the City with respect to a scope of work under Section 2.3(a) (Work Orders), LACMTA will issue a Work Order to the City for such scope of work.
- (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) The City shall accept a Work Order issued in accordance with the provisions of this Agreement promptly and without delay (and in any case within ten days of issuance by LACMTA) by counter-signing the Work Order or otherwise by written acceptance by the City Representative, followed by commencement of the work under the Work Order.

- (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 terms of this Agreement, that is not expressly authorized by a Work Order.
- (f) Except in the case of a change required due to an emergency (which notification may be given orally before being confirmed in writing within one Business Day), 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.
- (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.
- (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) (Work Orders).

#### 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 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.
- (b) If 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 then, to the extent such delay directly causes: (i) LACMTA to incur additional costs; or (ii) a delay to the WSAB Project, the City must reimburse LACMTA for all actual and documented costs and expenses incurred 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: (i) the City fails to carry out any work 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; or (ii) LACMTA reasonably determines that the City will be unable to timely complete such work, 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 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 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 terms of the applicable Work Order.



2.5 **Permits**

- (a) The Parties acknowledge that pursuant to Applicable Law, LACMTA is not subject to zoning, building or design review, or construction permitting ordinances of the City when constructing the City Portion.
- (b) Without prejudice to Section 2.5(a) (Permits):
  - (i) the City will issue a blanket Permit Notification to cover the City Portion;
  - (ii) for those permits and fees set out in the Permit Notification, the City will not exercise or otherwise attempt to assert permitting authority over, and will not require the payment of fees or the posting of bonds for or insurance by LACMTA or any LACMTA Contractor for, any work contemplated in the City Portion or otherwise under the provisions of this Agreement;
  - (iii) any processing procedures or timelines specified in the Permit Notification will be aligned with the procedures and timelines specified in this Agreement and will otherwise be streamlined as necessary to assist in the timely delivery of the City Portion in accordance with the Project Schedule; and
  - (iv) except for Cost reimbursement expressly provided under a Work Order, the City waives the payment of any permit Costs for permits identified in the Permit Notification.
- (c) To the extent any conflicts exist or arise between the provisions of the Permit Notification and the provisions of this Agreement, the provisions of this Agreement shall govern.
- (d) 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.
- (e) Without prejudice to the generality of Section 2.5(d) (Permits), the City acknowledges and agrees that unless otherwise agreed between LACMTA and the City, LACMTA may prepare, subject to concurrence by the City (which concurrence may not be unreasonably delayed or withheld), plans and applications for the establishment of street and pedestrian crossings with LACMTA's rail transit tracks, their subsequent maintenance or alteration and their operation, for submission to the CPUC. To the extent required by Applicable Law, the state fire marshal and the City fire department shall review such plans and specifications and perform inspections as needed throughout the Construction of the City Portion.

2.6 **Coordination of work**

- (a) The City will promptly notify LACMTA upon becoming aware of any proposed or planned Adjacent Work and will coordinate the design and performance of any Adjacent Work with LACMTA so that such Adjacent Work shall not interfere with, disrupt or delay the design, construction, operation or maintenance 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) delivering copies of all 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; and
  - (iii) if LACMTA reasonably determines and notifies the City that the Adjacent Work will, in whole or in part, interfere with, disrupt or delay the design, construction, operation or maintenance of the City Portion, suspending the Adjacent Work or the relevant part of the Adjacent Work (as applicable).

- (b) The City will, and will 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, operation or maintenance of the City Portion or any other part of the WSAB Project;
  - (iii) comply with LACMTA's or the relevant LACMTA Contractor's site access, track allocation/work permit procedures and work health and safety policies and procedures; and
  - (iv) promptly advise LACMTA of all matters arising out of the Adjacent Work, 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 WSAB Project.

## 2.7 Franchise Rights

- (a) After receipt of a written request from LACMTA for the City to exercise its franchise rights with respect to a utility whose facilities conflict with the City Portion, the City will:
  - (i) within ten days of receipt of such written request, coordinate with LACMTA to send written notice to the applicable utility owner instructing it to relocate or remove the conflicting utility at that utility owner's expense pursuant to the City's franchise rights;
  - (ii) within the time periods required under the applicable local, state and/or federal government codes, 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 with respect to that conflicting utility (including, at a minimum, a utility claim letter, record of investigations, draft utility agreements and/or utility certifications); and
  - (iii) undertake subsequent enforcement actions to enforce its franchise rights with respect to that conflicting utility in the event no action is taken by the applicable utility owner in response to a notice issued under Section 2.7(a) (Franchise Rights).
- (b) LACMTA and the City shall co-operate and coordinate in executing the necessary documents for each step set out in Section 2.7(a) (Franchise Rights).
- (c) Following the exercise of the City's franchise rights with respect to a conflicting utility pursuant to Section 2.7(a) (Franchise Rights), the City will coordinate the design and performance of the utility relocation or removal work performed by the utility owner with LACMTA so that such utility relocation or removal work shall not interfere with, disrupt or delay the design, construction, operation or maintenance of the City Portion including by:
  - (i) delivering copies of all designs and plans for the utility relocation or removal work to LACMTA and giving LACMTA the right to review and comment on the designs and plans for the utility relocation or removal work and to approve the final designs and plans for the utility relocation or removal work; and

- (ii) otherwise complying with Section 2.6 (Coordination of work) with respect to the coordination of the utility relocation or removal work.
- (d) LACMTA's approval of a utility owner's design under Section 2.7(c)(i) (Franchise Rights) 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 relocation or removal work performed by the utility owner or its contractors.

**2.8 Governmental and Lender Requirements**

If the WSAB Project is subject to financial assistance provided by loan agreements with the U.S. Department of Transportation, Federal Transit Administration, other Governmental Entities, and/or financial institutions providing grants, funding or financing, the Parties will comply with the terms and conditions set out in EXHIBIT 11 (Governmental and Lender Requirements) and any additional 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.

**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 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 Construction work requested to be performed by the City under Section 3.1(b) (Design Responsibilities), 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 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). 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 5 (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 6 (LACMTA Submittal Review Procedure) and otherwise in accordance with the terms 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 6 (LACMTA Submittal Review Procedure) and otherwise in accordance with the terms of this Agreement and any applicable Work Orders.
- (c) LACMTA shall be exempt from submitting any Design for Construction work within the City Rights-of-Way to the City for City's review and approval where:
  - (i) LACMTA, a LACMTA Contractor, or a tenant or licensee of LACMTA owns and maintains the 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.

**3.4 Design Development**

The Parties acknowledge and agree that:

- (a) the Basis of Design will establish the detailed scope, limits of work, specifications and requirements applicable to the Designs for any Rearrangements; and
- (b) the Design Documentation for any Rearrangements will be submitted for review progressively in Packages and:
  - (i) with respect to the Design for any Rearrangements that are part of the Enabling Works, 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; and
  - (ii) with respect to the Design for any Rearrangements that are part of the P3 Project Scope, the P3 Developer will have responsibility for defining the Packages as part of its design management plan for the P3 Project Scope.

**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, for the sole or primary purpose of affecting the WSAB Project.
- (b) The City shall promptly (and in any case within ten Business 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 shall be considered a "Betterment" for the purposes of this Agreement.

**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 6 (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 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.

#### 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) (Construction Responsibilities), 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 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). 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 City Rights-of-Way in connection with the WSAB Project shall comply with the requirements set out in EXHIBIT 7 (Construction Requirements).

