ITEM # 15

CITY OF MONTEBELLO
CITY COUNCIL AGENDA STAFF REPORT

TO: Honorable Mayor and City Council Members

FROM: Raul Alvarez, City Manager

BY: Cesar Roldan, Director of Public Works

SUBJECT: **APPROVE RESOLUTION NO. 24-84 EASTSIDE TRANSIT CORRIDOR PHASE 2 PROJECT ("ESP2 PROJECT") COOPERATIVE AGREEMENT WITH THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY ("LACMTA")**

DATE: November 13, 2024

RECOMMENDATIONS:

It is recommended that the City Council:

1. Adopt Resolution No. 24-84, approving the cooperative agreement (MCA) by and between the City of Montebello (City) and LACMTA related to the ESP2 Project; and
2. Authorize the City Manager to execute the cooperative agreement; and
3. Take such additional, related action that may be desirable.

FISCAL IMPACT:

There is no fiscal impact associated with the execution of this specific agreement. LACMTA Measure "M" guidelines reflect provisions adopted by the LACMTA Board (including Motion 14.2 (1026-0451) passed on May 26, 2016) that allow for local jurisdictions, through an agreement with LACMTA, to meet all or portion of their 3% Contribution obligation through first/last mile investments (known as the 3% Local Funding Contribution Credit"). This MCA does not address, and is not intended to address, any terms and conditions with respect to any 3% Contribution for the ESP2 Project by the City nor any 3% Local Funding Contribution Credit for first/last mile investments. Any terms related to the City's 3% Contribution, 3% Local Funding Contribution Credit, or any other in-kind contributions, will be discussed, negotiated, and agreed by LACMTA and the City under a separate agreement.

BACKGROUND/DISCUSSION:

The ESP2 Project intends to expand the Metro E Line, a light rail transit line, from its current terminus at the Atlantic Station in the unincorporated community of East Los Angeles to the City of Whittier. The approximate 9-mile extension will run through the Gateway Cities subregion of Los Angeles, including through the cities of Commerce, Montebello, Santa Fe Springs, Pico Rivera, Whittier, and unincorporated communities of East Los Angeles and West Whittier-Los Nietos.

Funded in large part by Measure M, the ESP2 Project requires local jurisdictions to pay three percent (3%) of the total project cost of the Measure M rail project (known as the "3% Contribution"). It should be noted that the MCA presented to the City Council for consideration is not intended to address the City's 3% Contribution nor meant to address any other in-kind contribution at this time. Further discussions and negotiations with LACMTA regarding the City's financial contributions is expected to take place within the next 18-24 months. Rather, the intent of the MCA is to identify the rights and responsibilities of each of the local participating agencies and LACMTA with respect to the design, construction, operation, and maintenance of the EPS2 Project. The MCA also addresses the allocation of costs and the procedures for the City to be reimbursed for conducting design reviews and construction support services.

Construction for the initial phase of the ESP2 Project is scheduled to begin in 2029. Once fully completed, the project will increase mobility operations for the local participating cities. If approved by the City Council, the MCA is then expected to be presented to the LACMA Board of Directors at the end of 2024.

ENVIRONMENTAL:

LACMTA is the lead agency for the ESP2 Project. On May 23, 2024, LACMTA's Board of Directors approved the certification of the Final Environmental Impact Report (EIR) for the EPS2 Project in accordance with the California Environmental Quality Act (CEQA). The LACMTA Board's approval finalizes the EIR for the two-phased project. A copy of the EIR, along with other planning and environmental records can be located on LACMTA's website: https://boardagendas.metro.net/board-report/2024-0190/

In February 2022, the LACMTA Board directed its staff to reinitiate the National Environmental Policy Act (NEPA) process for federal environmental clearance which will enable LACMTA to seek federal funding opportunities for the project.

ANALYSIS:

N/A

SUMMARY:

Staff recommend the City Council adopt Resolution No. 24-84 to approve the MCA by and between the City and LACMTA related to the ESP2 Project; authorize the City Manager to execute the MCA on the City's behalf; and take any additional steps

reasonably necessary to finalize the MCA in a form approved by the City Attorney.

ATTACHMENT(S)

1. Attachment A - Resolution No. 24-84 ESP2 MCA Approval
2. Attachment B - ESP2 - Cooperative Agreement - City of Montebello - Execution Version

ATTACHMENT A

RESOLUTION NO. 24-84

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTEBELLO, CALIFORNIA, APPROVING THE EASTSIDE TRANSIT CORRIDOR PHASE 2 PROJECT COOPERATIVE AGREEMENT WITH THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY ("LACMTA")

RECITALS

WHEREAS, largely funded by Measure M, the City of Montebello ("City") is a local jurisdiction participating in the approximate 9-mile expansion of LACMTA's Metro E Line, a light rail transit line, from its current terminus at the Atlantic Station in the unincorporated community of East Los Angeles, through various cities, including the City, and ending in the City of Whittier (known as the "ESP2 Project"); and

WHEREAS, as a local jurisdiction participating in the ESP2 Project, the City has been presented with a cooperative agreement with LACMTA, which addresses the City's portion of the design, construction, operation, and maintenance of the ESP2 Project; and

WHEREAS, the cooperative agreement is not intended to address the City's funding contribution, which shall be discussed, negotiated, and memorialized in a further agreement to be considered by the City Council at a later time; and

WHEREAS, once fully completed, the ESP2 Project will increase mobility operations for the local participating cities, including the cities of Commerce, Montebello, Santa Fe Springs, Pico Rivera, Whittier, and unincorporated communities of East Los Angeles and West Whittier- Los Nietos; and

WHEREAS, if approved by the City, the MCA will be presented to LACMTA's Board of Directors at the end of 2024.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONTEBELLO DOES HEREBY RESOLVE, DECLARE AND DETERMINE AS FOLLOWS:

SECTION 1. The City Council of the City of Montebello hereby finds and declares that the foregoing recitals are true and correct and incorporates them herein as findings and as a substantive part of this Resolution.

SECTION 2. The Cooperative Agreement for the Design and Construction of the Eastside Transit Corridor Phase 1 Project by and between the City of Montebello and the Los Angeles County Metropolitan Transportation Authority (the "MCA") is hereby approved.

SECTION 3. The Mayor is hereby authorized to execute this Resolution for and on behalf of the City of Montebello.

SECTION 4. The City Manager is hereby authorized to execute the MCA for and on behalf of the City of Montebello and take any additional steps reasonably necessary to finalize the MCA in a form approved by the City Attorney.

SECTION 5. This Resolution shall take full force and effect immediately upon adoption by the City Council.

APPROVED AND ADOPTED THIS 13TH DAY OF NOVEMBER 2024.

_____
Scarlet Peralta, Mayor

ATTEST:

_____
Christopher Jimenez, City Clerk

APPROVED AS TO FORM:

_____
Arnold M. Alvarez-Glasman, City Attorney

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS:
CITY OF MONTEBELLO)

I, Christopher Jimenez, City Clerk of the City of Montebello, County of Los Angeles, State of California, hereby certify that the foregoing Resolution No. 24-84 was passed and adopted by the City Council of the City of Montebello, signed by the Mayor and attested by the City Clerk at a regular meeting of said Council held on the 13th day of November 2024 and that said Resolution was adopted by the following vote, to-wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

The undersigned, City Clerk of the City of Montebello, does hereby attest and certify that the foregoing Resolution is a true, full and correct copy of a resolution duly adopted at a meeting of said City which was duly convened and held on the date stated thereon, and that said document has not been amended, modified, repealed or rescinded since its date of adoption and is in full force and effect as of the date hereof.

DATE: _____

_____
Christopher Jimenez, City Clerk

COOPERATIVE AGREEMENT FOR THE DESIGN AND CONSTRUCTION OF THE EASTSIDE TRANSIT CORRIDOR PHASE 2 PROJECT

BETWEEN

THE CITY OF MONTEBELLO

AND

THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

_____ 2024

EFFECTIVE DATE

CONTENTS

ARTICLE		PAGE
ARTICLE 1.	SCOPE AND DURATION	3
ARTICLE 2.	GENERAL OBLIGATIONS	4
ARTICLE 3.	DESIGN	12
ARTICLE 4.	CONSTRUCTION	14
ARTICLE 5.	BETTERMENTS	16
ARTICLE 6.	OPERATION AND MAINTENANCE	17
ARTICLE 7.	REIMBURSEMENT AND CREDITS	17
ARTICLE 8.	INDEMNITY, WARRANTIES AND INSURANCE	20
ARTICLE 9.	RESOLUTION OF DISPUTES	21
ARTICLE 10.	MISCELLANEOUS	22
ARTICLE 11.	DEFINITIONS AND INTERPRETATION	26

EXHIBIT 1 – PROJECT DESCRIPTION	36
EXHIBIT 2 – PROJECT PHASES AND PROJECT SCHEDULE	37
EXHIBIT 3 – PROJECT SITE	38
EXHIBIT 4 – ROLES AND RESPONSIBILITIES	39
EXHIBIT 5 – UTILITY ADJUSTMENT PROCEDURES	43
EXHIBIT 6 – DESIGN REQUIREMENTS	47
EXHIBIT 7 – LACMTA SUBMITTAL REVIEW PROCEDURE	49
EXHIBIT 8 – CONSTRUCTION REQUIREMENTS	51
EXHIBIT 9 – INSPECTION AND ACCEPTANCE PROCEDURE	55
EXHIBIT 10 – OPERATION AND MAINTENANCE PRINCIPLES	58
EXHIBIT 11 – FORMS	59
EXHIBIT 12 – CITY-PERFORMED PROJECT WORK	66
EXHIBIT 13 – EARLY INVOLVEMENT	69

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

RECITALS

(A) LACMTA proposes to develop and open an extension of the Metro E (Gold) Line light rail transit line known as the Eastside Transit Corridor Phase 2 Project (as further defined in Section 11.1 (*Definitions*), "**ESP2 Project**"). The ESP2 Project is an approximately 9-mile light rail transit extension from the existing Metro E (Gold) Line serving the cities and communities of Commerce, Montebello, Pico Rivera, Santa Fe Springs, Whittier, and unincorporated East Los Angeles and West Whittier-Los Nietos. At the December 2022 Board meeting, the Board approved a 4.6-mile initial operating segment extending the E-Line to Greenwood Station as the locally preferred alternative ("LPA"). The LPA includes design options for Atlantic/Pomona (open underground station) and Greenwood Station (at-grade) and a maintenance and storage facility located in the City of Montebello.

(B) The ESP2 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 City Portion of the ESP2 Project.

(C) This Agreement does not address, and is not intended to address any terms and conditions with respect to any first/last mile projects. Any terms and conditions with respect to any first/last mile projects will be discussed, negotiated and agreed by LACMTA and the City under a separate agreement.

(D) The Measure M ordinance requires local jurisdictions to pay three percent of the total project cost of a major Measure M rail project (known as the "**3% Contribution**"). The Measure M guidelines reflect provisions adopted by the LACMTA Board (including Motion 14.2 (2016-0451) passed on May 26, 2016) that allow for local jurisdictions, through an agreement with LACMTA, to meet all or a portion of their three-percent local contribution obligation through first/last mile investments (such portion being the "**3% Local Funding Contribution Credit**"). This Agreement does not address, and is not intended to address any terms and conditions with respect to any 3% Contribution for the ESP2 Project by the City nor any 3% Local Funding Contribution Credit for first/last mile investments. Any terms and conditions with respect to any 3% Contribution for the ESP2 Project, including any terms relating to any 3% Local Funding Contribution Credit or other in-kind contributions, will be discussed, negotiated and agreed by LACMTA and the City under separate agreements.

(E) This Agreement does not address and is not intended to address any terms and conditions with respect to the LACMTA Board's Land Bank Pilot Partnership with Los Angeles County Motion (June 2022 and any other relevant dates). Any City participation in, and the terms and conditions with respect to any City participation in, any such programs and initiatives will be discussed, negotiated and agreed by responsible parties under a separate agreement.

(F) LACMTA and the City wish to enter into this Agreement in order to identify the rights and obligations between the Parties in connection with the development and implementation of the ESP2 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 ESP2 Project as a high-priority public works project and has agreed 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 ESP2 Project. The Parties acknowledge that this Agreement is being entered into while the environmental review and approval process is ongoing and the Final Environmental Documents are being prepared. The signing of this Agreement by the City does not prejudice its right to participate in the environmental review and approval process nor does it predetermine the outcome of that process.

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

(i) acknowledge the intended scope, schedule and site for the ESP2 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, with respect to the Design, Construction, operation, and maintenance of the ESP2 Project as it relates to the City Portion and any Rearrangements.

(c) As of the date of this Agreement, the contracting and procurement plan for the ESP2 Project is under development by LACMTA. LACMTA may procure the Design, Construction, operation, and maintenance of the ESP2 Project, including the City Portion, under multiple procurements and contract packages, utilizing any delivery method, and may self-perform parts of the Design, Construction, operation, and maintenance of the ESP2 Project, including the City Portion.

(d) The City acknowledges and agrees that LACMTA may: (i) engage LACMTA Contractors to carry out the Design, Construction, operation and/or maintenance work with respect to the City Portion including the Design and/or Construction of Rearrangements; and (ii) in each LACMTA Contract, require the applicable LACMTA Contractor to comply with LACMTA 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 that as of the date of this Agreement, the ESP2 Project is currently in the Planning and Advanced Conceptual Engineering Phase and LACMTA may elect: (i) not to proceed with the ESP2 Project; or (ii) to amend the scope of the ESP2 Project, each in its sole discretion.

(f) LACMTA shall promptly notify the City of: (i) its contracting and procurement plan, once determined; and (ii) any changes to the scope of the ESP2 Project, in each case to the extent that such plan or changes have or are 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 to any amendments or supplements to this Agreement necessary as a result of any such plan or 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 ESP2 Project commences for the City Portion, unless terminated earlier in accordance with the provisions of this Agreement or extended in accordance with Article 6 (*Operation and Maintenance*).

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*) and the Parties agree to utilize the issue resolution ladder and decision-making protocols set out in EXHIBIT 4 (*Roles and Responsibilities*) in implementing this Agreement.

(b) The City and LACMTA shall each designate a City Representative and LACMTA Representative, respectively. EXHIBIT 4 (*Roles and Responsibilities*) provides initial designations. Either Party may change its designated representative by providing seven Days' prior Notice to the other Party.

(c) The City acknowledges and agrees that any individual assigned by the City to provide support and/or services for the ESP2 Project must attend an LACMTA training session on the terms and conditions of this Agreement prior to performing any work under this Agreement. The participation of City personnel in training under this Section 2.1 is eligible for reimbursement under Section 2.2 (*Annual Work Plan*), Section 2.3 (*Work Orders*) and Section 7.1 (*Reimbursements to the City*).

(d) Where a meeting of multiple cities involved in the ESP2 Project may be helpful due to issues, or potential issues, and/or solutions that impact multiple cities or to give an update on the overall status or progress on the ESP2 Project, LACMTA may invite the City to attend meetings together with other cities impacted by the ESP2 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 such meeting.