##### 4.3 Rights-of-Way

- (a) Replacement rights-of-way for the relocation of Conflicting Facilities shall be determined during the Design Phase and, if needed, may be acquired by LACMTA or the City following approval by the Parties of the location and type of such replacement rights-of-way. When reasonably possible and where the City Facilities being replaced are located in a public right-of-way, a Rearrangement shall be located in existing public rights-of-way. The required rights-of-way shall be acquired so as not to impair the Project Schedule. If the City cannot acquire necessary private rights-of-way without out-of-pocket expense to itself, such private rights-of-way may be acquired by LACMTA. 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, all City real property interests being taken out of service by the Rearrangement, and for which replacement real property interests are provided.
- (b) Upon reasonable request by LACMTA, the City shall provide all such reasonable assistance as may be required for LACMTA to obtain the right-of-way necessary to construct the City Portion. Without prejudice to the generality of the foregoing, the City shall consider requests by LACMTA to convey to LACMTA, at no cost to LACMTA, any street crossings, slivers, surface easements and temporary construction easements that may be required for Construction and/or operation of the WSAB Project without requiring LACMTA to go through the appraisal, negotiations, offer, closing and transfer process. 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.
- (c) 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, and that the City shall cooperate with LACMTA, and assist LACMTA, with any right-of-way certification processes involving other entities or agencies.

- (d) If, following a Rearrangement, a City Facility is located within the Project Right-of-Way, LACMTA shall provide the City with a license, in a form reasonably acceptable to the City, to operate, maintain, and/or remove such City Facility.

#### 4.4 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 8 (Inspection and Acceptance Procedure).

### ARTICLE 5. BETTERMENTS

- 5.1 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 Potential Notice of Betterment Form for LACMTA's review and approval. In addition:
  - (a) any Design furnished by the City under a Work Order shall specifically identify any Betterments included in such Design and where Betterments are identified, shall be accompanied by a completed Potential Notice of Betterment Form and submitted for LACMTA's review and approval; and
  - (b) if a City comment to a LACMTA Submittal constitutes a Betterment, LACMTA will notify the City and within 10 days of delivery of that notice, the City will: (i) withdraw the relevant comment; or (ii) submit a request for the applicable Betterment by submitting a completed Potential Notice of Betterment Form for LACMTA's review and approval. If the City fails to respond within 10 days of a notice delivered by LACMTA under this Section 5.1(b), the comment 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 Potential Notice of Betterment under this Section 5.1.
- 5.2 Subject to Section 5.1(b) (Betterments), the City shall submit any Potential Notice of Betterment Forms to LACMTA promptly after identifying a potential Betterment and in any event shall, unless otherwise agreed by LACMTA, deliver all Potential Notice of Betterment Forms to LACMTA prior to the establishment of the Basis of Design for the P3 Project Scope.
- 5.3 No Betterment shall be constructed and LACMTA shall have the right to refuse and withhold approval for any Betterment, that:
  - (a) is incompatible with the WSAB 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 for the P3 Project Scope.
- 5.4 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 Potential Notice of Betterment Form (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.
- 5.5 LACMTA shall not be responsible for the cost of any 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 may, at any time during the original Term, issue to the City a request to extend the Term to include the Operation and Maintenance Phase or to enter into a new master cooperative agreement with respect to the Operation and Maintenance Phase.
- 6.2 Following issuance of a request by LACMTA under Section 6.1 (Operation and Maintenance), the Parties shall use good faith efforts to agree an amendment or supplement to this Agreement or to agree a new master cooperative agreement to address the Parties respective obligations during the operation and maintenance of the WSAB 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 WSAB Project.
- 6.3 The Parties agree that any amendment or supplement to this Agreement or any new agreement entered into in accordance with Section 6.2 (Operation and Maintenance) 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 WSAB Project); and
  - (b) the agreed operation and maintenance principles set out in EXHIBIT 9 (Operation and Maintenance Principles).
- 6.4 Any amendment, or supplement or new agreement agreed by the Parties in accordance with Section 6.2 (Operation and Maintenance) 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, LACMTA will only be responsible for any Costs incurred in Abandoning such City Facility and will not be required to replace or compensate the City for the replacement of that City Facility.
- (c) 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.
- (d) 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, and other data, to LACMTA upon request;

- (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, with a notation that all work covered by a given 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(d)(iv) (Reimbursements to the City), 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 30 days to submit its final invoice. If the City fails to submit an invoice within such 30 day period, then LACMTA shall have no further obligation for payment to the City with regard to any amounts due or payable under the applicable closed out Work Order.
- (e) On completion of the Construction of the City Portion, LACMTA will issue a Notice of closeout to the City. Within 90 days of receiving such Notice, the City must issue invoices to LACMTA for all outstanding work. If the City fails to submit an invoice not previously submitted within such 90 day period, then LACMTA shall have no further obligation for payment to the City with regard to any amounts due or payable under the applicable invoice.

## 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 storage and transportation costs of such materials salvaged for the City's use;
  - (ii) Betterments upon acceptance of physical work where:
    - (A) the amount of the Betterment payment shall be based upon the estimated cost of the Replacement Facility less the estimated cost of the Conflicting Facility; and
    - (B) the amount of a Betterment credit, if any, shall be a fixed amount determined by the Parties during Design Development based upon estimates provided by the City and agreed to by LACMTA under a Potential Notice of Betterment Form; 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 equal to the depreciated value of the Conflicting Facility, which value is 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 calculated in accordance with Section 7.2(a)(iii)(A) (Reimbursements and Credits to LACMTA) prior to the commencement of the applicable Rearrangement work and documented in the applicable Work Order.
- (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) 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. In addition, LACMTA and the City may conduct an inspection survey of a Conflicting Facility during the Design Development process. 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).
- (d) 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 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, with a notation that all applicable work has been performed, 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 appropriate and necessary to the performance of the applicable work and have not previously been billed or paid; and
  - (v) after the expiration of the 60 day period described in Section 7.1(d)(iv) (Reimbursements and Credits to LACMTA), 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. If LACMTA fails to submit an invoice within such 30 day period, then the City shall have no further obligation for payment to LACMTA with regard to any amounts due or payable under the applicable work.

### 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 40 Business 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 40 Business 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, representatives, and employees 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 under this Agreement.
- (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) (Indemnity). The provisions of California Civil Code Section 2778 are made a part of this Agreement as if fully set out in this Agreement.

### 8.2 Warranty

- (a) In lieu of providing a bond, LACMTA warrants that any work affecting the structural stability of City Rights-of-Way shall be free from defect for a period of two years following City acceptance. Pursuant to this warranty and for the warranty period only, LACMTA, at its sole expense, shall remedy any damage to City Rights-of-Way to the extent caused by a failure of such structural support installed by LACMTA.
- (b) 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 acceptance of the work that any work performed by them shall be free from defect. Subject to Section 8.2(a) (Warranty), the limited warranty given under this Section 8.2(b) 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.
- (c) 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
  - (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

### 9.1 Attempt to Resolve

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.

### 9.2 Arbitration – No Work Stoppage

- (a) If the Parties are unable to resolve a Dispute pursuant to Section 9.1 (Attempt to Resolve), either Party may serve the other Party a demand for arbitration. Within 15 Business Days (or such longer period as agreed by the Parties) of receipt of such demand, the Parties shall agree on a sole arbitrator. If the Parties are unable to agree to the appointment of a sole arbitrator within the 15 Business Days (or any longer period as may be agreed), each Party shall select an arbitrator and those arbitrators shall select a qualified neutral third party to arbitrate with regard to the Dispute ("**Neutral Arbitrator**") to form a three-person panel. If either Party fails to designate its arbitrator within 15 Business Days (or longer period as agreed) of delivery of the demand or if the two designated arbitrators are unable to select the Neutral Arbitrator within five days of their appointment, a Neutral Arbitrator shall be designated pursuant to Section 1281.6 of the California Code of Civil Procedure, who shall hear the matter as the sole arbitrator.
- (b) The Parties acknowledge that Section 1283.05 of the California Code of Civil Procedure is applicable to those issues not involving work stoppage. A hearing date shall be set as promptly as possible following selection of the arbitrator in accordance with Section 9.2(a) (Arbitration – No Work Stoppage). The arbitrator's award shall follow promptly the hearing's conclusion, shall be supported by law and substantial evidence and the issuance of written findings of fact and conclusions of law. The making of an award that does not comply with such requirements shall be deemed to be in excess of the arbitrator's power and the court shall vacate the award if after review it determines that the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.

### 9.3 Arbitration – Work Stoppage

- (a) In the event of a Dispute, neither Party is permitted to stop work, except: (i) for reasons of public health or safety; or (ii) where work is prevented from continuing pending resolution of the Dispute. In the event that work is stopped, the provisions of this Section 9.3 shall apply. Upon stoppage of work, either Party may serve the other Party a demand for arbitration. A Neutral Arbitrator who is able to hear the Dispute and render a decision within five days after being selected shall be immediately designated pursuant to Section 1281.6 of the California Code of Civil Procedure.
- (b) Notwithstanding Sections 1282.2(b) and Section 1282(e) of the California Code of Civil Procedure (regarding postponement of the hearing), where work is stopped, the Neutral Arbitrator may not

postpone nor adjourn the hearing except upon the agreement of the Parties. The arbitration may proceed in the absence of a Party who, after due Notice, fails to appear. In addition to all other issues, the Neutral Arbitrator shall also determine whether it was absolutely necessary to stop and await resolution of the Dispute in order to continue the work. If it is determined that the work stoppage was not necessary, the Party that did not stop the work shall be entitled to damages (as determined by the Neutral Arbitrator) arising out of such work stoppage. Section 9.2(b) (Arbitration – No Work Stoppage) shall also apply.

**9.4 Impartiality of Arbitrator**

Any person who has any material financial or personal interest in the results of the arbitration shall be prohibited from acting as Neutral Arbitrator. Failure to disclose any such interest or relation shall be grounds for vacating an award handed down under Section 9.2 (Arbitration – No Work Stoppage) or 9.3 (Arbitration – Work Stoppage).

**9.5 Compensation of the Arbitrator**

Each Party shall pay the expenses and fees of the arbitrator it selects. The expenses and fees of the Neutral Arbitrator shall be paid in accordance with the provisions of Section 1284.2 of the California Code of Civil Procedure.

**9.6 Other Provisions**

An arbitrator or panel appointed under this Article 9 shall have only the authority to issue a non-binding award to resolve the dispute of the Parties. Except as otherwise expressly provided in this Agreement, any arbitration under this Article 9 shall be governed by the California Arbitration Act.

**9.7 Incorporation of Subcontracts**

The City must ensure that any contract entered into in connection with performance of the work under this Agreement includes provisions equivalent to this Article 9.

**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. 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:**

Gilbert A. Livas, City Manager  
City of Downey  
11111 Brookshire Avenue  
Downey, CA 90241

With a copy to:

Yvette M. Abich Garcia, City Attorney  
City of Downey  
11111 Brookshire Avenue  
Downey, CA 90241

With a copy to:

Director of Public Works/ City Engineer,  
City of Downey  
11111 Brookshire Avenue  
Downey, CA 90241

**To LACMTA:**

Mr. Richard Clarke, Chief Program Manager  
Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza, 16th Floor  
Los Angeles, California 90012  
Facsimile No.: (213) 922-7382

Attn: Eduardo Cervantes or John Koo, Third Party Administration

With a copy to:

Deputy Executive Officer, Project Management  
Engineering and Construction Division  
Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza  
Los Angeles, CA 90012  
Facsimile No.: (213) 922-7447  
Attn: \_\_\_\_\_

With a copy to:

Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza, 24th Floor  
Los Angeles, CA 90012  
Facsimile No.: (213) 922-7447  
Attn: \_\_\_\_\_, Deputy County Counsel

With a copy to:

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

- (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) (Notices)). All Notices (including by email communication) delivered after **5:00 p.m. PST** will be deemed delivered on the first Business Day following delivery.

**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 terms of such waivers).

**10.7 Amendments**

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

10.8 **Governing Law and Jurisdiction**

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

10.9 **Severability**

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

10.10 **Counterparts**

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

10.11 **Limitation on Third Party Beneficiaries**

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

10.12 **Survival**

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

**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.

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

**"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, construction, operation or maintenance of the City Portion; 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:

- (a) for those Rearrangements that are identified by LACMTA as being part of the Enabling Works (either under the provisions of this Agreement or by a notice delivered under Section 1.1(f) (Scope of Agreement)), the approval (or deemed approval) by the City under the provisions of this Agreement of the 60% Design Documentation for those Rearrangements; and
- (b) for those Rearrangements that are identified by LACMTA as being part of the P3 Project Scope (either under the provisions of this Agreement or by a notice delivered under Section 1.1(f) (Scope of Agreement)), the scope, specifications and requirements (including the requirements of the final EIR/EIS) that form the basis of the request for proposal issued by LACMTA for the P3 Project Scope.

**"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 WSAB Project;
- (ii) an upgrade resulting from Design or Construction in accordance with the applicable City Standards and ordinances as set out in EXHIBIT 5 (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 WSAB Project's Final Environmental Impact Report or Statement and any supplemental environmental reports for the WSAB 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 applicable Basis of Design.

**"Business Day"** means any day that is not a Saturday, a Sunday, or a federal public holiday.

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



**"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 harbour 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 terms of this Agreement.

**"City Municipal Code"** means the Downey Municipal Code.

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

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

**"City Rights-of-Way"** means the public streets, highways, bridges, parks and other public right-of-way of the City as further defined in Section 7100.24 of the City Municipal Code.

**"City Standards"** means the City's design standards and ordinances specified in EXHIBIT 5 (Design Requirements) which govern the design of all Rearrangements.

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

- (a) the LACMTA Submittal or Design work or Construction work that is the subject of the LACMTA Submittal fails to comply with (or is reasonably likely to fail to comply if implemented in accordance with the LACMTA Submittal) any applicable covenant, condition, requirement, term or provision of this Agreement; or
- (b) LACMTA (or the relevant LACMTA Contractor (as applicable)) has not provided all content or information required with respect to the LACMTA Submittal.

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

**"Construction"** means all construction activities related to the City Portion that are necessary to complete and operate and maintain the WSAB 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 WSAB Project identified as such in EXHIBIT 2 (Project Phases and Project Schedule).

**"Construction Staging Plan"** has the meaning given in EXHIBIT 7 (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 includes 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.

**"CPUC"** means the California Public Utilities Commission.

**"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 WSAB 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.

**"EIR/EIS"** means the Environmental Impact Report/Environmental Impact Statement for the WSAB Project completed pursuant to the California Environmental Quality Act and National Environmental Policy Act.