(e) LACMTA may convene Project Meetings in relation to the ESP2 Project or particular aspects of the ESP2 Project for the purposes of providing a non-binding forum for LACMTA, LACMTA Contractors and other attendees to monitor the progress of the ESP2 Project, to consider issues or potential issues, and to present, understand and discuss proposed solutions with respect to the ESP2 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 Project Meeting held with respect to the City Portion during normal business hours and upon reasonable notice. The purpose of inviting the City to participate in Project Meetings is to create greater transparency about the status of the ESP2 Project, to discuss potential/issues or concerns involving the City, and to explore solutions to those issues or concerns. Any Project Meeting attended by the City Representative (or a delegate) is consultative and advisory only, and nothing that occurs during any such Project Meeting and no information that is presented during any such Project Meeting will:

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

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

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

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

Any amendments to the terms of this Agreement discussed during a Project Meeting must be formalized and documented in accordance with the terms of this Agreement to take effect as a contractual obligation. If the City believes that any proposed actions discussed by LACMTA or an LACMTA Contractor during a Project Meeting conflict with the terms of this Agreement, the City shall send a Notice to LACMTA to outline the conflict and the Parties shall address the conflict in accordance with Part C (*Issue Resolution Ladder and Decision-Making Protocols*) of EXHIBIT 4 (*Roles and Responsibilities*).

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 July 31 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 to the City, Preliminary Projections of anticipated scope activities for the upcoming LACMTA Fiscal Year;

(ii) within 30 Days after the City's receipt of the Preliminary Projections, 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 for the anticipated work for which the City is eligible for

reimbursement, and the personnel resources (including any City Contractor) anticipated to be required to perform the anticipated work. This will include discussions of the ESP2 Project specific training as referenced in Section 2.1 (*Governance*).

(iii) within 15 Days after LACMTA receives the preliminary annual work plan from the City, the City and LACMTA will schedule a meeting to review the preliminary work plan and negotiate in good faith such issues as are necessary. This meeting will include discussions of any additional consultant resources that may be engaged through the use of City Contractors to mitigate the risk of delay in performing the work plan and ensure that the City has sufficient access to any specialized resources required to perform the anticipated work for the ESP2 Project;

(iv) not later than February 1 (or in the case of the first partial LACMTA Fiscal Year applicable to the ESP2 Project, no later than 60 Days following receipt of the preliminary annual work plan submitted by the City), LACMTA shall deliver to the City, updated information regarding the scope of activities and services for the upcoming LACMTA Fiscal Year for the ESP2 Project;

(v) not later than March 1 (or in the case of the first partial LACMTA Fiscal Year applicable to the ESP2 Project, no later than 30 Days following receipt of the updated information regarding the scope of activities and services from LACMTA), the City shall submit a Form 60 to LACMTA for all the anticipated work, activities, and services for the upcoming LACMTA Fiscal Year in accordance with Section 2.3 (*Work Orders*);

(vi) not later than April 1 (or in the case of the first partial LACMTA Fiscal Year applicable to the ESP2 Project, no later than 30 Days following receipt of the applicable Form 60 from the City under Section 2.2(a)(v)), the Parties shall negotiate in good faith and agree (subject to LACMTA Board approval where applicable) to each Form 60 submitted by the City under Section 2.2(a)(v) for all the anticipated work, activities, and services for the upcoming LACMTA Fiscal Year in accordance with Section 2.3 (*Work Orders*); and

(vii) not later than June 1 (or in the case of the first partial LACMTA Fiscal Year applicable to the ESP2 Project, no later than 60 Days following conditional agreement under Section 2.2(a)(vi)), LACMTA will obtain any and all Board approvals required and authorize and issue the Work Order for all the anticipated work, activities, and services for the upcoming LACMTA Fiscal Year in accordance with Section 2.3 (*Work Orders*). Authorization of such Work Order will be deemed as agreement of the Annual Work Plan for the ESP2 Project for the upcoming LACMTA Fiscal Year.

(b) This Section 2.2 does not limit the ability of the Parties to agree to additional Work Orders during the applicable LACMTA Fiscal Year with respect to any work, activities or services required to be performed by the City under this Agreement that were not anticipated under the Annual Work Plan and not already authorized through a Work Order.

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

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, whether under the Annual Work Plan procedures or otherwise, 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 the scope of work under such Annual Work Plan or other specific scope of work (as applicable).

(b) If LACMTA approves a Form 60 submitted by the City under Section 2.3(a) without requiring any changes or additions, LACMTA will issue a signed Work Order to the City for the agreed upon Annual Work Plan or specific scope of work (as applicable). Following receipt of a signed Work Order, the City must promptly commence the work authorized under such Work Order.

(c) Each Work Order issued by LACMTA to the City in accordance with this Agreement shall specify the work authorized to be performed, any materials or equipment to be acquired, and the amount of money that the City will be reimbursed for the authorized work as agreed under the applicable Form 60. In the case of a Work Order under which the City is to perform the Design and/or Construction of a Rearrangement or for City-Performed Project Work, the Work Order will also specify the schedule, including the estimated start and finish dates for the authorized work.

(d) If LACMTA requests changes or additions (including any additional or supplemental provisions) to a Form 60 submitted by the City prior to issuing a Work Order, the Parties shall negotiate such changes or additions in good faith. Upon the Parties' agreement on any such changes or additions (and any necessary City council or LACMTA Board approval for such changes or additions), LACMTA will issue a Work Order to the City for the applicable Annual Work Plan or specific scope of work (as applicable), with the agreed changes or additions and, following receipt of such Work Order, the City must, within ten Days of issuance by LACMTA, accept any agreed changes or additions to the applicable Form 60 by counter-signing the Work Order or otherwise by written acceptance by the City Representative, in each case followed by the prompt commencement of the services and work authorized under the Work Order. If the City fails to accept the Work Order within ten Days, the Work Order will be deemed to be accepted by the City. Nothing in this Section 2.3(d) shall prohibit LACMTA from approving a Form 60 under Section 2.3(b) in part and authorizing the City to commence the approved part of the scope of work.

(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 the ESP2 Project or otherwise under the provisions of this Agreement, that is not expressly authorized by a Work Order, as may be amended pursuant to Section 2.3(f).

(f) Except in the case of a change required in response to an emergency, the City may submit proposed changes to a Work Order in writing to LACMTA for Approval. LACMTA shall not unreasonably withhold or delay such Approval. If approved, the City may perform the work in accordance with the authorized change. In the case of a change due to an emergency, the notification may be given orally, but must be confirmed in writing to LACMTA within three Days of commencement of any emergency work.

(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 exceed 110% of the previously estimated Costs; or

(iii) that the estimated finish 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).

2.4 **Project Schedule**

(a) The City agrees to cooperate and coordinate with LACMTA in accordance with the provisions of this Agreement for LACMTA to achieve the Project Schedule and, subject to LACMTA agreeing to the reimbursement of the Cost of the applicable resources in accordance with Sections 2.3 (*Work Orders*)

and 7.1 (*Reimbursements to the City*), to allocate sufficient staff and other resources necessary to provide the level of service required to perform the scope of work in accordance with the work schedules, review periods and timelines identified in this Agreement and any Work Orders. If the City determines that, notwithstanding its compliance with its obligations under this Section 2.4(a), additional personnel or other resources (including through the use of City Contractors) are required to mitigate the risk of delay in performing the scope of work within the defined schedule, the City may submit a proposed change to a Work Order in accordance with Section 2.3(f) (*Work Orders*).

(b) To the extent the City fails to carry out any work or obligations for which it is responsible under the provisions of this Agreement and/or any Work Order in accordance with the work schedules, review periods and timelines identified in this Agreement and the applicable Work Order, and such failure is attributable to the City, then, to the extent such delay directly causes: (i) LACMTA to incur additional Costs; or (ii) a delay to the ESP2 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 due to the City.

(c) Without limiting any other rights under this Section 2.4, if the City fails to carry out any work or obligations for which it is responsible under the provisions of this Agreement in accordance with the work schedules, review periods and timelines identified in this Agreement and the applicable Work Order (in each case, as may be extended under Section 2.4(d)), LACMTA (or a LACMTA Contractor) will issue a Notice to the City referencing the relevant work or obligation (including any anticipated delay and cost impacts to the ESP2 Project) and requesting the City's immediate attention (or, if the Project Schedule allows without causing LACMTA to incur additional costs or a delay to the ESP2 Project, providing an extension of time) and if the delay remains unresolved, LACMTA shall escalate the delay utilizing the issue resolution ladder set out in EXHIBIT 4 (*Roles and Responsibilities*). Where the delayed obligation relates to Design or Construction work that the City has agreed to perform under the terms of this Agreement or where LACMTA reasonably determines that the City will be unable to timely complete any Design or Construction work that the City has agreed to perform under the terms of this Agreement, LACMTA may by a 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 (or LACMTA Contractor) with the transfer of such work to LACMTA (or LACMTA Contractor) in accordance with the provisions of this Agreement.

(d) To the extent:

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

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

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

2.5 **Permits**

(a) 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) or the requirements set out in EXHIBIT 8 (*Construction Requirements*):

(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 LACMTA Contractors in relation to any application by LACMTA or an 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), the City acknowledges and agrees that unless otherwise agreed between LACMTA and the City, LACMTA may prepare for submission to the CPUC, plans and applications for the establishment of street and pedestrian crossings with LACMTA's rail transit tracks, the subsequent maintenance or alteration and the operation, subject to concurrence by the City (which concurrence may not be unreasonably delayed or withheld). 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 Design and Construction of the City Portion.

2.6 **Coordination of Work**

(a) Except in the case of Adjacent Work required as a result of an emergency (which notification and coordination shall occur within three Days following the occurrence of the emergency), the City will promptly (and in any case no later than 30 Days) notify LACMTA upon becoming aware of any proposed or planned Adjacent Work and will take all reasonable actions within its powers, to coordinate the Design and performance of any Adjacent Work with LACMTA so that such Adjacent Work shall not pose a safety hazard, or interfere with, disrupt or delay the Design, Construction, operation or maintenance of, or threaten the structural integrity of the City Portion. Such actions shall include:

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

(ii) providing to LACMTA the scope of work and estimated start and finish dates for the Adjacent Work;

(iii) to the extent requested by LACMTA, delivering copies of designs and plans for the Adjacent Work to LACMTA and giving LACMTA the right to review, comment on the final plans and designs and plans for the Adjacent Work; and

(iv) coordinating the Adjacent Work or suspending the Adjacent Work or the relevant part of the Adjacent Work (as applicable).

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

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

(A) attending coordination meetings upon reasonable request; and

(B) providing interface data reasonably requested by LACMTA or the LACMTA Contractors 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 ESP2 Project;

(iii) comply with LACMTA's or the 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 on the City Portion or any other part of the ESP2 Project.

2.7 **Utility Adjustments**

(a) In accordance with Section 1.1 (*Scope of Agreement*), the Parties will cooperate and coordinate in performing the steps necessary to ensure that applicable Utility owners implement the Utility Adjustments necessary to address Utility Conflicts that will impact the City Portion of the ESP2 Project, including LACMTA and the City each exchanging information, participating in coordination meetings, coordinating in the issuance of Notices to Utility owners requesting a Utility Adjustment, and performing the other steps and activities set out in EXHIBIT 5 (*Utility Adjustment Procedures*).

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

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

2.8 **Governmental and Lender Requirements**

If the ESP2 Project is subject to financial assistance provided by loan agreements with the U.S. Department of Transportation, the Federal Transit Administration, other federal, state and local Governmental Entities, and/or financial institutions providing grants, funding or financing, the Parties will comply with any prescribed governmental and lender requirements set out in a Work Order or otherwise under the applicable grant, funding or financing agreements notified to the City.

2.9 **Access**

If, prior to LACMTA's scheduled start of Construction 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, as 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 **Early Involvement**

(a) The Parties will cooperate and coordinate during the Planning and Advanced Conceptual Engineering Phase, including performing all steps and activities set out in EXHIBIT 13 (*Early Involvement*).

(b) To commence the Early Involvement Procedures, LACMTA shall deliver a Notice to the City inviting the City to an initial meeting as set out in Part A (*Early Involvement Procedures*) of EXHIBIT 13 (*Early Involvement*). Such Notice will include a target date for documenting the Project Definition, LACMTA's anticipated date for issuance of Procurement Documents for the ESP2 Project, and any updates to the ESP2 Project description, Project Schedule, phasing, and other information set out in EXHIBIT 1 (*Project Description*), EXHIBIT 2 (*Project Phases and Project Schedule*), and EXHIBIT 3 (*Project Site*), or otherwise previously notified to the City by LACMTA.

(c) The purpose of the Early Involvement Procedures is to:

(i) identify and define the applicable City Standards and other criteria under the Basis of Design for any Rearrangements (with respect to the criteria for the scope elements listed under Part A (*Early Involvement Procedures*) of EXHIBIT 13 (*Early Involvement*) as part of establishing the Project Definition, thereby:

(A) provide agreed parameters for Design reviews performed by the City under this Agreement, and minimize the risk of delays, change orders and other unforeseen Costs after award; and

(B) provide the City with the opportunity to identify, notify and agree to the applicable City Standards and other criteria under the Basis of Design for any Rearrangements as contemplated in the exclusions listed in sub-paragraphs (ii) and (iii) of the definition of "Betterment", and therefore to minimize the risk of Betterments arising under paragraph (b) of the definition of "Betterment";

(ii) identify Utility Adjustments arising from the City Portion and enable the Parties to plan for and commence the procedures set out under Section 2.7 (*Utility Adjustments*);

(iii) inform the City of the anticipated Project Schedule, and enable the Parties to plan for resource needs during the Design Phase and Construction Phase to minimize the risk of delays; and

(iv) identify, plan for, and coordinate anticipated Adjacent Work in accordance with Section 2.6 (*Coordination of Work*).

(d) The Parties will finalize and agree to the Project Definition (including the Basis of Design) prior to the end of the Planning and Advanced Conceptual Engineering Phase of the ESP2 Project in accordance with Part A (*Early Involvement Procedures*) of EXHIBIT 13 (*Early Involvement*) and in any case prior to issuance of the Procurement Documents for the Design of the Rearrangements provided that:

(i) if any matters remain outstanding at the end of the Planning and Advanced Conceptual Engineering Phase or 30 Days prior to the scheduled issuance of the Procurement Documents for the Design of the Rearrangements (whichever is earlier), the Parties will finalize and agree to the Project Definition to the extent of the agreed matters, subject to identifying those outstanding matters on the Project Definition form in accordance with Part A (*Early Involvement Procedures*) of EXHIBIT 13 (*Early Involvement*) and, unless LACMTA has notified the City that such outstanding matters may be agreed at a later stage based on LACMTA's contracting and procurement plan for the ESP2 Project and/or the Project Schedule, the outstanding matters will be referred to the Level 2 decision makers identified in Part C (*Issue Resolution Ladder and Decision-Making Protocols*) of EXHIBIT 4 (*Roles and Responsibilities*) for discussion and prompt resolution; and

(ii) if the Procurement Documents applicable to a Rearrangement are advertised more than 24 months after agreement on the Project Definition, LACMTA and the City will review the Project Definition in accordance with this Section 2.10 and Part A (*Early Involvement Procedures*) of

EXHIBIT 13 (*Early Involvement*) and may agree to amend the Project Definition to reflect any impacts to such Rearrangement arising from such delay or from any further Design Development performed since agreement on the Project Definition.