**"Enabling Works"** means those elements of the WSAB Project scope that LACMTA intends to procure under separate contract package(s) to the P3 Project Scope, as described in Part B of EXHIBIT 1 (Project Description).

**"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 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'.

**"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 10 (Forms).

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

**"LACMTA Retained Scope"** means the WSAB Project scope elements for which LACMTA intends to retain responsibility, as described in Part B of EXHIBIT 1 (Project Description).

**"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 City Rights-of-Way; and
- (c) any other documents which LACMTA (or the LACMTA Contractors) must submit to the City in accordance with this Agreement.

**"Neutral Arbitrator"** is defined in Section 9.2(a) (Resolution of Disputes).

**"Non-conforming Work"** means Design work or Construction work not in accordance with the requirements of this Agreement.

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

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

**"P3 Developer"** means the LACMTA Contractor that is awarded the P3 Project Scope.

**"P3 Project Scope"** means those elements of the WSAB Project scope that LACMTA intends to procure under a design, build, finance, operate and maintain agreement, as described in Part B of EXHIBIT 1 (Project Description).

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

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

**"Permit Notification"** means a blanket Permitting Process and Waiver of Certain Permit Fees issued by the City.

**"Planning and Procurement Phase"** means the phase of the WSAB Project identified as such in EXHIBIT 2 (Project Phases and Project Schedule).

**"Potential Notice of Betterment Form"** means the form set out in Part B of EXHIBIT 10 (Forms).

**"Project Right-of-Way"** means the permanent right-of-way for the WSAB Project, as identified in Part A of EXHIBIT 3 (Project Site).

**"Project Schedule"** means the schedule for the WSAB Project including the City Portion set out in Part B of EXHIBIT 2 (Project Phases and Project Schedule).

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

**"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 and the City mutually agree is necessary in order to construct, operate or maintain the WSAB Project; or
- (b) the installation of new and required City Facilities which LACMTA and the City mutually agree is necessary as a result of the impact of the construction, operation or maintenance of the WSAB 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.

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

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

**"Traffic Control and Lighting Work"** has the meaning given in EXHIBIT 5 (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.

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

**"Working Group"** means each working group established pursuant to Section 2.1(c) (Governance).

**"WSAB Project"** means the design, construction, operation and maintenance of a light rail transit system known as the West Santa Ana Branch Transit Corridor, as more fully described in EXHIBIT 1 (Project Description).

## 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;
  - (ix) an obligation to do something "promptly" means an obligation to do so as soon as the circumstances permit, avoiding any delay; and
  - (x) in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" mean "to and including".
- (b) This Agreement is not to be interpreted or construed against the interests of a Party merely because that Party proposed this Agreement or some provision of it, or because that Party relies on a provision of this Agreement to protect itself.

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

APPROVED AS TO FORM

MARY C. WICKHAM,  
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

YVETTE M. ABICH GARCIA,  
City Attorney

By: \_\_\_\_\_  
Yvette M. Abich Garcia  
City Attorney

"CITY"

THE CITY OF DOWNEY,  
a California municipal corporation

By: \_\_\_\_\_  
Name: Gilbert A. Livas  
Its: City Manager

ATTEST

By: \_\_\_\_\_  
City Clerk

**EXHIBIT 1 – PROJECT DESCRIPTION**

**Part A: WSAB Project**

The WSAB Project is a new 19-mile light rail transit (LRT) line that will connect southeast LA County to downtown Los Angeles, serving the cities and communities of Artesia, Cerritos, Bellflower, Paramount, Downey, South Gate, Cudahy, Bell, Huntington Park, Vernon, unincorporated Florence-Graham community of LA County and downtown Los Angeles. The project area is home to 1.2 million residents and is a job center to approximately 584,000 employees. Projections show the resident population increasing to 1.5 million and jobs increasing to 670,000 by 2040. Population and employment densities are five times higher than the LA County average. This rail corridor is anticipated to serve commuters in a high travel demand corridor by providing relief to the limited transportation systems currently available to these communities. In addition, the project is expected to provide a direct connection to the Metro Green Line, Metro Blue Line and the LA County regional transit network. The WSAB Project involves a shared corridor of approximately 10 miles of freight-owned ROW that runs along the Wilmington and La Habra Branches (owned by Union Pacific Railroad, UPRR) and the San Pedro Subdivision (owned by the Ports of LA and Long Beach).

The main goals of the WSAB Project are to:

1. Provide mobility improvements
2. Support local and regional land use plans and policies
3. Minimize environmental impacts
4. Ensure cost effectiveness and financial feasibility
5. Promote equity

**Part B: Anticipated Contractual Packages**

As at the date of this Agreement, the Enabling Works, P3 Project Scope and LACMTA Retained Scope are anticipated to comprise of the following scope elements:

Enabling Works	LACMTA Retained Scope	P3 Project Scope
<ul style="list-style-type: none"> <li>• Advanced utility relocation</li> <li>• Freight relocation</li> <li>• Grade crossings                             <ul style="list-style-type: none"> <li>- Civil and Striping</li> <li>- Drainage</li> <li>- Utilities</li> <li>- Traffic Control</li> <li>- Signal (Freight Preemption only)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Right-of-way acquisition</li> <li>• Supply and installation of fare collection equipment and all fare collection activities</li> <li>• Security and enforcement activities, with limited exceptions (such as at maintenance storage facilities)</li> <li>• Art installation</li> <li>• Bike hubs and/or lockers</li> <li>• Environmental site assessment including identification of potential or existing contamination or hazardous materials through soil borings</li> </ul>	<ul style="list-style-type: none"> <li>• Design and construction of the WSAB Project (including all stations, vehicles, light rail track, systems and maintenance storage facilities), other than those scope elements that are defined as part of the Enabling Works or that are LACMTA Retained Scope</li> <li>• The operation of all train services and performance of all other operating functions for the WSAB Project during the term of the LACMTA Contract with the P3 Developer, other than those scope elements that are LACMTA Retained Scope</li> </ul>

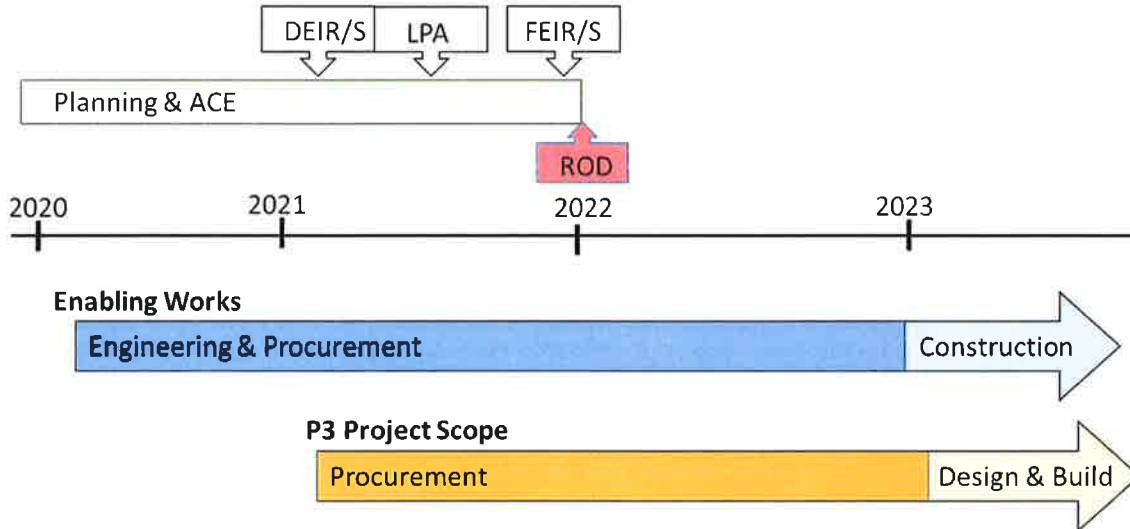


	<p>and review of publicly available information</p> <ul style="list-style-type: none"><li>• Geotechnical investigations</li><li>• Remediation of hazardous materials (if any)</li></ul>	<ul style="list-style-type: none"><li>• All asset management and maintenance activities for the WSAB Project during the term of the LACMTA Contract with the P3 Developer, other than those scope elements that are LACMTA Retained Scope</li></ul>
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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 early phasing 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	Key activities include: <ul style="list-style-type: none"> <li>• Preparation of the draft EIR/EIS and the final EIR/EIS</li> <li>• Approval by LACMTA Board of the locally preferred alternative (LPA)</li> <li>• Preparation of Advanced Conceptual Engineering (15%) for the WSAB Project</li> <li>• Certification of the final EIR by the LACMTA Board</li> <li>• FTA issuance of the Record of Decision</li> <li>• Preparation of the Mitigation Monitoring and Reporting Plan (MMRP)</li> </ul>
Enabling Engineering & Procurement	Works: Key activities include: <ul style="list-style-type: none"> <li>• Engineering and Design Development for the Enabling Works by LACMTA and the LACMTA Contractors (including any Rearrangements included within that Enabling Works scope) through to Final Design</li> <li>• Working with third parties to obtain third party approvals for the Enabling Works, including CPUC, United Pacific Railroad and Caltrans</li> <li>• Procurement of LACMTA Contractor(s) to perform the Enabling Works</li> </ul>
Enabling Construction	Works: Key activities include: <ul style="list-style-type: none"> <li>• Construction of Enabling Works (including any related Rearrangements)</li> </ul>

PHASE	KEY ACTIVITIES
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P3 Project Procurement	<p>Scope: Key activities include:</p> <ul style="list-style-type: none"> <li>• Definition of the scope, specifications and requirements for the P3 Project Scope</li> <li>• Procurement of the P3 Developer to perform the P3 Project Scope (a two-stage procurement process including a request for qualifications and a request for proposal phase is anticipated)</li> </ul>
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P3 Project Design Build	<p>Scope: Key activities include:</p> <ul style="list-style-type: none"> <li>• Design Development for the P3 Project Scope by the selected P3 Developer through to Final Design</li> <li>• Construction of the P3 Project Scope (including any related Rearrangements) by the P3 Developer</li> <li>• Performance of any LACMTA Retained Responsibilities by LACMTA</li> <li>• Testing, trial running and certification of revenue service availability</li> </ul>
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Operation and Maintenance	<p>Key activities include:</p> <ul style="list-style-type: none"> <li>• Operation of passenger service on the WSAB Project by the P3 Developer</li> <li>• Maintenance of the WSAB Project by the P3 Developer</li> <li>• Performance of any LACMTA Retained Responsibilities by LACMTA</li> </ul>
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**Part B: Project Schedule**

*[Latest Project Schedule to be inserted prior to execution]*

EXHIBIT 3 – PROJECT SITE

Part A: WSAB Project Site



Part B: City Portion

[Map of the location of the City Portion to be inserted prior to execution]

**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:

<b>LACMTA Representative</b>	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
<b>City Representative</b>	City Manager or his/her designee

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

Phase	LACMTA		City
	LACMTA Retained	P3 Developer	
<b>General</b>	Performing its retained obligations and ensuring that the LACMTA Contractors (including the P3 Developer) comply with the provisions of this Agreement	During the term of its LACMTA Contract with LACMTA, performing LACMTA's responsibilities under this Agreement other than Cost reimbursement and those obligations specifically retained by LACMTA and excluded from the P3 Project Scope	Performing all of City's obligations under this Agreement and ensuring that all City Contractors comply with the provisions of this Agreement
<b>Planning and Advanced Conceptual Engineering</b>	Managing the planning process and preparing all environmental documents including the EIR/EIS  Preparing Advanced Conceptual Engineering for the WSAB Project	Not applicable	Providing support and assistance to LACMTA in obtaining Governmental Approvals and in dealing with other third parties with respect to the City Portion
<b>Enabling Works: Engineering &amp; Procurement</b>	Preparing and submitting the Design for Enabling Works to the City to the extent required by this Agreement, up to and including Final Design stage  Preparing the procurement documents and managing the procurement for the Enabling Works	Not applicable	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

Phase	LACMTA		City
	LACMTA Retained	P3 Developer	
<b>Enabling Works: Construction</b>	Monitoring progress and performance of the LACMTA Contractor(s) responsible for Enabling Works	Interfacing and coordinating with the LACMTA Contractor(s) responsible for the Enabling Works	Performing its Construction-related obligations under any Work Orders  Coordinating Adjacent Work, City Construction Work and City Maintenance Work
<b>P3 Project Scope: Procurement</b>	Preparing the procurement documents and managing the procurement for the P3 Project Scope	Submitting its proposal in accordance with the procurement documents	To the extent requested by LACMTA, reviewing the scope, specifications and requirements for any Rearrangements included within the P3 Project Scope
<b>P3 Project Scope: Design Build</b>	<p>Reviewing Designs prepared by the P3 Developer and ensuring that such Designs are submitted to the City to the extent required by this Agreement</p> <p>Performing and/ or ensuring that LACMTA Contractors perform the LACMTA Retained Scope</p> <p>Monitoring progress and performance of the P3 Developer's Construction work</p>	<p>Defining its design management plan for the design of the P3 Project Scope</p> <p>Submitting Design Packages in accordance with the terms of its LACMTA Contract with LACMTA and its design management plan, and submitting such Designs to the City to the extent required by this Agreement, up to and including Final Design stage</p> <p>Performing the Construction work required to be performed under the P3 Project Scope in accordance with the Final Designs, approved plans, the provisions of its LACMTA Contract for the P3 Project Scope and the provisions of this Agreement</p>	<p>Reviewing and approving Designs submitted to it in accordance with agreed procedures</p> <p>Performing any other Design-related obligations under any Work Orders</p> <p>Performing its Construction-related obligations under any Work Orders</p> <p>Coordinating Adjacent Work, City Construction Work and City Maintenance Work</p>
<b>Operation and Maintenance</b>	<p>Performing or ensuring that LACMTA Contractors perform, the LACMTA Retained Scope</p> <p>Monitoring performance of the P3 Developer's operation and maintenance work</p>	Performing the operation and maintenance work required to be performed under the P3 Project Scope in accordance with the approved plans, the provisions of its LACMTA Contract for the P3 Project Scope and the provisions of this Agreement (including any amendment or supplement or new agreement entered into	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

Phase	LACMTA		City
	LACMTA Retained	P3 Developer	
		under <u>Article 6 (Operation and Maintenance)</u>	work and Adjacent Work with LACMTA and the P3 Developer