(e) The scope of Rearrangements and Basis of Design applicable to the Rearrangements agreed under a Project Definition shall comply with this Agreement.

(f) Subject to this Section 2.10, the City acknowledges and agrees that upon agreement of a Project Definition, LACMTA will rely on the Project Definition to prepare and issue the Procurement Documents for the Design and Construction of the ESP2 Project.

(g) Any support and/or services required to be provided by the City under the provisions of this Section 2.10 are eligible for reimbursement under Sections 2.2 (*Annual Work Plan*), 2.3 (*Work Orders*) and 7.1 (*Reimbursements to the City*). No reimbursements to the City will be made for:

(i) performance of its obligations as a responsible agency or cooperating agency (as applicable) for the purposes of the environmental review and approval process; or

(ii) unless otherwise agreed by LACMTA, performance of any other activities, work and services performed during the Planning and Advanced Conceptual Engineering Phase falling within any of the categories of activities that are not eligible for reimbursement set out in Part B (*Reimbursement for Participation in Early Involvement Procedures*) of EXHIBIT 13 (*Early Involvement*).

2.11 **Requests for Information**

Either Party may submit to the other a Request for Information or clarification. Upon delivery of any such request, the receiving Party must provide the information requested to the other Party promptly and in any case within 14 Days of delivery of the request (or such longer period as the Parties may agree having regard to the quantum of information requested).

ARTICLE 3. DESIGN

3.1 **Design Responsibilities**

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

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

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

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

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

3.2 **Design Requirements**

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

3.3 **Design Review Procedure**

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

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

(c) LACMTA is exempt from submitting any Design for Construction work within the Public Rights-of-Way to the City for the City's review and Approval where:

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

(ii) the work is related to utility trenching and shoring within Occupational Safety and Health Administration (OSHA) guidelines and the relevant LACMTA Contractor is OSHA certified. For the avoidance of doubt, this exemption does not affect any LACMTA obligation to submit Construction Staging Plans (including Traffic Management Plans) in accordance with EXHIBIT 8 (*Construction Requirements*).

Without prejudice to the foregoing, the City further acknowledges that as between the Parties, LACMTA has sole discretion to determine whether, and which features or facilities are required in order for LACMTA to comply with its obligations under Applicable Law in connection with the ESP2 Project (whether or not situated within the Public Rights-of-Way) including the ADA and in the case of its obligations under the ADA to determine whether matters are technically infeasible; provided, however, in making such determination, LACMTA shall utilize current rules and regulations promulgated under the ADA, and guidelines issued by federal agencies in accordance with the ADA, including but not limited to The ADA Best Practices Tool Kit for State and Local Governments published by Civil Rights Division of the U.S. Department of Justice.

3.4 **Design Development**

The Parties acknowledge and agree that:

(a) the Basis of Design will establish the scope, limits of work, specifications and requirements applicable to the Designs for any Rearrangements as at the issuance of Procurement Documents; and

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

3.5 **City Standards**

(a) The City agrees that it shall not adopt any new City Standards, or otherwise amend or supplement any existing City Standards or its interpretation or application of any existing City Standards, for the sole or primary purpose of affecting the ESP2 Project.

(b) Subject to Sections 3.5(a) and 3.5(c), the Parties acknowledge that the City may adopt new City Standards not listed in EXHIBIT 6 (*Design Requirements*) or amend or supplement existing City

Standards listed in EXHIBIT 6 (*Design Requirements*) during the Term, provided that the City shall promptly (and in any case within 15 Days of adoption) notify LACMTA of any changes or additions to the City Standards adopted during the Term.

(c) Any changes or additions to the City Standards applicable to a Rearrangement after the establishment of the Basis of Design for that Rearrangement shall be considered a "Betterment" for the purposes of this Agreement (except to the extent an exclusion under that definition applies).

3.6 **Changes to Design**

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

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

3.7 **Value Engineering**

(a) The Parties must work together to create efficiencies to reduce the overall Cost of the ESP2 Project in order to maximize the value of public funds. The City will exercise sound engineering judgment to cooperate and coordinate with LACMTA to identify efficient approaches to the Design of Rearrangements for the ESP2 Project when:

(i) performing the steps and activities under the Early Involvement Procedures including when reviewing the scope, criteria, specifications, and requirements for the Rearrangements that are included in the applicable Procurement Documents; and

(ii) performing Design reviews under Section 3.3 (*Design Review Procedure*);

(b) The Parties acknowledge and agree that this will include identifying, and reviewing LACMTA Contractor-identified, recommendations for potential innovations and value engineering opportunities with respect to the Rearrangements that offer value in terms of a reduced capital Cost for the ESP2 Project and/or that will offer value in terms of schedule savings, and/or quality benefits and adopting and applying those recommendations that, following evaluation by the Parties, will reduce the capital cost of the ESP2 Project and/or that will offer value in terms of schedule savings, and/or quality benefits. Any innovation or value engineering recommendations will be evaluated on the basis that any such recommendation should satisfy the required function of the Rearrangement at the lowest total Cost (capital, operating, and maintenance) consistent with the requirements of performance, reliability, maintainability, and safety.

ARTICLE 4. CONSTRUCTION

4.1 **Construction Responsibilities**

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

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

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

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

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

4.2 **Construction Requirements**

Construction of the Rearrangements and any other Construction work performed in the Public Rights-of-Way in connection with the ESP2 Project shall comply with the requirements set out in EXHIBIT 8 (*Construction Requirements*).

4.3 **Rights-of-Way**

(a) The Parties acknowledge that pursuant to Applicable Law, LACMTA is permitted to use Public Rights-of-Way to the same extent those rights and privileges relating to Public Rights-of-Way are granted to the City.

(b) 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 mutual agreement of 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 of those City Facilities shall be located in existing public rights-of-way. The required replacement rights-of-way for the relocation of Conflicting Facilities shall be acquired so as not to impact the Project Schedule. If the City cannot acquire any necessary private rights-of-way for the relocation of Conflicting Facilities 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.

(c) Subject to Section 4.3(b), the Parties acknowledge that LACMTA is responsible for the acquisition of any private rights-of-way necessary to Construct and/or operate the ESP2 Project on the Project Right-of-Way, and LACMTA (or LACMTA Contractors) shall be responsible for the acquisition of any temporary construction easements necessary to construct the ESP2 Project. Upon reasonable request by LACMTA, the City shall provide reasonable assistance as may be required for LACMTA to obtain rights-of-way necessary to Construct the City Portion including considering reasonable requests by LACMTA to convey to LACMTA, at no cost to LACMTA, any City-owned street crossings, slivers, surface easements and temporary construction easements that may be required for Construction of the ESP2 Project without requiring LACMTA to go through the appraisal, negotiation, offer, closing and transfer process. Following any such reasonable request, LACMTA will prepare or cause to be prepared the title documents and documents of conveyance, and shall transmit such documents to the City Representative who shall process them through the required departments for execution, and return them to LACMTA within 90 Days after receipt, but in any event in accordance with the Project Schedule.

(d) The City agrees and acknowledges that this Agreement satisfies any LACMTA obligations to the City and otherwise relating to the certification of rights-of-way, and that the City shall cooperate with LACMTA, and assist LACMTA with any right-of-way certification processes involving other entities or agencies.

(e) 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 **Hazardous Materials**

LACMTA (or LACMTA Contractor) will be responsible for any environmental site assessments, and any remediation of hazardous materials to be performed on the Project Site for the purposes of the ESP2 Project. LACMTA will not be responsible for any Costs relating to the presence or existence of any environmental hazard on, in, under or about any City Facility, including but not limited to, any "hazardous substance" as that term is defined under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.), unless LACMTA or an LACMTA Contractor caused the environmental hazard through its actions, or remediation of hazardous materials is required to be performed on the Project Site for the purposes of the ESP2 Project in accordance with the environmental site assessments.

4.5 **Inspection and Acceptance**

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

ARTICLE 5. BETTERMENTS

5.1 **Notice of Betterments**

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

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

(c) If a City comment to an LACMTA Submittal or any other form of City request with respect to the ESP2 Project constitutes a Betterment, LACMTA will deliver an LACMTA Notice of Potential Betterment to the City and within ten Days of delivery of such Notice, the City will: (i) withdraw the relevant comment; or (ii) submit a request for the applicable Betterment by submitting a completed City Betterment Request for LACMTA's review and Approval. If the City fails to respond within ten Days of a Notice delivered by LACMTA under this Section 5.1(c), the comment will be deemed to be withdrawn. Such deemed withdrawal shall be without prejudice to the City's right to submit the request under a subsequent City Betterment Request under this Article 5.

5.2 **Approval of Betterments**

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

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

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

5.3 **Right to Refuse a Betterment**

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

(a) is incompatible with the ESP2 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 establishment of the Basis of Design.

5.4 **Cost of Betterments**

LACMTA shall not be responsible for the Cost of any Betterment (whether or not the Cost exceeds any estimates provided by LACMTA, and including the Cost of any mitigations included as a result of the Betterment in the Final Environmental Documents). 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 cooperative agreement with respect to the Operation and Maintenance Phase.

6.2 Following issuance of a request by LACMTA under Section 6.1, the Parties shall use good faith efforts to agree to an amendment or supplement to this Agreement or to agree to a new cooperative agreement to address the Parties' respective obligations during the Operation and Maintenance of the ESP2 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 ESP2 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 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 phases of the ESP2 Project); and

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

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

ARTICLE 7. REIMBURSEMENT AND CREDITS

7.1 **Reimbursements to the City**

(a) Except with respect to Betterments, LACMTA will reimburse the City for Costs incurred for work performed by the City or 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 to Abandon such City Facility and will not be required to replace or compensate the City for the replacement of that City Facility.

(c) The City shall use the following procedures for submission of its progress billings to LACMTA 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 a description of the tasks performed by reference to the tasks described in the Work Order, City Contractor invoices, the names of individuals performing the relevant tasks, the time expended on each task, a description and quantity of equipment and materials utilized on each task, the number of hours each piece of equipment was utilized, and any other supporting information required under the terms of the Work Order or otherwise requested by LACMTA;

(iii) each billing statement shall: (A) be noted as either "progress" or "final"; (B) be addressed to the LACMTA Representative; (C) include a certification that the Costs identified in such billing were appropriate and necessary for 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 Article 7;

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

(v) after expiration of the 60-Day period described in Section 7.1(c)(iv), LACMTA will 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.

(d) On completion of Construction of the City Portion, LACMTA will issue a Notice of closeout to the City (including Final Acceptance of all Rearrangements for that City Portion). Within 90 Days of receiving such Notice, the City must issue invoices to LACMTA for all services under any Work Order for the Design and/or Construction of the ESP2 Project. Any invoices submitted after the expiration of the 90-Day period may require additional documentation and verification of work performed before LACMTA will process the invoice.

7.2 **Reimbursements and Credits to LACMTA**

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

(i) salvage of 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. 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, or an inspection survey of a City Facility conducted by the Parties prior to or during Design Development. LACMTA may request and authorize the City to perform support services with respect to any such inspection survey pursuant to the procedures set out under Section 2.3 (*Work Orders*);

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

(A) the initial amount of the Betterment payment or credit shall be based upon the estimated Cost for the Design and Construction of the Rearrangement with the Betterment *less* the estimated Cost for Design and Construction of the

Rearrangement without the Betterment, in each case as set out by LACMTA in its response and Approval to the applicable City Betterment Request; and

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

(iii) the Expired Service Life Value of each Conflicting Facility being replaced if the Replacement Facility will have an expected period of useful service greater than the expected remaining period of useful service of the existing Conflicting Facility, had the existing Conflicting Facility remained in service and the Rearrangement not been made. The Expired Service Life Value shall be determined by the Parties 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 submitted by the City) for salvage, Betterments, and Expired Service Life Value of applicable City Facilities against work performed by the City; and

(ii) payment from the City for salvage, Costs of Betterments, and Expired Service Life Value of applicable City Facilities where LACMTA performs the work invoiced.

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

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

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

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

(iv) the final billing for a salvage, Betterment, or Expired Service Life Value with respect to a City Facility, with a notation that all applicable payments due to LACMTA for that salvage, Betterment, or Expired Service Life Value, shall be submitted to the City within 60 Days after completion of the applicable work, and shall summarize prior progress billings, show inclusive dates upon which work was performed, and include a certification that the Costs identified in such billing were calculated in accordance with this Section 7.2 and have not previously been billed or paid; and

(v) after the expiration of the 60-Day period described in Section 7.2(c)(iv), 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 submit its final invoice.

7.3 **Payment of Billings**

Payment of each invoice properly submitted pursuant to Section 7.1 (*Reimbursements to the City*) or 7.2 (*Reimbursements and Credits to LACMTA*) shall be due within 60 Days of receipt; provided that: (a) all such payments shall be conditional, subject to post-audit adjustments; (b) final payment for a Rearrangement shall be contingent upon final inspection (and acceptance) of the work by the Party billed for such work, which inspection (and acceptance, where applicable), will not be unreasonably withheld or delayed; and (c)

LACMTA may withhold payments in the amount of any credit amounts due to LACMTA if the City has not posted such credits within 60 Days after submittal of requests for the same by LACMTA.

ARTICLE 8. INDEMNITY, WARRANTIES AND INSURANCE

8.1 Indemnity

(a) Each Party shall release, defend, indemnify, and hold harmless the other Party and its respective officers, agents, 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). The provisions of California Civil Code Section 2778 are made a part of this Agreement as if fully set out in this Agreement.

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

8.2 Warranty

(a) In lieu of providing a bond associated with excavations in, or adjacent to, Public Rights-of-Way, LACMTA warrants that any work in connection with the City Portion affecting the structural stability of the Public Rights-of-Way shall be free from defect for a period of two years following Substantial Completion of that part of the work by LACMTA or the applicable LACMTA Contractor. Pursuant to this warranty and for the warranty period only, LACMTA, at its sole expense, shall remedy any damage to the Public Rights-of-Way to the extent caused by a failure of such structural support installed by LACMTA or an LACMTA Contractor.

(b) Solely with respect to Rearrangements performed by LACMTA or LACMTA Contractors and any work performed by the City or the City Contractors, the City and LACMTA each warrant to the other for a period of one year from and after Substantial Completion of that Rearrangement or work (or at such earlier date on which responsibility for the maintenance, loss or damage for that Rearrangement or work passes to the other Party) that such Rearrangement or work performed by them shall be free from defect, provided that in the case of any Punch List items recorded at Substantial Completion (or such earlier date on which the Parties agree that responsibility for maintenance, loss or damage passes), the warranty period shall be for one year from and after completion of that Punch List item. Subject to Section 8.2(a), 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 LACMTA Contractors and any work performed by the City or the City Contractors, warranties supplied by LACMTA Contractors and City Contractors to LACMTA or the City (as applicable) shall be made for the benefit of both LACMTA and the City.

(d) If the City discovers a defect or failure of structural support for a City Facility that results from work performed by LACMTA or an LACMTA Contractor after the expiration of the warranty periods set out in this Section 8.2, LACMTA will, in good faith and as promptly as reasonably possible, engage the City to find an equitable remedy to address the subject defect or failure.

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: $2,000,000 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: $2,000,000 in general liability; $1,000,000 in workers' compensation/employer's liability; $1,000,000 in 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 an 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 an 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 a 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 22 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 22 Days (or any longer period as may be agreed), each Party shall select an arbitrator and those arbitrators shall select a Neutral Arbitrator to form a three-person panel. If either Party fails to designate its arbitrator within 22 Days (or any longer period as agreed) of delivery of the demand, or if the two designated arbitrators are unable to select a 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). The arbitrator's award shall promptly follow the hearing's conclusion, and 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 Section 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 a Neutral Arbitrator. Failure to disclose any such interest or relation shall be grounds for vacating an award handed down under Sections 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 Parties 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. All such reviews and audits shall be performed during normal business hours, and without charge. Each Party represents and warrants the completeness and accuracy in all material respects of all information it or its agents provide 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 to such adjustment. Examination of a document or record during one review and audit shall not preclude further re-examination of such document or record in a subsequent review and audit. The Parties must ensure that any contract entered into in connection with performance of the work under this Agreement contains provisions acknowledging the rights of the City or LACMTA (as applicable) under this Section 10.3(a).

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

10.4 **Notices**

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

To the City:

City Manager (or designee)
City of Montebello
1600 W. Beverly Blvd.
Montebello, CA 90640
Facsimile No.:_____
Attn: Raul Alvarez

With a copy to:

City Attorney
City of Montebello
1600 W. Beverly Blvd.
Montebello, CA 90640
Facsimile No.: _____

Attn:_____

With a copy to:

Director of Public Works (and/or the City Engineer)
City of Montebello
1600 W. Beverly Blvd.
Montebello, CA 90640
Facsimile No.:_____
Attn: Cesar Roldan

To LACMTA:

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 Ferdinand Chan, Third Party Administration

With a copy to:

Program Management
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, CA 90012
Facsimile No.: (213) 922-7447
Attn: Mohammed Nasim, Project Manager

With a copy to:

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

With a copy to:

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

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

10.5 **Assignment; Successors and Assigns**

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

10.6 **Waiver**

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

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

10.7 **Amendments**

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

10.8 **Governing Law and Jurisdiction**

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

10.9 **Severability**

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

10.10 **Counterparts**

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

10.11 **Limitation on Third-Party Beneficiaries**

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

10.12 **Survival**

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

10.13 **Approvals; Further Documents and Actions**

(a) Any Approval required or permitted to be given by any Party pursuant to this Agreement or any Work Order shall:

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

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

(iii) be deemed granted if no response is provided to the Party requesting an Approval within the time period prescribed by this Agreement or the applicable Work Order or if no time is prescribed by this Agreement or the applicable Work Order, within 30 Days, in each case commencing upon actual receipt by the Party from which an Approval is requested or required, of a request for Approval from the requesting Party.

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

ARTICLE 11. DEFINITIONS AND INTERPRETATION

11.1 Definitions

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

"3% Contribution" means the three percent contribution local jurisdictions are required to pay towards the cost of a major Measure M rail project, as defined in Recital D.

"3% Local Funding Contribution Credit" has the meaning given in Recital D.

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

"ACE Design Documentation" means the Design Documentation prepared as part of the Advanced Conceptual Engineering phase of the Design process.

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

"Adjacent Work" means any removal, demolition, repair, restoration, relocation or reconstruction of existing facilities and/or construction of new facilities and/or other physical works by the City or a third party: (a) that is performed or to be performed within 100 feet of the Project Site; or the performance of which has the potential to pose a safety hazard, or impact, disrupt, delay or conflict with the Design, Construction, operation or maintenance of, or threaten the structural integrity 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" or **"ACE"** 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's 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" or **"AWP"** means an estimate of the City's Costs and resources needed to perform anticipated work during any given LACMTA Fiscal Year. Such estimate is prepared and agreed to by the Parties on an annual basis 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.

"Approval" means any acceptance, approval, consent, permission, satisfaction, agreement, authorization or any other like action required or permitted to be given by any Party pursuant to this Agreement or any Work Order.

"Basis of Design" means, with respect to a Rearrangement, the scope, criteria, specifications and requirements (including requirements of the Final Environmental Documents) for those Rearrangements agreed by the Parties as at the date of issuance by LACMTA of Procurement Documents for the Design of the Rearrangement.

"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 upgrades 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.

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 ESP2 Project;

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

(iii) measures to mitigate environmental impacts identified in the ESP2 Project's Final Environmental Documents and any supplemental environmental reports for the ESP2 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 an LACMTA Contractor after the establishment of the Basis of Design.

"Board" means the Board of Directors for the Los Angeles County Metropolitan Transportation Authority.

"City" means the City of Montebello. "City" shall also refer to any City-owned or operated "water" and/or "power" departments.

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

"City Construction Work" means any Construction work 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 LACMTA Contractors.

"City Design Work" means any Design work 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 and utility tunnels, alleys, storm drains, sanitary sewers, survey monuments, parking lots, parks, public landscaping and trees, traffic control devices, lighting and communications equipment (cameras, sensors, LTE, microwave receivers, etc.) and public buildings, police and fire department related improvements, as well as any dams or water storage tanks, systems, and appurtenances. City-owned airport and harbor facilities are not included in this definition.

"**City Inspector**" means the City's designated individual or individuals responsible for overseeing and enforcing plan and code requirements during construction of the Rearrangements in the City Portion.

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

"City Municipal Code" means City of Montebello Municipal Code.

"City-Performed Project Work" means any Design work and/or Construction work with respect to the City Portion of the ESP2 Project performed by the City at the request of LACMTA.

"City Portion" means that portion of the ESP2 Project that will pass in, on, under, over or along public streets, highways, bridges, parks and other public right-of-way within the City, as shown in Part B (*City Portion*) of EXHIBIT 3 (*Project Site*).

"City Representative" means an individual or individuals designated by the City to represent the City on matters relating to this Agreement and authorized to make decisions and bind the City on matters relating to this Agreement.

"City Standards" means the City design standards, specifications, and/or ordinances that govern the design, of all Rearrangements, as specified in EXHIBIT 6 (*Design Requirements*) or adopted by the City and notified to LACMTA in accordance with Section 3.5 (*City Standards*).

"Compliance Comment" means a comment on, objection to or the withholding of Approval to an 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 LACMTA Contractor) has not provided all content or information required with respect to the LACMTA Submittal.

"**Conflicting Facility**" means an existing facility, which the Parties determine requires Rearrangement in order to construct, operate or maintain the ESP2 Project.

"Construction" means all construction activities related to the City Portion that are necessary to build, operate and maintain the ESP2 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 ESP2 Project that involves build-out and Construction of the City Portion including the steps and activities described in EXHIBIT 2 (*Project Phases and Project Schedule*).

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

(a) eligible direct costs include allowable direct labor costs, equipment and 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 ESP2 Project that involves Design Development through Final Design, including Design reviews performed in accordance with this Agreement and the other steps and activities described in Part A (*Phases*) of EXHIBIT 2 (*Project Phases and Project Schedule*).

"Dispute" means a 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.

"Early Involvement Procedures" means the procedures where the Parties exchange information, participate in coordination meetings, and perform the other steps and activities prior to the release of Procurement Documents set out in Section 2.10 (*Early Involvement Procedures*) and Part A (*Early Involvement*) of EXHIBIT 13 (*Early Involvement*).

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

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

"ESP2 Project" means the Design, Construction, operation, and maintenance of the extension of the Metro E (Gold) Line light rail line known as the Eastside Transit Corridor Phase 2 Project, as more fully described in EXHIBIT 1 (*Project Description*).

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

"Final Acceptance" means acceptance that all work for a Rearrangement is complete and all other requirements for completion described under Section 4.1 (*Statement of Final Completion*) of EXHIBIT 9 (*Inspection and Acceptance Procedure*) have been satisfied.

"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 (AFC) plan status and with the Design being signed and sealed by the "Engineer of Record".

"Final Environmental Documents" means the final impact reports, statements, assessments and approvals for the ESP2 Project completed pursuant to the California Environmental Quality Act (CEQA) and/or National Environmental Policy Act (NEPA) (as applicable).

"Final Inspection Correction List" means a list of corrections required to satisfy the requirements for Final Acceptance of a Rearrangement in accordance with the terms of this Agreement.

"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 the 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 (*Form 60*) of EXHIBIT 11 (*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 the Parties.

"LACMTA" means the Los Angeles County Metropolitan Transportation Authority.

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

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

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

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

"LACMTA Representative" means an individual or individuals designated by LACMTA to represent LACMTA on matters relating to this Agreement and authorized to make decisions and bind LACMTA on matters relating to this Agreement.

"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) Plans for Construction work performed by LACMTA or an LACMTA Contractor within Public Rights-of-Way; and

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

"Neutral Arbitrator" means a neutral third party qualified to arbitrate with regard to a Dispute.

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

"Operation and Maintenance Phase" means the phase of the ESP2 Project that commences upon operation of passenger service and includes maintenance of the ESP2 Project.

"Package" means a collection of Design Documentation submitted by LACMTA or an 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 Advanced Conceptual Engineering Phase**" means the phase of the ESP2 Project that involves preparation of the draft environmental documents, certification of the Final Environmental Documents (as applicable), preparation of Advanced Conceptual Engineering, preparation of the contracting and procurement plan, and other steps and activities set out in EXHIBIT 13 (*Early Involvement*).

"Preliminary Projections" means information regarding the scope of activities and services LACMTA anticipates to request from the City during the upcoming LACMTA Fiscal Year to support the ESP2 Project, including the estimated start and finish dates for the anticipated scope of activities and services.

"**Procurement Documents**" means, with respect to a Rearrangement, any advertisement, request for proposal, invitation for bid, or other procurement documents issued or to be issued by LACMTA with respect to the Design and/or Construction of that Rearrangement or a part of the scope for that Rearrangement, including the form of LACMTA Contract and any other documents enclosed with or attached to the request for proposal, invitation for bid, or other procurement document. The term "Procurement Documents" for the purposes of this Agreement shall not include any request for qualification in a two-step procurement process or LACMTA's pre-qualification documents.

"**Project Definition**" means the scope of Rearrangements and the City Standards applicable to Rearrangements to be performed as part of the ESP2 Project, in the form set out in Part C (*Form of Project Definition*) of EXHIBIT 13 (*Early Involvement*) to be agreed or as agreed by the Parties at the end of the Planning and Advanced Conceptual Engineering Phase for the ESP2 Project, and in any case prior to issuance of Procurement Documents for design of the Rearrangements.

"Project Meeting" means any meeting, working session, working group meeting, workshop, over-the-shoulder review meeting, or other meeting convened by LACMTA or an LACMTA Contractor for the purposes of providing a non-binding forum for LACMTA, the LACMTA Contractor and other attendees to monitor the progress of the ESP2 Project, to consider issues, potential issues, and to present, understand and discuss proposed solutions with respect to the ESP2 Project as described Section 2.1(e) (*Governance*).

"Project Right-of-Way" means the permanent right-of-way for the ESP2 Project, as identified in Part A (*ESP2 Project Site*) of EXHIBIT 3 (*Project Site*), or as notified by LACMTA to the City and compliant with the ESP2 Project's Final Environmental Documents and any supplemental environmental reports for the ESP2 Project.

"Project Schedule" means the schedule for the ESP2 Project including the City Portion set out in Part B (*Project Schedule*) of EXHIBIT 2 (*Project Phases and Project Schedule*), as may be updated in the Project Definition or otherwise notified by LACMTA in accordance with this Agreement.

"Project Site" means, collectively, the Project Right-of-Way and each temporary construction easement for the ESP2 Project, as identified in Part A (*ESP2 Project Site*) of EXHIBIT 3 (*Project Site*), as may be updated in the Project Definition or otherwise notified by LACMTA in accordance with this Agreement.

"Public Rights-of-Way" means the public streets, highways, bridges, parks and other public lands or properties within the City.

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

"Rearrangement" means the work of:

(a) removal, replacement, restoration, alteration, reconstruction, support, or relocation of all or a portion of a Conflicting Facility, whether permanent or temporary, which LACMTA determines in its sole discretion is necessary in order for the ESP2 Project to comply with Applicable Law or otherwise which the Parties mutually agree is necessary in order to construct, operate or maintain the ESP2 Project.

(b) the installation of new and required City Facilities which LACMTA determines in its sole discretion is necessary in order for the ESP2 Project to comply with Applicable Law or otherwise which the Parties mutually agree is necessary as a result of the impact of the construction of the ESP2 Project.

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

"Statement of Final Acceptance" means the formal written acknowledgment from the City to LACMTA that Final Acceptance of a Rearrangement has been achieved.

"Statement of Substantial Completion" means the formal written acknowledgement from the City to LACMTA that Substantial Completion of a Rearrangement has been achieved.

"Substantial Completion" means completion of the work for a Rearrangement or applicable part of a Rearrangement (except for Punch List items or outstanding work that is otherwise only required to be performed under this Agreement for the purposes of achieving Final Acceptance), such that the Rearrangement (or applicable part of the Rearrangement) is ready for handover to the City, as more fully described in Section 5 (*Responsibility to Complete Work*) of EXHIBIT 9 (*Inspection and Acceptance Procedure*).

"Substantial Completion Correction List" means a list of the corrections required to satisfy the requirements for Substantial Completion of a Rearrangement (or part of a Rearrangement) in accordance with the terms of this Agreement.

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

"Term" means the duration between the date the Agreement was fully executed by the Parties and the first date of passenger service.

"Traffic Control and Lighting Work" means the removal and reinstallation, modification of existing, or installation of new traffic control devices or lighting systems.

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

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

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

"**Utility Conflict**" means an existing Utility which LACMTA determines requires a Utility Adjustment in order to construct, operate or maintain the ESP2 Project in compliance with the Final Environmental Documents and, subject to Section 2.5(a) (*Permits*), and Applicable Law.

"Work Order" means a work request submitted by LACMTA to the City authorizing the performance of any work associated with the ESP2 Project and the associated purchase of required materials.