**Part C: Issue Resolution Ladder**

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, or Designated Project Manager	Spearhead council approval of all work outside of normal working hours including any night work variances, holiday work restrictions, police & fire department requests, peak hours exemptions, and other requests with potential short-term impacts to the community (i.e. revised detours, temporary full street closures, revised haul routes)	LACMTA Chief Program Manager
Director of Public Works, City Engineer, or Designated PE Representative	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	LACMTA Senior Executive Officer over Designated Project Manager
City Public Works Construction Department Head or Designated Construction Administration Representative	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 where LACMTA performs work within City Right-of-Way such as street improvement, signal, lighting, and utility work.	LACMTA Designated Project Manager level (Executive Officer or Deputy Executive Officer) or Designated Construction Manager (Deputy Executive Officer or Senior Director)
City Public Works Permit Division Head or Designated Representative	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 CM, and LACMTA Third Party Admin Dept Project Lead (Civil)

City Traffic Engineer or Designated TE Representative	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, lighting, etc. )	LACMTA Designated Project Engineer (Deputy Executive Officer or Senior Director levels), consultant CM, LACMTA Third Party Admin Dept Project Lead (Civil) and TE consultants.
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## EXHIBIT 5 – 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 5 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 the following comprise the "**City Standards**" for the purposes of this Agreement:

- (a) *[To agree with the City and insert prior to execution]*

### 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. 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.
- 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 City Rights-of-Way must be removed to accommodate the WSAB 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 effect the removal of such projections, or if LACMTA otherwise elects, LACMTA will make its own arrangements for removal of such projections. The City will cooperate with LACMTA to minimize the cost to eliminate, move, remove or otherwise terminate projections.
- 3.5 **City Communications Facilities.** The relocation of any conflicting underground City communications facilities shall be done by employing intercept-style manholes at both ends of every conflicting communications conduit segment in question, directly on the alignment of existing conduit segment(s), and beyond the area of the conflicting communications facilities.

### 4. PREPARATION AND SUBMISSION OF DESIGN DOCUMENTATION

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

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

- (i) in Packages in accordance with the schedule under the applicable design management plan defined by LACMTA and/or the applicable LACMTA Contractor and notified to the City (as may be updated and notified to the City from time to time); and
  - (ii) in a manner and at a rate which, having regard to the quantum of Design Documentation submitted, will give the City a reasonable opportunity to review the submitted Design Documentation;
- (b) ensure that the Design Documentation submitted for the Final Design is of a level of detail which is sufficient to permit the City to determine whether the Design Documentation complies with this Agreement and the Construction work which will be performed in accordance with the Design Documentation will comply with this Agreement and highlights any material amendments made since any earlier submittal of that Design Documentation;
- (c) invite the City to attend any pre-submittal workshops held where Design Documentation for a Rearrangement is to be presented; and
- (d) if reasonably requested by the City, make available the appropriate design personnel to participate in design review meetings after submittal of any Design Documentation for a Rearrangement to explain the Design Documentation or a particular element of it and provide such information regarding the Design Documentation as the City may reasonably request.

## EXHIBIT 6 – 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 be consistent throughout the Design Phase and any new individuals proposed to undertake Design review during the reviews of ongoing Packages shall be subject to LACMTA's approval.
- 1.2 The procedures set out in this EXHIBIT 6 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 ten days of receipt of a LACMTA Submittal from LACMTA or a LACMTA Contractor if it considers (acting reasonably) 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 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 (provided by LACMTA) and shall be accompanied by an annotated LACMTA Submittal (if applicable).
- 2.4 If no comments are received within the LACMTA Submittal Review Period, 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 6 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 6 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 6, LACMTA must (or must require that the relevant LACMTA Contractor):
- (a) address the Compliance Comments and re-submit the LACMTA Submittal for review; or
  - (b) notify the City that it does not agree with the grounds for rejection. If LACMTA does not agree with the grounds for rejection on the basis that such grounds would constitute a Betterment, Article 5 (Betterments) of this Agreement shall apply.

- 3.3 The City agrees that during the Final Design stage, it shall not raise any new issues, or make any comments, which are inconsistent with its comments on earlier submittals, or with any changes already agreed to by the City.
- 3.4 The City's approval of the Final Design for any Rearrangement will not be withheld if the submittal is consistent with the most recent earlier submittal for such Rearrangement, modified as appropriate to respond to the City's Compliance Comments on such earlier submittal (to the extent such comments were made in accordance with the provisions of this Agreement) and to reflect any subsequent changes agreed to by the City and LACMTA.

4. **NO COMMENCEMENT OF CONSTRUCTION WORK**

LACMTA and the City must not commence or permit the commencement of any Construction work that is the subject of, governed by or dependent upon a LACMTA Submittal until LACMTA (or a LACMTA Contractor) has submitted the relevant LACMTA Submittal to the City in accordance with this EXHIBIT 6 and:

- (a) within five Business 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, 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 7 – CONSTRUCTION REQUIREMENTS

### 1. GENERAL REQUIREMENTS

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

- (a) in the case of any Rearrangements, the approved Final Design (including any changes agreed under Section 3.6 (Changes to Design) of this Agreement;
- (b) all Governmental Approvals, Applicable Law and, subject to Section 3.5 (City Standards) of this Agreement, the City Standards;
- (c) the schedule for such Construction work agreed under the relevant Work Order (if applicable) or otherwise under the Project Schedule; and
- (d) all other Construction requirements set out in this EXHIBIT 7 or otherwise under the provisions of this Agreement and any relevant Work Order (if applicable).

### 2. EXTENDED WORKING HOURS

The Parties acknowledge that extended working hours (beyond the windows contemplated in the City's ordinances limiting work hours and including holiday or weekend working) may be necessary to facilitate Construction and operation of the City Portion. The Parties will agree such working hours following joint review of the schedule and activities to be carried out by LACMTA and the LACMTA Contractors. If a change is required to the agreed working hours, the Parties will negotiate in good faith to agree such change.

### 3. HAULAGE ROUTES

The Parties will agree haulage routes reasonably necessary to facilitate Construction and operation of the City Portion. If a change is required to an agreed haulage route, the Parties will negotiate in good faith to agree such change.

### 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 City Rights-of-Way.
- (b) The City acknowledges that the Construction work to be performed by LACMTA or the LACMTA Contractors within the City Rights-of-Way is intended to be performed progressively under multiple contractual packages and the Construction Staging Plans described in this EXHIBIT 7 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 and pedestrian 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 and vehicular traffic as described in the worksite traffic control plans;
  - (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 and vehicular 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 night time of vehicular and pedestrian 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 other the City Rights-of-Way shall be temporarily or permanently closed for the necessity and convenience of the WSAB 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) WATCH Manual page references shall be acceptable as a form of traffic control plans and submittal.
- (c) The City's traffic department 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.

**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 6 (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 6 (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 6 (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 other the City Rights-of-Way. Accordingly, LACMTA shall give the City ten days' advance written Notice where Construction work is to be performed in the City Rights-of-Way.
- (b) LACMTA and the LACMTA Contractors shall take all appropriate actions to ensure safe performance of the Construction work within the City 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 City 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 AND PERMANENT STREET CLOSURES**

Upon notification of a proposed temporary or permanent street closure, the City, as requested by LACMTA, shall initiate the appropriate proceedings and shall establish the necessary conditions for the closures.

8. **TEMPORARY FACILITIES**

8.1 **LACMTA Facilities**

Temporary Facilities may be necessary to facilitate Construction of the WSAB Project (including Rearrangements). LACMTA or its designee may use, without cost, lands owned or controlled by the City for any Construction related purpose, including, but not limited to, 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.