11.2 **Interpretation**

(a) In this Agreement unless otherwise expressly stated:

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

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

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

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

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

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

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

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

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

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

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

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

APPROVED AS TO FORM

DAWYN R HARRISON,
County Counsel

By:_____
Elena Eggers
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: _____
Title: _____

APPROVED AS TO FORM

_____,
City Attorney

By:_____
Name: _____
City Attorney

ATTEST
By:_____
Name: _____
City Clerk

"**CITY**"

CITY OF MONTEBELLO,
a California municipal corporation

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

EXHIBIT 1 – PROJECT DESCRIPTION

The ESP2 Project is a contemplated extension of the E (Gold) Line light rail transit line that will extend services from the current terminus at the Atlantic Station in the unincorporated community of East Los Angeles to the city of Whittier within the Gateway Cities subregion of Los Angeles County. The ESP2 Project would extend the existing E (Gold) Line approximately 9.0 miles and include seven new stations and a maintenance and storage facility. The extension would serve the cities of Commerce, Montebello, Pico Rivera, Santa Fe Springs and Whittier, and the unincorporated communities of East Los Angeles and West Whittier-Los Nietos.

As of the date of this Agreement, LACMTA contemplates the ESP2 Project occurring in multiple phases. In December 2022, the LACMTA Board selected an initial operating segment to Greenwood (Atlantic/Pomona Station to Greenwood Station) as the locally preferred alternative with an open-air underground station at the Atlantic/Pomona station, underground stations at Atlantic/Whitter and the Citadel, at-grade guideway in Montebello including the at-grade Greenwood Station and the Montebello Maintenance Storage Facility. The LACMTA Board also approved environmentally clearing through CEQA the full project alignment to Whittier with a terminus at Lambert Station, confirming the LACMTA Board's commitment to the eventual buildout of the ESP2 Project to Whittier. In order to access potential additional funding sources at a federal level, LACMTA will also proceed into the NEPA process.

The ESP2 Project will provide improved and reliable transit service to meet the mobility needs of residents, employees, and visitors who travel within the corridor. In addition to advancing the goals of LACMTA’s Vision 2028 Strategic Plan, objectives of the ESP2 Project include:

1. Enhance regional connectivity and air quality goals by extending the existing Metro E (Gold) Line further east from the East Los Angeles terminus.

2. Provide mobility options to increase accessibility and convenience to and from eastern Los Angeles County.

3. Improve transit access to activity centers and employment within eastern Los Angeles County that would be served by the ESP2 Project.

4. Accommodate future transportation demand resulting from increased population and employment growth.

5. Enable jurisdictions in eastern Los Angeles County to address their transit-oriented community goals, and provide equitable development opportunities.

6. Improve accessibility and connectivity to transit-dependent communities.

EXHIBIT 2 – PROJECT PHASES AND PROJECT SCHEDULE

Part A: Phases

As of the date of this Agreement, the phasing and time periods for the ESP2 Project are 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.

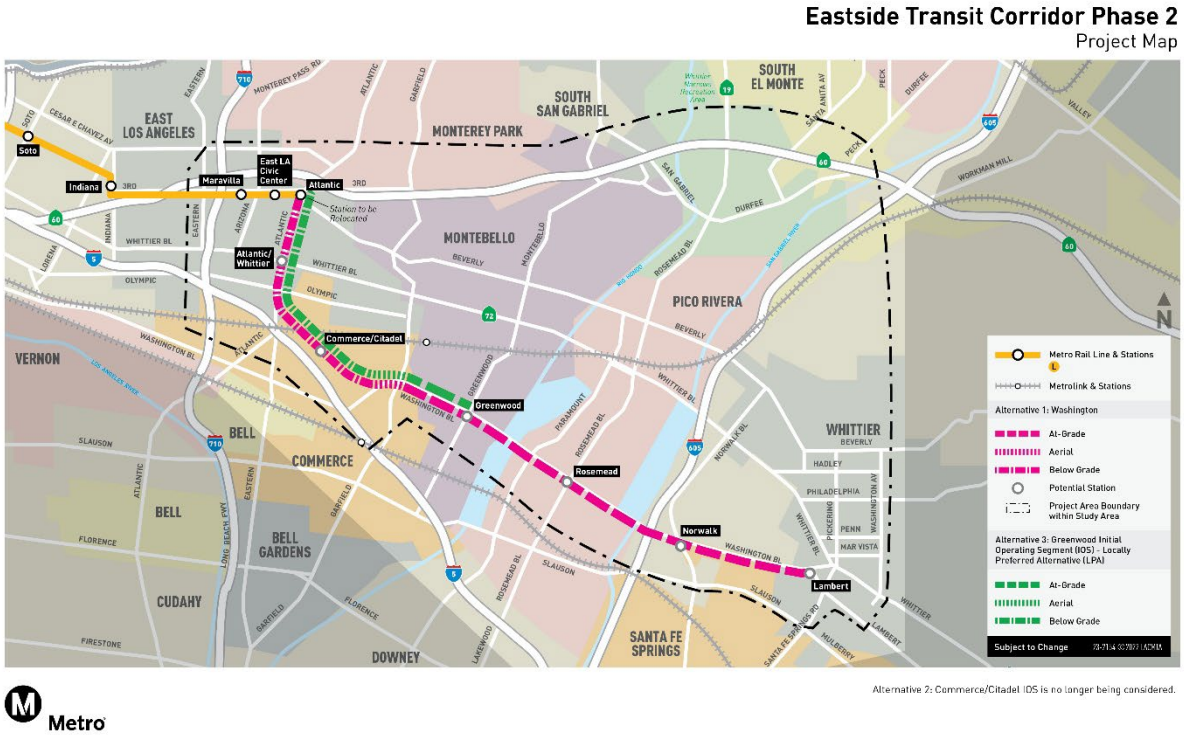
PHASE	KEY ACTIVITIES
Planning and Advanced Conceptual Engineering Phase	Key activities include: • Preparation of the draft environmental documents • Certification of the Final Environmental Documents (as applicable) • Preparation of Advanced Conceptual Engineering • Preparation of the contracting and procurement plan
Design Phase	Key activities include: • Agreement by the Parties on Design and/or Construction work to be performed by the City (including any City-Performed Project Work and Adjacent Work) in accordance with Sections 3.1(b) (*Design Responsibilities*) and 4.1(b) (*Construction Responsibilities*) of this Agreement • Procurement of LACMTA Contractor to deliver the ESP2 Project • Development of Engineering and Final Design by LACMTA and its Contractor • Design review and support services provided by the City in accordance with this Agreement
Construction Phase	Key activities include: • Construction of the ESP2 Project (including any Rearrangements and Utility Adjustments) • Inspection, Substantial Completion, and Final Acceptance
Operation and Maintenance Phase	Key activities include: • Operation of passenger service • Maintenance of the ESP2 Project

Part B: Project Schedule

As notified by LACMTA to the City or otherwise incorporated in an amendment to this Agreement.

EXHIBIT 3 – PROJECT SITE

Part A: ESP2 Project Site



Part B: City Portion

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

EXHIBIT 4 – ROLES AND RESPONSIBILITIES

Part A: LACMTA Representative and City Representative

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

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

Part B: Summary of Key Roles and Responsibilities

Phase	LACMTA / LACMTA Contractors	City
General	Performing all LACMTA obligations under this Agreement and ensuring that LACMTA Contractors comply with the provisions of this Agreement	Performing all City obligations under this Agreement and ensuring that City Contractors comply with the provisions of this Agreement
Planning and Advanced Conceptual Engineering Phase	Managing the planning process and preparing environmental documents including the Final Environmental Documents (as applicable) Preparing Advanced Conceptual Engineering for the ESP2 Project Preparing the contracting and procurement plan for the ESP2 Project	Providing support and assistance to LACMTA in obtaining Governmental Approvals and dealing with other third parties with respect to the City Portion
Design Phase	Discussing and identifying any Design and/or Construction work to be performed by the City (including any City-Performed Project Work and/or Adjacent Work) Preparing Procurement Documents and managing the procurement of LACMTA Contractors for the Design and Construction work Preparing and submitting Designs for the City Portion to the City for review and Approval to the extent required by this Agreement Acquiring Right-of-Way as required for the ESP2 Project Monitoring performance of LACMTA Contractors	Discussing and identifying any Design and/or Construction work to be performed by the City (including any City-Performed Project Work and/or Adjacent Work) Continuing to provide support and assistance to LACMTA in obtaining Governmental Approvals and dealing with other third parties with respect to the City Portion Reviewing and approving Designs for the City Portion submitted to the City Performing other Design-related obligations under any Work Orders Providing assistance to LACMTA in procuring any right-of-way necessary for the City Portion to the extent set out in this Agreement
Construction Phase	Performing the Construction Work in accordance with the Final Designs, LACMTA Contract, and other requirements, and provisions of this Agreement	Performing Construction-related obligations under any Work Orders

Phase	LACMTA / LACMTA Contractors	City
	Performing inspection on the construction of Rearrangements within Public Right-of-Way in the City Portion Monitoring performance of LACMTA Contractors	Performing inspection on the construction of Rearrangements within Public Right-of-Way in the City Portion Coordinating Adjacent Work, City Construction Work and City Maintenance Work
Operation and Maintenance Phase	Operating and maintaining the ESP2 Project, including performing any operation and maintenance work allocated to LACMTA under the provisions of this Agreement.	Performing any operation and maintenance work allocated to the City under the provisions of this Agreement. Coordinating maintenance work and Adjacent Work with LACMTA and LACMTA Contractors

Part C: Issue Resolution Ladder and Decision-Making Protocols

City Team	Partial List of Key Functions for Decision or Approval	LACMTA Team
City Manager, Director of Public Works	Spearhead council approvals. **Level 2** decision makers for the purposes of the issue resolution ladder described below.	LACMTA Deputy Chief Planning (until approval of the Final Environmental Documents) or LACMTA Deputy Chief Program Management (following approval of the Final Environmental Documents)
Director of Public Works, City Engineer	Approve all final Construction plans and related documents as required by this Agreement. Provide overall leadership in timely resolution of Design, Construction, plan review, and related administrative matters. CA Professional Engineer Registration **Level 1** decision makers for the purposes of the issue resolution ladder described below.	LACMTA Senior Executive Officer or designated LACMTA Project Manager
City Public Works Construction Department Head or City designated Project Manager or equivalent designated representative(s)	Provide Construction support as specified in this Agreement. Manage assigned resources and coordinate interactions between the City, LACMTA, and 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 (Executive Officer or Deputy Executive Officer) or designated Construction Manager (Deputy Executive Officer or Senior Director)
City Public Works Permit Division Head or equivalent	Oversee and coordinate all plan reviews as specified in this Agreement.	LACMTA designated Project Engineer (Deputy Executive Officer or Senior Director levels), consultant

City Team	Partial List of Key Functions for Decision or Approval	LACMTA Team
designated representative(s)	Manage and coordinate interaction of the City with LACMTA and 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.	construction manager, and LACMTA Third Party Admin Dept Project Lead (Civil)
City Traffic Engineer or equivalent designated representative(s)	Approve Traffic Management Plan and all worksite traffic control plans, and any Design Documentation for the Final Design pertaining to both permanent and temporary traffic controls (signals, striping, detours, lane closures, MUTCD restrictions, lighting, etc.).	LACMTA designated Project Engineer (Deputy Executive Officer or Senior Director), consultant construction manager, LACMTA Third Party Admin Dept Project Lead (Civil) and traffic engineering consultants

Issue Resolution Ladder

Issues between the Parties that arise with respect to the ESP2 Project under this Agreement that cannot be resolved at the working level will be escalated by the Parties for resolution as follows:

1. If the issue is unresolved at the working level for 20 Days commencing on the date when LACMTA or the City first identifies the issue to the other in a meeting (as documented in meeting minutes), or in an email notification to the other marked "Issue for Resolution" in the subject line and describing the issue or difference and the background to it (together with any supporting information), then on the 21st day:

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

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

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

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

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

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

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

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

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

EXHIBIT 5 – UTILITY ADJUSTMENT PROCEDURES

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

1. **Identification of Utility Conflicts**

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

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

(a) City-owned Utilities; and

(b) private Utilities.

The list of identified Utility Conflicts will include the anticipated Utility Adjustment to address each Utility Conflict and a schedule defining when such Utility Adjustments should be performed. The City acknowledges and agrees that identification of Utility Conflicts within the City Portion will be an iterative process and that LACMTA may update the list of identified Utility Conflicts during all phases of the ESP2 Project.

2. **Interface with Utility Owner**

2.1 Within 20 Days (or any other time period agreed by the Parties) following delivery of a Utility Conflict identification list under Section 1.2 (*Identification of Utility Conflicts*) of this EXHIBIT 5, for each Utility Conflict that has been identified, the City will:

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

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

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

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

(iv) timeframes for the required Utility Adjustment; and

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

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

2.2 Within 30 Days (or any other time period agreed by the Parties) of delivery of a Utility Conflict identification list under Section 1.2 (*Identification of Utility Conflicts*) of this EXHIBIT 5, the Parties will meet to:

(a) review the information provided by the City under Section 2.1 (*Interface with Utility Owner*) of this EXHIBIT 5 and any comments or questions from LACMTA regarding the terms of each applicable franchise agreement;

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

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

(d) discuss and agree to timing and approach and roles and responsibilities under this Exhibit including identifying:

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

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

2.3 Following each such meeting, the Parties will document the agreed timing, approach and roles and responsibilities to be taken in accordance with this EXHIBIT 5 in minutes signed by each Party:

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

(i) within ten Days of receipt of a written request from LACMTA the City will exercise its franchise rights under the franchise agreement with the applicable Utility owner by sending written Notice to the applicable Utility owner instructing it to relocate or remove the conflicting Utility or perform any other Utility Adjustment at that Utility owner's expense;

(ii) the City will request a meeting with each applicable Utility owner to be attended by the Parties, and at each such meeting the City point-of-contact, with the assistance of LACMTA, will lead the Utility Conflict and Utility Adjustment discussions (including schedule expectations in accordance with the ESP2 Project Schedule for the City Portion and Cost reimbursement expectations);

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

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

(v) promptly after delivery by LACMTA (and in any case within the time periods required under the applicable franchise agreement or under Applicable Law), the City will submit to each applicable Utility owner any required project plans, Designs, and other relevant documents for the City Portion prepared by LACMTA for that Utility owner's review;

(vi) all responses to reviews, comments and other correspondence relating to a Utility Conflict or the exercise of franchise or other City rights in accordance with this Exhibit from Utility owners shall be delivered to the City in accordance with the time periods required under the applicable franchise agreement or under Applicable Law or any more stringent schedule agreed with the Utility owner for the ESP2 Project, with a copy to LACMTA. If a Utility owner fails to provide a copy to LACMTA, the City agrees to forward a copy of such responses, comments or other correspondence to LACMTA within three Days of receipt;

(vii) LACMTA will address any comments received from Utility owners and will submit responses to the Utility owner with a copy to the City. If LACMTA is not permitted to submit responses

directly to the Utility owner under the terms of the franchise agreement or otherwise under Applicable Law, the City agrees to transmit LACMTA's response to the Utility owner;

(viii) for the Utility Adjustments to be performed by that Utility owner, the City shall request that the applicable Utility owner prepare and deliver: (A) 65%, 85% and 100% Designs (or, if Design stages are defined in the applicable franchise agreement, in accordance with the terms of the applicable franchise agreement) including, at a minimum, horizontal design, profiles, shoring, and worksite traffic control plans; and (B) "as-built" drawings in a CAD file format acceptable to LACMTA and to the City showing all Utility Adjustments performed by the Utility owner within 60 Days after completion of such Utility Adjustment work;

(ix) the City shall exercise its rights under the terms of the franchise agreement or otherwise under Applicable Law to coordinate the Design of the Utility Adjustment with the Design for the City Portion and ensure that the Design for the Utility Adjustment does not interfere with, disrupt or delay the Design, Construction, operation or maintenance of the City Portion, including ensuring that the Utility owner delivers or the City shall otherwise deliver promptly upon receipt from the Utility owner, copies of all Designs and plans for the Utility Adjustment work to LACMTA and shall give LACMTA the right to review and comment on the Designs and plans for the Utility Adjustment work. Any LACMTA comments to or acceptance or Approval of a Utility owner's Design under this Exhibit 5 will not relieve the Utility owner or its contractors from professional liability (errors and omissions) as the Design Engineer of Record for any Utility Adjustment performed by the Utility owner or its contractors; and

(x) with respect to Design and Construction work for Utility Adjustments that are to be performed by a Utility Owner, the City shall:

(A) enforce the Utility owner's schedule for Design and Construction in accordance with any timelines set out under the terms of the City franchise agreement, Applicable Law or any more stringent schedule agreed with the Utility owner for the ESP2 Project;

(B) assist in coordinating the Utility owner's schedule for Construction with LACMTA's ESP2 Project Schedule and shall otherwise require that the Utility owner comply with Section 2.6 (*Coordination of Work*) of this Agreement with respect to the coordination of the Utility Adjustment work;

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

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

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

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

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

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

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

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

EXHIBIT 6 – DESIGN REQUIREMENTS

1. **General Design Criteria**

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

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

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

2. **City Standards**

The Parties agree that, for the purposes of this Agreement, the "City Standards" will be those City Design standards and ordinances notified by the City to LACMTA or otherwise incorporated in an amendment to this Agreement in accordance with Section 3.5 (*City Standards*) of this Agreement.

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 taking into account health and safety concerns.

3.2 **Landscaping**. Trees and landscaped areas under ownership or daily control of the City shall be preserved whenever practical. Trees within the ESP2 Project Site which are not being removed by LACMTA, shall be protected. If the City elects and right-of-way is available, trees that must be removed due to Rearrangements will be replaced or relocated, if practicable, by LACMTA in accordance with the LACMTA tree policy in effect at the time of Project Definition or the Final Environmental Documents, whichever is more stringent. Replacement work shall be performed 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 Signal and Lighting Systems**. If a Rearrangement requires Traffic Signal and/or Lighting Work, then LACMTA shall obtain the City's Approval of LACMTA's Traffic Signal and Lighting Design (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 Facility or Public Rights-of-Way must be removed to accommodate the ESP2 Project, LACMTA will issue a Work Order to the City and the City shall take all reasonable actions within its powers to require the elimination of such projections by the time specified in the Work Order. If the City is not empowered to affect the removal of such projections, or if LACMTA otherwise elects, LACMTA will make its own arrangements for removal of such projections. The City will cooperate with LACMTA to minimize the Cost of eliminating, moving, removing or otherwise terminating projections.

3.5 **City Communications Facilities**. The relocation of any conflicting underground City communications facilities shall be performed by employing intercept-style manholes at both ends of each conflicting communications conduit segment, 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 shall, and will ensure that LACMTA Contractors will:

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

(i) in Packages in accordance with the schedule notified to the City as part of the Annual Work Plan process (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 the opportunity to review the submitted Design Documentation in accordance with EXHIBIT 7 (*LACMTA Submittal Review Procedure*);

(b) ensure that the Design Documentation submitted for the Final Design highlights any material amendments made since any earlier submittal of that Design Documentation, and 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;

(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, provide additional supporting information and/or make available the appropriate Design personnel to participate in post-submittal Design review meetings, to explain the Design Documentation for a Rearrangement or a particular element of it.

EXHIBIT 7 – LACMTA SUBMITTAL REVIEW PROCEDURE

1. **General**

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

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

2. **Review Procedure**

2.1 The City shall use reasonable endeavors to notify LACMTA and LACMTA's Contractor (if applicable) within 10 Days of receipt of an LACMTA Submittal from LACMTA or an LACMTA Contractor if the City considers (acting reasonably) that the LACMTA Submittal is incomplete or deficient for the purpose of the City's review (or deficient to the extent that the City is unable to proceed with its review) and requires re-submission, together with a detailed description of the information that the City deems to be missing or deficient. If no such Notice is delivered by the City within 14 days of receipt of an LACMTA Submittal, the LACMTA Submittal shall be deemed complete and acceptable for the purposes of the City proceeding with its review.

2.2 For those LACMTA Submittals submitted for review but not formal Approval to the City (including, Design Documentation submitted for those stages of Design Development review that precede the Final Design), the City shall complete its review and issue its comments to LACMTA and the LACMTA Contractor within the LACMTA Submittal Review Period. For those LACMTA Submittals that have been designated as requiring City review and Approval under this Agreement (including, submission of a Final Design Document for Approval), the City shall complete its review, issue its comments, and confirm its Approval or rejection, within the LACMTA Submittal Review Period.

2.3 All Compliance Comments shall be transmitted in the form of a comment matrix or, if mutually agreed, through another equivalent format, and shall reference the City Standard applicable to the Compliance Comment, and be accompanied by an annotated LACMTA Submittal (if applicable). Where a database is used for transmission of comments, LACMTA will provide the City (and the relevant City Contractors) with user accounts and training for this purpose.

2.4 If no comments are received within the LACMTA Submittal Review Period, the LACMTA Submittal shall be deemed complete and approved by the City.

2.5 The Parties acknowledge that the process set out in this EXHIBIT 7 is intended to facilitate the LACMTA Submittal review process and be consistent with the LACMTA Guidelines on Enhanced Partnering 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 an LACMTA Submittal under Section 2 (*Review Procedure*) of this EXHIBIT 7 if such LACMTA Submittal fails to comply with the requirements of this Agreement, and as specified in the City's Compliance Comments.

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

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

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

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

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 an LACMTA Submittal until LACMTA (or LACMTA Contractor) has submitted the relevant LACMTA Submittal to the City in accordance with this EXHIBIT 7 and:

(a) within seven Days of receiving a Notice from LACMTA (or relevant LACMTA Contractor) that the City failed to respond to an 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 relevant LACMTA Contractor, as applicable) that it approves such LACMTA Submittal.

EXHIBIT 8 – CONSTRUCTION REQUIREMENTS

1. **General Requirements**

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

(i) The approved Final Design (including any changes agreed under Section 3.6 (*Changes to Design*) of this Agreement);

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

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

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

(b) In conjunction with its contractors, LACMTA will be responsible for conducting public outreach to provide proper notification to the affected communities prior to and during Construction, complying with the Final Environmental Documents.

2. **Extended Working Hours**

The Parties acknowledge that extended work hours may be necessary to facilitate Construction of the City Portion. The Parties will agree to such work hours following joint review of the schedule and activities to be carried out by LACMTA and LACMTA Contractors. If a change is required to the agreed working hours, the Parties will negotiate in good faith to agree to such change.

3. **Haul Routes**

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

4. **Interruptions**

(a) The Parties acknowledge that certain components of the work in the City Portion will require interruption of City services. The Parties will agree to 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 City services are interrupted.

(b) In advance of any scheduled interruption of City services, LACMTA will cooperate with the City to minimize such interruptions, and will notify affected parties including residents and businesses located within 1/4 mile of the work, Council offices, and other elected officials. The City acknowledges 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 any reasonable request.

5. **Notification Matrix**

Prior to the start of the Construction phase, the City will notify LACMTA of its notification matrix providing the name, phone number and email address of the designated point of contract for the ESP2 Project within each City department.

6. Pedestrian and Vehicular Traffic Circulation and Access

6.1 General Requirements

(a) LACMTA or LACMTA Contractors shall develop a plan for any Construction work performed within the Public Rights-of-Way.

(b) LACMTA or LACMTA Contractors shall develop plans for actions to raise public awareness of upcoming Construction work, and assist affected parties in the resolution of complaints related to Construction.

(c) The City acknowledges that the Construction work to be performed by LACMTA or LACMTA Contractors within the Public Rights-of-Way is intended to be performed progressively under multiple packages, and that plans and reports described in this EXHIBIT 8 may be prepared for each package.

(d) The City understands that LACMTA requires flexibility in the execution of Construction, and LACMTA will ensure that any plan prepared by LACMTA or LACMTA Contractors will, at a minimum, meet the City's requirements that are necessary to provide for public health and safety (including pedestrian and vehicular safety), and consistent with the Basis of Design.

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

6.2 Worksite Traffic Control Plans

Worksite Traffic Control Plans (WTCP) shall include:

(a) plans for the handling of vehicular and pedestrian traffic on streets within or adjacent to a Construction work zone showing street closures, detours, warning devices and other pertinent information;

(b) actions to maintain access to businesses, schools and residences located within or adjacent to a Construction work zone; and

(c) The Work Area Traffic Control Handbook (WATCH) Manual can be used to implement lane closures as explicitly allowed in the WATCH Manual. An engineered WTCP must be developed, submitted to and approved by the City for all closures not explicitly allowed by the WATCH Manual. Temporary traffic signal plans, if required, shall be developed, submitted to and approved by the City.

6.3 Temporary Street Lighting Plans

LACMTA or the LACMTA Contractors shall develop temporary street lighting plans, which shall include:

(a) safety and security at nighttime for vehicular and pedestrian traffic traveling on streets through a Construction work zone;

(b) lighting devices, circuit and power service connections, and other pertinent information as applicable.

Any street lighting plans prepared under this Section 6.3 will be submitted for review and Approval in accordance with Section 7 (*Temporary Facilities*) below.

6.4 Traffic Management Plan (TMP)

(a) The Parties may agree that a street, highway, bridge, or other Public Right of Way shall be temporarily or permanently closed for the necessity of the ESP2 Project. If such closure is agreed to, a TMP shall be developed by LACMTA or the LACMTA Contractor as part of the applicable plan. A TMP shall be prepared only for streets classified as collector or high and shall include:

(i) WTCP, and temporary traffic signal and street lighting plans as required;

(ii) Synchro analysis of affected streets;

(iii) mitigations for emergency services;

(iv) community outreach plan; and

(v) construction schedule for the applicable work activities including an analysis on the impacts to the community.

(b) Any TMP prepared under this Section 6.4 shall be submitted for review and Approval in accordance with Section 7 (*Temporary Facilities*) below.

7. Temporary Facilities

7.1 City Facilities

Temporary Facilities may be necessary to facilitate Construction of the ESP2 Project (including Rearrangements). LACMTA or its designee may use, without cost, lands owned or controlled by the City for Construction related purposes 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. If no response is received from the City within 45 Days of receipt of a request to use such lands, LACMTA's request to use lands owned or controlled by the City shall be deemed approved.

Upon completion of the related Construction and LACMTA's determination that the Temporary Facilities no longer are needed, LACMTA or the LACMTA Contractor shall remove all Temporary Facilities and restore the area as nearly as practicable to its original condition unless the Parties agree to some other arrangement.

7.2 LACMTA Facilities

In the event that Temporary Facilities are necessary to implement 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. If no response is received from LACMTA within 45 Days of receipt of a request to use such lands, the City's request to use lands owned or controlled by LACMTA shall be deemed approved.

Upon completion of the Rearrangement, 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.

8. Temporary Decking or Plating

LACMTA or LACMTA Contractors shall ensure that where required, temporary decking or plating in areas open for use by the public shall not be constructed of exposed timber and shall be designed for the posted speed and loading per the American Association of State Highway and Transportation Officials Load and Resistance Factor Design, latest edition adopted by Caltrans with applicable California Amendments.

The decking surface shall have a minimum dynamic friction factor of 0.35 for skid resistance as measured by California Test Method No. 345, and a minimum static friction factor of 0.60 for slip resistance as measured by American Standards for Testing Materials C1028 to provide safe operating conditions for vehicular and pedestrian traffic under both wet and dry conditions.

The decking surfaces shall be tested for dynamic and static friction values by the City for compliance with established standards as necessary. The end ramp profiles, methods of anchorage, decking/street drainage

provisions shall be submitted to the City. Temporary curb installations shall be submitted to the City for approval and shown on the Traffic Management Plan for reference.

The decking surface conditions shall be installed and maintained per City Standard. If the City does not have a City Standard regarding the installation and maintenance of decking surface conditions, the decking surface conditions shall be installed and maintained in accordance with LACMTA or LACMTA Contractor standards.

9. **Underground Service Alert**

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

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, the LACMTA 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 for retrieval. 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**

LACMTA shall maintain a set of "as-built" drawings of Rearrangements performed by LACMTA during Construction. Red line mark-ups for temporary street lighting systems, traffic signal systems, and other City Facilities shall be submitted to the City within 15 Days after completion of Construction of Replacement Facilities. Upon completion of the Rearrangement work, LACMTA shall furnish to the City as-built drawings within 75 Days after completion of the work on City Facilities, showing all Replacement Facilities installed in a format consistent with requirements listed in the Basis of Design.

The City shall maintain a set of "as-built" drawings of Rearrangements performed by the City during Construction. Red line mark-ups for temporary street lighting systems, traffic signal systems, and other City Facilities shall be submitted to LACMTA within 15 Days after completion of Construction of Replacement Facilities. Upon completion of the Rearrangement work, the City shall furnish to LACMTA as-built drawings within 75 Days after completion of the work on City Facilities, showing all Replacement Facilities installed in a format as agreed during Early Involvement.

EXHIBIT 9 – INSPECTION AND ACCEPTANCE PROCEDURE

1. **City Inspections**

1.1 City will provide dedicated inspection staff for the ESP2 Project who shall be responsible for overseeing and enforcing code requirements for the construction of City Facilities. In the event the City does not have sufficient City or City Contractor staff available to perform this work, then upon notification from the City, LACMTA may assign LACMTA inspection staff to perform this work on behalf of the City.

1.2 LACMTA will provide dedicated inspection staff for the ESP2 Project who shall be responsible for overseeing and enforcing code requirements for all Construction work other than for the construction of City Facilities.

2. **Betterments**

In the event any City Inspector request made under this EXHIBIT 9 is identified as a Betterment, the Parties will follow the Betterment process outlined in Article 5 (*Notice of Betterments*) of this Agreement.