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 10 Business 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 60 Business 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 8 – INSPECTION AND ACCEPTANCE PROCEDURE**

**1. INSPECTION DURING CONSTRUCTION**

- 1.1 Each Party shall give the other Party at least ten days' Notice prior to commencing a Rearrangement for which it is responsible to enable such other Party to make arrangements for inspection of such work.
- 1.2 Any Construction of Rearrangements performed by LACMTA (directly or through the LACMTA Contractors) under this Agreement shall be subject to inspection and final acceptance by the City provided that any such inspection carried out by the City shall be solely for the purposes of assessing whether the Construction work conforms with, subject to Section 3.5 (City Standards) of this Agreement, the City Standards. Such inspection services shall be authorized by LACMTA under a Work Order issued in accordance with Section 2.3 (Work Orders) of this Agreement. If City inspection services are authorized under a Work Order, the City shall:
  - (a) provide inspectors at LACMTA's cost as needed to comply with the schedule for such inspections set out in the Work Order;
  - (b) cooperate and coordinate with the LACMTA Representative and the LACMTA Contractors to observe and inspect any Rearrangements or new City Facilities so that upon completion of Construction, the City will have a basis for acceptance of the work;
  - (c) ensure that all City inspectors submit copies of daily written inspection reports to LACMTA, each within 48 hours after such inspection; and
  - (d) remove and replace any inspector five Business Days after LACMTA's reasonable written request.
- 1.3 Any Construction work performed by the City or a City Contractor pursuant to a Work Order agreed under the provisions of this Agreement shall be subject to LACMTA inspection and final acceptance.
- 1.4 If, in carrying out an inspection, a Party identifies Non-conforming Work, the Party must provide the other Party with immediate Notice with detailed reasons (and in any event, no later than 24 hours from discovery). The Party that performed the relevant work must rectify any Non-conforming Work.
- 1.5 The City shall not have any inspection rights with respect to any structures or physical elements that are owned and maintained by LACMTA, a LACMTA Contractor, or a tenant or licensee of LACMTA.

**2. ACCEPTANCE PROCEDURE**

- 2.1 Promptly following completion of any Rearrangement, the Party that performed the Construction shall notify the other Party that the Rearrangement is ready for final inspection.
- 2.2 The final inspection shall be carried out within seven Business Days of receipt of a Notice under Section 2.1 (Acceptance Procedure) and within three Business Days of the completion of the final inspection, the inspecting Party shall notify the other Party of any Non-conforming Work. If no Notice is received, the relevant work will be deemed accepted by the inspecting Party.
- 2.3 The City shall accept all Rearrangements that are in conformance with the City Standards.

**3. INDEPENDENT ENGINEER**

The City acknowledges and agrees that LACMTA may delegate its inspection and acceptance rights under this EXHIBIT 8 to an independent engineer appointed under the terms of any LACMTA Contract.

## EXHIBIT 9 – OPERATION AND MAINTENANCE PRINCIPLES

### 1. PRIMARY RESPONSIBILITIES

- 1.1 LACMTA (directly or through the LACMTA Contractors, including in particular the P3 Developer) will be responsible for the operation and maintenance of the WSAB Project including the City Portion (and including maintenance of any low impact development water and storm drain mitigation measures constructed outside of the City Rights-of-Way as part of the WSAB Project and on the Project Site or otherwise on a Metro-owned right of way).
- 1.2 The City (directly or through the City Contractors) will be responsible for:
- (a) the maintenance of all City Facilities within the City 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;
  - (b) operation of the traffic signal system within the jurisdiction and control of the City; and
  - (c) maintenance of all low impact development water and storm drain mitigation measures constructed within the City Rights-of-Way.

### 2. TRAFFIC SIGNALS

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.

### 3. MAINTENANCE OF THE CITY PORTION

LACMTA shall obtain appropriate permits from the City when performing maintenance work on or near the City streets 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 to 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.

### 4. UTILITY CONTRACTS

In the event the City enters into a contract with private utility companies such as Southern California Edison for the provision of electricity and/or the applicable water district for the provision of water supply in connection with the WSAB Project, LACMTA shall similarly procure separate license and cooperative agreements with such private utilities. Further, if the City owns and operates its own "power" department and the WSAB Project draws electricity from this source, then such agreements shall include a "power restoration" priority provision regarding outages resulting from emergencies whereby the WSAB Project and future operations shall be provided with the highest level priority consistent with other state-wide designated essential facilities.

EXHIBIT 10 – 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.	<b>Direct Labor</b>	<b>Est. Hours</b>	<b>Rate Per Hour</b>	<b>Est. Cost</b>	<b>TOTAL</b>
2.		0.00	\$0.00	\$0.00	
3.		0.00	\$0.00	\$0.00	
4.		0.00	\$0.00	\$0.00	
5.	<b>TOTAL DIRECT LABOR HOURS</b>	<b>0.00</b>		<b>TOTAL DIRECT LABOR</b>	<b>\$0.00</b>
6.	<b>Labor Overhead (O/H)</b>	<b>O/H Rate</b>	<b>x Base</b>	<b>Est. Cost</b>	
7.		0%		\$0.00	
8.				<b>TOTAL LABOR OVERHEAD</b>	<b>\$0.00</b>
9.	<b>Direct Material</b>			<b>Est. Cost</b>	
10.	<b>a. Purchase Parts</b>			\$0.00	
11.	<b>b. Subcontracted items</b>			\$0.00	
12.	<b>c. Other</b>			\$0.00	
13.				<b>TOTAL DIRECT MATERIAL</b>	<b>\$0.00</b>
14.	<b>Equipment</b>		<b>Unit Cost</b>	<b>Est. Cost</b>	
15.			\$0.00	\$0.00	
16.			\$0.00	\$0.00	
17.				<b>TOTAL EQUIPMENT</b>	<b>\$0.00</b>
18.	<b>Subcontractors*</b>			<b>Est. Cost</b>	
19.				\$0.00	
20.				\$0.00	
21.				\$0.00	
22.				<b>TOTAL SUBCONTRACTORS</b>	<b>\$0.00</b>
23.				<b>TOTAL BURDENED COST (add lines 5, 8, 13, 17 and 22)</b>	<b>\$0.00</b>
24.	<b>Other Direct Costs</b>			<b>Est. Cost</b>	
25.				\$0.00	
26.				\$0.00	
27.				\$0.00	
28.				<b>TOTAL OTHER DIRECT COSTS</b>	<b>\$0.00</b>
29.	<b>Travel</b>			<b>Est. Cost</b>	
30.	<b>a. Transportation</b>			\$0.00	
31.	<b>b. Per Diem or Subsistence</b>			\$0.00	
32.				<b>TOTAL TRAVEL</b>	<b>\$0.00</b>
33.	<b>General and Administrative Expense</b>	<b>Rate %</b>	<b>% x Line 23</b>		
34.		0%		\$0.00	
35.				<b>TOTAL GENERAL AND ADMINISTRATIVE EXPENSE</b>	<b>\$0.00</b>
36.				<b>TOTAL ESTIMATED COSTS (Total Lines 23, 28, 32 and 35)</b>	<b>\$0.00</b>
37.	<b>Profit/Fee</b>	<b>Total Labor and Overhead (line 5 + line 8)</b>	<b>Rate %</b>	<b>% x Total Labor and Overhead</b>	
38.			0%	\$0.00	
39.				<b>TOTAL FEE</b>	<b>\$0.00</b>
40.				<b>TOTAL ESTIMATED PRICE (Total of Lines 36 and 39)</b>	<b>\$0.00</b>

41.	Milestone /Task Number	Milestones/Tasks	Hours	Completion Date	Payment Amount		
42.					\$0.00		
43.					\$0.00		
44.					\$0.00		
45.	<b>TOTAL MILESTONES/TASKS (Must equal line 40)</b>					<b>\$0.00</b>	
* 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.							
<b>51. CERTIFICATE</b>							
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.							
<b>52. CERTIFICATE OF CURRENT COST OR PRICING DATA</b>							
This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in Section 2.101 of the Federal Acquisition Regulations (FAR) and required under subsection 15.403-4) submitted, either actually or by specific identification in writing, to LACMTA's Contracting Officer or to LACMTA's Contracting Officer's representative in support of _____* are accurate, complete and current as of _____**. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the Proposer/Consultant/Contractor and LACMTA that are a part of the proposal.							
53. This proposal as submitted represents our best estimates and/or actual costs as of this date.							
54. Type Name and Title of Authorized Representative				Signature		Date***	
55.		* Identify the proposal, quotation, request for price adjustment, or other submission involved, giving appropriate identifying number (e.g. Information For Bid No., Work Order No., Request for Proposal No., Change Order No., Modification No., etc.)					
56.		** Insert the day, month and year when price negotiations were concluded and price agreement was reached.					
57.		*** Insert the day, month and year of signing (i.e., When price negotiations were concluded and mutual agreement was reached on contract price).					
Form 60 Attachments (Applicable if Box is checked)							
Scope of Work Expanded Description for which Cost Estimate is based on:							
1							
2							
3							

4	
	Schedule in which Scope of Work is based on:
1	
2	
3	
4	
	Non-Disclosure Agreement (NDA) Provisions as noted in Master Cooperative Agreement (MCA) Exhibit B is applicable which the following Form 60-specific items:
1	
2	
3	
4	
	Track Allocation Request for Metro active rail 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: LACMTA “Potential Notice of Betterment” Form**

The Word file of the latest version of this form is available upon request from LACMTA's assigned Third Party Administration (TPA) Representative.

Alternatively, a written memorandum on City's letterhead may be submitted to the TPA Representative with the following required information:

1. Scope: Describe in detail with reference to applicable sections of this Master Cooperative Agreement, City Standards, and Applicable Law including any relevant codes.

Note the following common reasons for denial:

- (a) Scope is not per agreed City Standards or a legal requirement.
  - (b) Scope added after establishment of the applicable Basis of Design.
  - (c) Scope is not endorsed by LACMTA as a WSAB Project requirement.
  - (d) Scope is not identified in the EIR or amendments.
2. Detailed Justification: Why does City believe the scope is not a Betterment? Cite specific prior cases, exceptions under Applicable Law including any relevant codes, project-specific reasons, etc.
  3. Cost Estimate: Use Metro Form 60 to provide a detailed cost breakdown as proposed for the Betterment in question.
  4. City's Agreement: City agrees that scope is a Betterment and provides separate funding. The source of funds must be specified, City approved financial documents supporting validity and timing of funds must be provided, and a determination regarding whether City will commit to provide adequate front funding for cash-flow must be made.
  5. Signatures: The form shall provide a signature block with 2 signatures from City Representatives agreeing to the information provided.
  6. LACMTA Signatures: The form signature block area shall provide for LACMTA to countersign with 2 LACMTA Representative signatures with checkboxes indicating whether the Betterment proposal is denied or approved.

**EXHIBIT 11 – GOVERNMENTAL AND LENDER REQUIREMENTS**

**1. AUDIT AND INSPECTION**

The City shall comply with all financial record keeping, reporting and such other requirements as may be imposed as a condition to or requirement of funding obtained by LACMTA from third parties (provided that LACMTA gives reasonable Notice of such requirements to the City). The City shall permit the authorized representatives of LACMTA, the U.S. Department of Transportation, the Comptroller General of the United States, any other government agency, and/or financial institution providing funding or oversight on the WSAB Project to inspect, audit and copy, during normal business hours and upon reasonable notice, all cost and other relevant records relating to performance by the City, its contractors and subcontractors under any Work Order issued to the City for the WSAB Project or Rearrangements of the City Facilities related thereto, from the date of this Agreement through and until not less than three years after the date of termination or expiration of this Agreement, except (a) in the event of litigation or settlement of claims arising from performance of this Agreement, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto, and (b) such later date as is required by the rules and regulations of any such government agency or financial institution (provided LACMTA gives reasonable Notice of such later date to the City). Examination of a document or record on one occasion shall not preclude further examination of such document or record on subsequent occasions. By providing any of its records for examination pursuant to this EXHIBIT 11, the City represents and warrants that such records are accurate and complete. The City further agrees to permit the Federal Transit Administration and its contractors access to sites of performance under this Agreement as reasonably may be required. The City shall insert into any contracts it enters into for the performance of work hereunder the above requirements and also a clause requiring the contractors (or consultants) to include the above requirements in any subcontracts or purchase orders. In the case of such contractors, consultants, subcontractors and suppliers, any records subject to the above requirements shall include, without limitation, any relevant records as to which a tax privilege might otherwise be asserted.

**2. INTEREST OF MEMBERS OF CONGRESS**

No members of or delegates to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

**3. PROHIBITED INTERESTS**

No member, officer or employee of LACMTA, or of a local public body, during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. To LACMTA's and the City's knowledge, no board member, officer or employee of LACMTA has any interest, whether contractual, non-contractual, financial or otherwise in this transaction, or in the business of the City; and if any such interest comes to the knowledge of either Party at any time, a full and complete disclosure of all such information will be made in writing to the other Party, even if such interest would not be considered a conflict under Article 4 of Division 4 (commencing with Section 1090) or Division 4.5 (commencing with Section 3690) of the Government Code of the State of California.

**4. EQUAL EMPLOYMENT OPPORTUNITY**

In connection with the performance of this Agreement, the Parties shall not discriminate against any employee or applicant for employment because of age, race, religion, color, sex, sexual orientation, national origin or disability. The Parties shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their age, race, religion, color, sex, sexual orientation, national origin, or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

5. **DISADVANTAGED BUSINESS ENTERPRISE**

In connection with the performance of this Agreement, the City will cooperate with LACMTA in meeting all applicable federal regulations with regard to the maximum utilization of disadvantaged business enterprises, and will use its best efforts to ensure that disadvantaged business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this Agreement.

6. **PRIOR APPROVAL**

This Agreement and all amendments thereto are subject to U.S. Department of Transportation, Federal Transit Administration review and approval.

7. **NON-DISCRIMINATION**

Without limiting any other provision of this EXHIBIT 11, the City agrees to comply, and to cause all of its contractors who work on projects subject to this Agreement to comply, with all applicable non-discrimination laws, rules and regulations, whether imposed by federal, state or local authority.

8. **BUY AMERICA**

If the City performs any City Construction Work under a Work Order, the City must comply with 49 U.S.C. 5323(j) and 49 CFR Part 661 et seq., which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. If the City performs any City Construction Work under a Work Order, the City shall incorporate the Buy America conditions set forth in every contract or purchase order entered into with a City Contractor in respect of such City Construction Work and shall enforce such conditions.