3. **Substantial Completion**

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

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

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

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

3.2 If LACMTA considers that the requirements for Substantial Completion of a Rearrangement (or the applicable part of the Rearrangement) have been satisfied in accordance with Section 3.1 (*Substantial Completion*) of this EXHIBIT 9, LACMTA shall submit a Notice to the City requesting a Statement of Substantial Completion. LACMTA may issue a Notice under this Section 3.2 notwithstanding that there are known Punch List items or outstanding work that is otherwise only required to be performed under this Agreement for the purposes of achieving Final Acceptance, provided that LACMTA's Notice shall include the list of proposed Punch List items.

3.3 Within ten Days (or any other time period agreed by the Parties) of delivery of a Notice by LACMTA requesting a Statement of Substantial Completion, the City Inspector and LACMTA will together inspect the Rearrangement (or the applicable part of the Rearrangement) to determine its status of completion in accordance with Section (1)(a)(i) (*General Requirements*) of EXHIBIT 8 (*Construction Requirements*) and to agree to the Punch List items.

3.4 Within five Days of completion of the inspection of the applicable part of the Rearrangement, the City will either:

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

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

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

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

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

4. **Statement of Final Acceptance**

4.1 The following requirements must be satisfied in order to achieve Final Acceptance of a Rearrangement :

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

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

(c) LACMTA (or the applicable LACMTA Contractor) has delivered all "as-built" drawings for the Rearrangement (or for all parts of that Rearrangement where Substantial Completion of a part was permitted).

4.2 If LACMTA considers that the requirements for Final Acceptance of a Rearrangement have been satisfied in accordance with Section 4.1 of this EXHIBIT 9, LACMTA shall submit a Notice to the City requesting a Statement of Final Acceptance.

4.3 Within ten Days of delivery of a Notice by LACMTA requesting a Statement of Final Acceptance, the City Inspector and LACMTA will together inspect the Rearrangement to determine its status of completion.

4.4 Within five Days of completion of the inspection of the applicable part of the Rearrangement, the City will either:

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

(b) if the City determines that the requirements for Final Acceptance of the Rearrangement have not been achieved, reject by Notice LACMTA's request, together with a Final Acceptance Correction List.

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

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

5. **Responsibility to Complete the Work**

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

5.2 The issuance of a Statement of Substantial Completion for a Rearrangement (or a part of a Rearrangement) shall not relieve LACMTA of its obligation to complete the Punch List items and to promptly remedy any omissions and latent or unnoticed defects in the Rearrangement covered by the Statement of Substantial Completion in accordance with the warranties under Section 8.2 (*Warranty*) of this Agreement.

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

(a) in accordance with Sections 5.1 and 5.2 above, it shall be LACMTA's continuing responsibility to complete and deliver every part, and the integrated whole, of the Rearrangement and to satisfy the conditions of Final Acceptance of that Rearrangement; and

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

EXHIBIT 10 – OPERATION AND MAINTENANCE PRINCIPLES

1. **Primary Responsibilities**

1.1 LACMTA (directly or through LACMTA Contractors) will be responsible for the operation and maintenance of the ESP2 Project (including maintenance of any low impact development water and storm drain mitigation measures constructed outside of the Public Rights-of-Way as part of the ESP2 Project, on the ESP2 Project Site, or on LACMTA-owned right-of-way).

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

(a) maintenance of all City Facilities within the Public Rights-of-Way including, but not limited to, trees, gutters, sidewalks, ramps, streets, roadways, utilities, vaults, pull boxes, streetlights, traffic signals, traffic loops, striping, signage, irrigation, bioswales 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 Public 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 and hardware 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 Public Rights-of-Way and conform to all City 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. All traffic control devices shall conform to accepted City practices and shall be installed and maintained in accordance with the California Manual on Uniform Traffic Control Devices and/or approved worksite traffic control plans. 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 for the provision of electricity and/or the applicable water district for the provision of water supply in connection with the ESP2 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 ESP2 Project draws electricity from this source, then such agreements shall include a "power restoration" priority provision regarding outages resulting from emergencies whereby the ESP2 Project and future operations shall be provided with the highest priority consistent with other state-wide designated essential facilities.

5. **Track Allocation**

The City and any City Contractors shall comply with LACMTA's Track Allocation/Work Permit Procedures in effect at the time of any Construction, Maintenance or repair work on or in the vicinity of the ESP2 Project or Project Site.

EXHIBIT 11 – FORMS

Part A: Form 60

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

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

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

48.a. Agency Name/Address	48.b. Individual to contact/Telephone Number

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

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

51. CERTIFICATE

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

52. CERTIFICATE OF CURRENT COST OR PRICING DATA

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

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

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

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

Form 60 Attachments (Applicable if Box is checked)

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

4	
	Schedule in which Scope of Work is based on:
1	
2	
3	
4	
1	
2	
3	
4	
	Track Allocation Request for Metro active bus rapid right-of-way encroachment is anticipated per stated Scope of Work. The following information is provided in advance to facilitate final Metro TAR Approval:
1	
2	
3	
4	
FORM 60 IS SIGNED AND EXECUTED WITH THE FOLLOWING ADDITIONAL ASSUMPTIONS:	
1 CITY AS-BUILT RESEARCH BY CITY FOR METRO PROJECTS IN THE PLANNING PHASE SHALL BE TREATED AS PART OF LABOR OVERHEAD PORTION OF COST	

Part B: City Betterment Request Form

CITY BETTERMENT REQUEST

Date: _____

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

From: City of Montebello (City)

Subject Scope/Scope Element: _____

Project: Eastside Transit Corridor Phase 2 (ESP2) Project

Pursuant to the Cooperative Agreement (CA) between the City and LACMTA with respect to the ESP2 Project, this shall serve as a formal Notice that the following design and/or construction scope is requested to be delivered as a Betterment as defined within the CA.

Scope of requested Betterment:

_____

_____

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

_____

_____

Estimated rough order of magnitude cost: _____

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

CITY OF MONTEBELLO

By:_____

Name: _____

Title: _____

Date:_____

_____

LACMTA has reviewed the above City Betterment Request and:

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

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

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

   _____

An estimated cost is listed below:

Design Costs: $_____ Construction Costs: $_____

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

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

By:_____

Name: _____

Title: _____

Date: _____

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

CITY OF MONTEBELLO

By:_____

Name: _____

Title: _____

Date: _____

Part C: LACMTA Notice of Potential Betterment[1]

NOTICE OF POTENTIAL BETTERMENT

Date: _____

To: City of Montebello (City)

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

Subject Scope/Scope Element: _____

Project: Eastside Transit Corridor Phase 2 (ESP2) Project

Pursuant to the Cooperative Agreement (CA) between the City and LACMTA, this shall serve as a formal Notice that the following City comment or request with respect to the Design Documentation, Construction plans, and/or work for the ESP2 Project has been identified as a potential Betterment as defined within the CA.

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

_____

_____

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

- ❑ if implemented, the City comment or request would comprise an upgrade, change or addition to a City Facility (or a part of a City Facility) that provides for greater capacity, capability, durability, appearance, efficiency, function or other betterment of that City Facility over that which was provided by the City Facility prior to the ESP2 Project, and none of the exclusions listed in the CA apply; or
- ❑ If implemented, the City comment or request would comprise a change in or supplement to the City Standards applicable to that work after the establishment of the Basis of Design, and none of the exclusions listed in the CA apply.

Details:_____

_____

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

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

By:_____

Name: _____

Title: _____

Date: _____

---

[1] Please refer to Article 5. This is the form that would be used by LACMTA if it identifies a City request or comment as a potential Betterment. The reasons for identifying a City request or comment as a potential Betterment listed in the form are intended to align with the definition of Betterment. It also includes a response form from the City, withdrawing the comment or enclosing a City Betterment Request.

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

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

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

CITY OF MONTEBELLO

By:_____

Name: _____

Title: _____

Date: _____

EXHIBIT 12 – CITY-PERFORMED PROJECT WORK

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

1.1 In accordance with Section 3.1(b)(ii) (*Design Responsibilities*) and Section 4.1(b)(ii) (*Construction Responsibilities*) of this Agreement, LACMTA may request by Notice that the City prepare a Cost estimate and proposal for the City to perform Design work and/or Construction work with respect to the City Portion of the ESP2 Project. The request submitted by LACMTA shall set out:

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

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

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

1.2 Within 15 Days after submission of a Notice by LACMTA under Section 1.1 (*Request for the City to Perform Design and/or Construction Work*) above, the Parties will meet to discuss the request and following such meeting the City will, within 15 Days of such meeting, Notify LACMTA if it is not able to perform or procure the City-Performed Project Work, or within 30 Days of such meeting will provide LACMTA with:

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

(b) any City comments or proposed adjustments to LACMTA's proposed schedule for performing the City-Performed Project Work; and

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

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

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

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

2.1 Any schedule for City-Performed Project Work prepared and agreed by the Parties under Section 1 above will be aligned with, and allow for, the timely delivery of the City Portion in accordance with the Project Schedule. The agreed schedule for City-Performed Project Work will be attached to the applicable Work Order.

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

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

Where the City-Performed Project Work includes only Construction work (and not the preparation of the Designs for that Construction work) then, if requested by LACMTA, agreed by the Parties and authorized

under a Work Order, the City or City Contractor (if included as part of a procurement under Section 4 (*Procurement of City-Performed Project Work*) below) will perform Design support services including performing constructability reviews prior to commencing the City-Performed Project Work.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) the environmental controls established in the LACMTA Contracts for the ESP2 Project, including construction noise and vibration control, pollution controls, and archaeological and paleontological coordination;

(d) the applicable Annual Work Plan and Work Orders, including the agreed schedule set out under the applicable Annual Work Plan and Work Orders;

(e) good industry practice;

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

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

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

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

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

6. **Inspection**

All City-Performed Project Work will be subject to inspection for conformance to agreed scope, criteria, specifications, requirements, and contractual terms and conditions.

7. **Debarred Contractors**

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

EXHIBIT 13 – EARLY INVOLVEMENT

Part A: Early Involvement Procedures

1. **Initial Meeting(s)**

Within 30 Days of delivery of a Notice from LACMTA initiating the Early Involvement Procedures, LACMTA will convene an initial meeting (or initial meetings, as required) with the City. Topics for the initial meeting(s) will include:

(a) an update from LACMTA on the:

(i) LACMTA team members responsible for delivery of the ESP2 Project;

(ii) status of the ESP2 Project, including the anticipated Project ROW, funding sources, phasing, and contracting and procurement plan;

(iii) anticipated elements and scope of work within the City Portion;

(iv) Project Schedule including the anticipated date for issuance of the Procurement Documents for the ESP2 Project; and

(v) key risks identified for the ESP2 Project that may impact the schedule or implementation of the Design and Construction of any Rearrangements; and

(b) a discussion of the resource needs to support the ESP2 Project and Project Schedule, both in terms of the Early Involvement Procedures and the later phases of the ESP2 Project.

2. **Resourcing**

If the first Annual Work Plan for the ESP2 Project has not already been agreed and/or a Work Order covering the work, support, and services to be performed as part of the Early Involvement Procedures has not already been authorized, then following the initial meeting(s) held under Section 1 (*Initial Meeting(s)*) above, the Parties will prepare and agree to the first Annual Work Plan and/or Work Order (as required) in accordance with Sections 2.2 (*Annual Work Plan*) and 2.3 (*Work Orders*) of this Agreement.

3. **Project Definition**

3.1 **Review of Design Documentation**

(a) To the extent not already submitted to the City prior to the Effective Date, LACMTA will submit to the City the ACE Design Documentation and/or any Design Documentation based on further Design Development undertaken.

(b) LACMTA will convene a workshop(s) to present the ACE Design Documentation and/or Design Documentation based on any further Design Development undertaken. The agenda for the workshop(s) will include discussions of key aspects of the Design of the ESP2 Project that may impact the scope and Basis of Design for the Rearrangements. Such key Design elements may include:

(i) roadway width, alignment and tie-ins

(ii) sidewalk and parkway widths;

(iii) bus/rail interface and bus stops (including bus pad lengths and locations);

(iv) curb ramps, radii and ADA requirements;

(v) signaling, pre-emption, and illumination requirements;

(vi) hydraulics and drainage;

(vii) landscaping, tree removals and replacements; and

(viii) track alignment and pedestrian circulation at station plazas.

(c) The City will actively participate in the Design workshop(s) and provide LACMTA with written comments to the ACE Design Documentation and any further Design Documentation submitted to it (to the extent not already submitted prior to the Effective Date) in accordance with EXHIBIT 7 (*LACMTA Submittal Review Process*) to assist in the identification of the scope of Rearrangements, City Standards, Basis of Design, and Utility Adjustments as described below.

(d) LACMTA will notify the City of any matters or issues relating to the scope of Rearrangements, Basis of Design, or other matters or issues referred to in this Part A that may be agreed at a later stage based on, among other matters, the contracting and procurement plan and Project Schedule.

3.2 **Scope of Rearrangements**

(a) Together with the preparation and review of the ACE Design Documentation and any other Design Documentation submitted to the City, the Parties will identify or mutually agree (as applicable) to the scope of Rearrangements for the purpose of issuance of the Procurement Documents for the ESP2 Project as follows:

(i) LACMTA will identify: (A) any removals, replacements, restorations, alterations, reconstruction, support, or relocation of all or a portion of any Conflicting Facilities whether permanent or temporary, and (B) any installation of new City Facilities which LACMTA determines in its sole discretion are necessary to comply with Applicable Law. If the City determines that the join line or tie-in point between any Rearrangements and an existing City Facility as depicted in the Design Documentation is inadequate, LACMTA will perform its evaluation and may add a transition of up to ten linear feet; and

(ii) LACMTA and the City will discuss in good faith and mutually agree to: (A) any removals, replacements, restorations, alterations, reconstruction, support, or relocation of all or a portion of any Conflicting Facilities whether permanent or temporary, and (B) any installation of new City Facilities which are necessary in order to construct, operate or maintain the ESP2 Project, or as a result of the impact of the Construction, operation, or maintenance of the ESP2 Project.

(b) The Rearrangements identified or mutually agreed to under this Section 3.2 will be listed in the Project Definition.

3.3 **Identification of Betterments**

(a) To the extent that the City identifies any proposed Betterments falling within paragraph (a) of the definition of "Betterment", during its review of the ACE Design Documentation and any other Design Documentation or otherwise during the activities under this Part A, it will submit a completed City Betterment Request for LACMTA's review and Approval in accordance with Section 5.1 (*Notice of Betterments*) of this Agreement.

(b) LACMTA will review any City Betterment Requests submitted by the City and counter-sign the City Betterment Request to the extent a requested Betterment is approved in accordance with Section 5.2 (*Approval of Betterments*) of this Agreement.

(c) Any Betterments approved by LACMTA for inclusion in the ESP2 Project (at the City's cost, in accordance with the Agreement) will be included in the Project Definition as described under Section

3.11 (*Establishing the Project Definition*) below. The Parties acknowledge that any additional mitigations (at the City's cost) with respect to the Betterment may need to be included and addressed in the Final Environmental Documents and the City agrees to cooperate with LACMTA in providing all such information and documents as may be required for this purpose.

3.4 **Initial Identification of Utility Conflicts**

(a) Together with the preparation and review of the ACE Design Documentation, any other Design Documentation, and otherwise as requested by LACMTA, the City will coordinate and cooperate with LACMTA in providing any locational data or other information as described in Section 1 (*Identification of Utility Conflicts*) of EXHIBIT 5 (*Utility Adjustment Procedures*).

(b) Prior to establishing the Project Definition, LACMTA may submit an initial list of identified Utility Conflicts as described in Section 1 (*Identification of Utility Conflicts*) of EXHIBIT 5 (*Utility Adjustment Procedures*), in which case the Parties will perform the activities under Sections 2.1 and 2.2 (*Interface with Utility Owner*) of EXHIBIT 5 (*Utility Adjustment Procedures*) with respect to the Utility Conflicts identified on that initial list.

3.5 **City Standards**

(a) Following identification of a Rearrangement under Section 3.2 (*Scope of Rearrangements*) above, the City will review the list of City Standards set out in EXHIBIT 6 (*Design Requirements*) of this Agreement or otherwise notified to LACMTA and confirm to LACMTA in writing the City Standards applicable to the Design, Construction, and submission of as-built drawings for the Rearrangement, and any amendments or additions to those City Standards applicable to the Design and Construction of the Rearrangement.

(b) LACMTA will notify the City if it objects to the City's list of applicable City Standards on the basis of Section 3.5 (*City Standards*) of this Agreement and/or of any requested deviations to those City Standards necessary for the ESP2 Project.

(c) The list of City Standards (and any deviations) agreed to by the Parties will be included in the Project Definition as described under Section 3.11 (*Establishing the Project Definition*) below.

3.6 **Basis of Design**

(a) LACMTA may convene and the City will participate in workshop(s) to discuss the scope, criteria, specifications and requirements for each Rearrangement.

(b) Following presentation of the ACE Design Documentation and any other Design Documentation, and identification of a Rearrangement under Section 3.2 (*Scope of Rearrangements*), and the workshops and provision of information under Section 3.6(a) above, LACMTA will submit for City review the draft scope, criteria, specifications and requirements for that Rearrangement that form or are intended to form, the basis of the Procurement Documents to be issued by LACMTA and that include the Design and/or Construction of the Rearrangement within its scope. Together with such submission, LACMTA will submit a table of requested deviations from any City Design or Construction criteria notified to LACMTA under Section 3.6(a) above. The City will review the draft scope, criteria, specifications and requirements for that Rearrangement for compliance with the City Standards identified under Section 3.5 (*City Standards*) above and otherwise for compliance with this Agreement and provide comments to LACMTA in accordance with EXHIBIT 7 (*LACMTA Submittal Review Procedure*).

(c) The Parties will discuss in good faith and resolve comments submitted by the City and mutually agree to the Basis of Design. The Basis of Design agreed by the Parties will be included in the Project Definition as described under Section 3.11 (*Establishing the Project Definition*) below.

3.7 **Construction Requirements**

The Parties will discuss in good faith the key aspects of Construction for the ESP2 Project. Such elements may include:

(a) variances, full street closures, lane closures and streets subject to any other street closure restrictions, including discussion and identification of any required City Council approvals, and lead time for City Council approvals or other proceedings that may be required for potential street closures or other significant Construction operations;

(b) instrumentation; and

(c) support of excavation requirements.

The approach to these elements agreed by the Parties will be included in the Project Definition as described under Section 3.11 (*Establishing the Project Definition*) below.

3.8 **Allocation of Responsibilities**

LACMTA will discuss allocation of responsibilities for Design and Construction and may request that the City:

(a) perform Design and/or Construction work with respect to a Rearrangement in accordance with Sections 3.1 (*Design Responsibilities*) and 4.1 (*Construction Responsibilities*) of this Agreement; and/or

(b) perform additional Construction work with respect to the City Portion of the ESP2 Project that is not part of any Rearrangement in accordance with Section 4.1 (*Construction Responsibilities*) of this Agreement and pursuant to the procedures and subject to the requirements set out under EXHIBIT 12 (*City-Performed Project Work*).

3.9 **Anticipated Schedule and Resource Requirements**

(a) LACMTA will convene a schedule workshop to present to the City the anticipated Project Schedule for the City Portion including the schedule for procurement, Design Development, right of way acquisition, Construction, testing and commissioning.

(b) The Parties will review the anticipated Project Schedule, acknowledging it is preliminary, and acknowledging that the scheduling of Design Package reviews will be established by the applicable LACMTA Contractor, and look ahead to forecast resource requirements for the City to be able to support timely delivery of the ESP2 Project in accordance with the terms of this Agreement, taking into account the allocation of responsibilities under Section 3.8 (*Allocation of Responsibilities*) above.

3.10 **Anticipated Interfaces and Adjacent Work**

(a) In accordance with the terms of this Agreement, City will promptly notify LACMTA of any known or anticipated Adjacent Work and any other known or anticipated Design or Construction interfaces with respect to the ESP2 Project. In addition, the City will promptly notify LACMTA of any known deficiencies in any City Facilities within the City Portion for the ESP2 Project that may reasonably be expected to give rise to Adjacent Work or a Design or Construction interface with respect to the ESP2 Project.

(b) LACMTA will convene and the City will participate in any Adjacent Work or other interface workshop(s) to agree to the approach to coordinating Design inputs and scheduling of Construction or other work.

3.11 **Establishing the Project Definition**

(a) All matters agreed under this Part A will be documented by the Parties, in the form of Project Definition set out in Part C (*Form of Project Definition*) of this EXHIBIT 13. LACMTA will prepare and sign the Project Definition and submit it to the City for the City's review, acceptance and counter-signature.

(b) Any matters not agreed at the time of documenting and signing the Project Definition will be described in the Project Definition. Unless LACMTA has notified the City that such outstanding matters may be agreed at a later stage of the ESP2 Project based on, among other matters, the contracting and procurement plan and Project Schedule, matters marked as not agreed will be referred to the Level 2 decision makers identified in Part C (*Issue Resolution Ladder and Decision-Making*) of EXHIBIT 4 (*Roles and Responsibilities*) for the purposes of achieving resolution prior to the scheduled advertisement of the Procurement Documents associated with the Design of the Rearrangements.

Part B: Reimbursement for Participation in Early Involvement Procedures

1. **Eligible for Reimbursement**

The following activities performed as part of the Early Involvement Procedures are eligible for reimbursement in accordance with Sections 2.3 (*Work Orders*) and 7.1 (*Reimbursements to the City*) of this Agreement:

(a) Review of ACE Design Documentation and other Design Documentation submitted to the City for purposes of defining and agreeing to the Project Definition; and

(b) All technical, support services, and other activities described in Part A (*Early Involvement*) of this EXHIBIT 13 and not expressly excluded under Section 2 (*Not Eligible for Reimbursement*) below.

2. **Not Eligible for Reimbursement**

The following activities performed as part of the Early Involvement Procedures are not eligible for reimbursement in accordance with Sections 2.3 (*Work Orders*) and 7.1 (*Reimbursements to the City*) of this Agreement:

(a) participation in and coordination of community engagement activities;

(b) performance by the City of its obligations as a responsible agency or cooperating agency (as applicable) for the purposes of the environmental review and approval process for the ESP2 Project, including:

(i) provision of as-builts or other necessary information, documents, or data;

(ii) review of draft environmental documents;

(iii) providing feedback on the scope of the project transportation analysis;

(iv) access, safety and operational analyses;

(v) identifying City or LACMTA-led projects that can off-set vehicle miles traveled (VMT);

(vi) station connectivity analyses, as applicable;

(vii) feasibility study review and comment;

(viii) alternatives assessment review and comment;

(ix) public right-of-way protocols;

(x) tree removals to be addressed in the environmental documents; and

(xi) support for outreach to stakeholders during the Planning and Advanced Conceptual Engineering Phase.

Part C: Form of Project Definition

PROJECT DEFINITION FOR THE ESP2 PROJECT

This Project Definition has been agreed in accordance with the Cooperative Agreement between LACMTA and the City dated [●] ("**Agreement**"). Words defined in the Agreement have the same meaning in this Project Definition.

IMPORTANT NOTICE:

(1) This is the Project Definition for the ESP2 Project and will apply to the ESP2 Project as set out in the Agreement, subject only to amendments made in accordance with the terms of the Agreement and to any matters marked as not yet agreed in this Project Definition.

(2) In accordance with the Agreement and subject only to amendments made in accordance with the Agreement, the City acknowledges that, with respect to the ESP2 Project in this Project Definition:

(a) LACMTA will rely on this Project Definition to prepare and advertise the applicable Procurement Documents (Section 2.10 (*Early Involvement*) of the Agreement); and

(b) any changes or additions to the Basis of Design, including to the City Standards included in the Basis of Design, applicable to a Rearrangement after the establishment of this Project Definition shall, subject to Section 2.10(d) (*Early Involvement*) of the Agreement and the exclusions set out in the definition of "Betterment" under the Agreement, be deemed a Betterment for the purposes of the Agreement (Section 2.10 (*Early Involvement*) of the Agreement).

Project Details	
Date of Project Definition:	[*Insert date of notice.*]
LACMTA Representative:	[*Include name.*]
City Representative:	[*Include name*]
Project Short Description:	[*Insert short (2-3 paragraphs) description of the project (including any updates since issuance of the LACMTA Project Notice), including the project objectives.*]
Project URL:	[*Include a link to the LACMTA project webpage for the project where further details have been or will be posted.*]
Project Environmental Documents:	[*Include a link to the LACMTA project webpage for the project where the environmental documents have been or will be posted.*]
Anticipated Contract Packages and Anticipated Project Delivery Method for each Contract Package:	[*Confirm/identify the anticipated contract packages, for example, LACMTA retained scope, any AUR or other advanced work contract packages, and the core scope package. For each contract package, confirm/identify the anticipated project delivery method*.]
Anticipated Funding Sources:	[*For the purposes of giving an indication of whether federal requirements will apply, confirm/identify the current anticipated funding sources (local, state, and/or federal)*.]
Anticipated Schedule (Anticipated Key Milestone Dates):	[*Include a summary or attachment showing the current anticipated schedule, including the key milestones relevant to this Agreement. In particular, the anticipated dates/milestones for advertisement of the Procurement Documents, Design Phase and Construction Phase*.]

<table>
<tr><td>Anticipated Project ROW / City Portion:</td><td>[Include a reference to the relevant drawings/ alignment definition under the environmental documents.]</td></tr>
<tr><td>Anticipated Resource Needs:</td><td>[Document any discussions regarding forward-planning for resource needs for the project.]</td></tr>
<tr><td colspan="2">Agreed Scope, Basis of Design and City Standards</td></tr>
<tr><td>Design Documentation Reviewed</td><td>LACMTA and the City confirm that they have reviewed the ACE Documentation and other Design Documentation prepared as attached to this Project Definition as Attachment [•] and that comments were received and resolved as set out in Attachment [•].</td></tr>
<tr><td>Key Design elements:</td><td>LACMTA and the City have identified the following key Design elements as being applicable to the ESP2 Project and have resolved them as set out below: [Describe here or in an attachment. This may include cross-references to the Basis of Design/City Standards referenced in other sections of the Project Definition]
<table>
<tr><th>Key Design Elements</th><th>Agreed approach</th></tr>
<tr><td>Roadway width, alignment and tie-ins</td><td></td></tr>
<tr><td>Sidewalk and parkway width</td><td></td></tr>
<tr><td>Bus/rail interface and bus stops (including bus pad lengths and locations)</td><td></td></tr>
<tr><td>Curb ramps, radii and ADA requirements</td><td></td></tr>
<tr><td>Signaling, pre-emption, and illumination requirements</td><td></td></tr>
<tr><td>Hydraulics and drainage</td><td></td></tr>
<tr><td>Landscaping, tree removals and replacements</td><td></td></tr>
<tr><td>Track alignment and pedestrian circulation at station plazas</td><td></td></tr>
</table></td></tr>
<tr><td>Scope of Rearrangements:</td><td>[Here or by attachment or reference to the ACE, describe the scope of Rearrangements agreed upon.]</td></tr>
<tr><td>Betterments:</td><td>In accordance with the Agreement, the Betterments described in the Potential Notices of Betterment, signed by the City and accepted, authorized and countersigned by LACMTA, attached under Attachment [●] to this Project Definition will be incorporated into the scope of the project, at the City's cost.</td></tr>
<tr><td>Utility Adjustments:</td><td>[Here or by attachment, describe any Utility Conflicts already identified and any agreements reached as to the timing, approach, and roles and responsibilities for the related Utility Adjustments.]</td></tr>
</table>

<table>
<tr><td>City Standards:</td><td>The Parties agree that the City Standards set out in the Basis of Design and provided to LACMTA on a data storage device such as a flash drive or CD-ROM, will apply to the Design of the Rearrangements, subject to any approved deviations described.</td></tr>
<tr><td>Basis of Design:</td><td>The mutually agreed Basis of Design for the Rearrangements to be performed within the scope of the ESP2 Project is attached as Attachment [●] to this Project Definition.</td></tr>
<tr><td>Construction Requirements</td><td>LACMTA and the City have identified the following key Construction requirements as being applicable to the ESP2 Project and have addressed them as set out [below]/[in Attachment [●]]<table>
<tr><td>Full street closures, lane closures and streets subject to any other street closure restrictions, including discussion and identification of any required City Council approvals, and lead time for City Council approvals or other proceedings that may be required for potential street closures or other significant Construction operations</td><td>[Here or by attachment, describe any the street closures, etc. required for the ESP2 Project and the approach discussed, including any required City Council approvals.]</td></tr>
<tr><td>Instrumentation</td><td>[Here or by attachment, describe how this will be addressed for the ESP2 Project.]</td></tr>
<tr><td>Support of excavation requirements</td><td>[Here or by attachment, describe how this will be addressed for the ESP2 Project]</td></tr>
</table></td></tr>
<tr><td>Allocation of Responsibilities:</td><td>[To the extent Design and Construction responsibilities have been allocated to the City, describe those here.]</td></tr>
<tr><td>Anticipated Adjacent Work or Other Interfaces:</td><td>[To the extent Adjacent Work or other interfaces (or deficiencies in existing City Facilities that may reasonably be expected to give rise to Adjacent Work or a Design or Construction interface with respect to the project) are identified, document those here or in an Attachment, together with any agreed approaches to coordinate that work or interface.]</td></tr>
<tr><td>Outstanding Matters for Resolution:</td><td>[To the extent any matters remain outstanding, describe those here (or in an attachment).]</td></tr>
</table>

ACKNOWLEDGED AND AGREED

LACMTA REPRESENTATIVE

By: _____
Name: _____
Title: _____

CITY REPRESENTATIVE

By: _____
Name: _____
Title: _____

Attachments to Project Definition

[*List and incorporate attachments*]