



## Board Report

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### CONSTRUCTION COMMITTEE SEPTEMBER 21, 2023

**SUBJECT: CITY OF LOS ANGELES MASTER COOPERATIVE AGREEMENT**

**ACTION: APPROVE RECOMMENDATION**

#### **RECOMMENDATION**

AUTHORIZE the Chief Executive Officer to execute the Master Cooperative Agreement between the City of Los Angeles and the Los Angeles County Metropolitan Transportation Authority for a term of ten years (Attachment A).

#### **ISSUE**

The Master Cooperative Agreement (MCA) is intended to establish the Parties' obligations, roles and responsibilities, and processes and procedures to support the efficient, timely and safe delivery of LACMTA's transportation projects, including with respect to the design and construction of the rearrangements of City facilities arising from those transportation projects. In accordance with Cal. Pub. Util. Code § 30633 and as an agency of the state regulating transportation matters of state-wide concern, LACMTA is immune from local regulation unless the state legislature has expressly made LACMTA subject to specific local ordinances, or compliance with such ordinances is mandated by the California Constitution. LACMTA has an unrestricted and equal right to use the right of way "to the same extent...granted to municipalities within the state." Given that LACMTA has a right to approve its own projects and use the public right of way "to the same extent" as the City, the City has no right or obligation under California law to review LACMTA's design of Transportation Projects - such rights arise only under the MCA that is the subject of this board action.

#### **BACKGROUND**

The design, construction and maintenance of some transportation projects undertaken by the Los Angeles County Metropolitan Transportation Authority (LACMTA) traverse portions of the City of Los Angeles (City) and require the removal, replacement, restoration, alteration, reconstruction and relocation of all or a portion of City facilities. The approval of Measure R and Measure M has expanded LACMTA's capital projects program and increased investment in public transportation projects, sparked ambitious public policy goals to address climate change with an emphasis on equitable public transportation solutions, and set forth aggressive project timelines. LACMTA and the City must partner, cooperate, and collaborate more efficiently to meet the public mandates.

On September 26, 1991, the City and LACMTA executed an MCA to design and construct the City facilities necessary to accommodate the development of rail transit systems and busway transit systems delivered under the Design/Bid/Build delivery method. On January 21, 2003, the City and LACMTA executed a subsequent MCA to design and construct the City facilities necessary to accommodate the development of transit systems and busway transit systems delivered under the Design/Build delivery method.

On September 30, 2020, the Chief Executive Officer of LACMTA terminated the 2003 MCA for several reasons, with the foremost being that the MCA had aged 20 years and was no longer suited for LACMTA's program of projects. The City Mayor's Office acknowledged the termination of the MCA and committed to negotiating a new agreement that strengthens the collaboration between the Parties and covers the breadth of projects delivered by LACMTA.

After LACMTA terminated the MCA, the parties engaged in numerous partnering sessions, facilitation meetings, workshops, focus groups, and negotiations to develop a new MCA that addresses lessons learned and that will support the delivery of LACMTA's upcoming program of transportation projects under a range of delivery methods.

## **DISCUSSION**

The MCA executed in 2003 was limited to rail transit systems and busway transit systems delivered under the design/build delivery method and bound LACMTA to the 1991 MCA for guidance and requirements related to the delivery of design/bid/build of rail transit systems and busway transit systems. LACMTA projects are no longer limited to rail transit systems and busway transit systems and the delivery methods utilized are not limited to design/build or design/bid/build. Therefore, the new MCA will apply to the design and construction of any light rail, heavy rail (including subway), busway, tram, highway, high occupancy toll lanes (including Express Lanes/FasTrak), bike path, active transportation or other forms of transportation or mobility systems that are located within the City, regardless of the project delivery method and contracting and procurement strategy adopted by LACMTA. Over the last three years, the parties participated in a series of meetings and focus groups to discuss project delivery challenges and to address the technical needs and requirements for the new MCA. At the end of the series of facilitated meetings, the parties commenced negotiation of the agreement and have negotiated diligently for the past 12 months.

The agreement memorializes a partnership between LACMTA and the City and a renewed commitment to collaboration and cooperation on the delivery of projects. The new MCA acknowledges LACMTA and the City's shared public policy goals on safety, equity, climate action, cost efficiency and delivering projects in a timely manner. It also focuses on increased transparency between the parties, resourcing and staff capacity, governance and senior leadership engagement, defining the project scope elements earlier in the design development process, refining the process and procedures for submittal and approval periods, and protocols for elevating issues and resolving issues to avoid delayed decisions. The City agrees to assist LACMTA by providing engineering, technical, analytical, and administrative support services, and other services necessary for the successful delivery and implementation of transportation projects. Taken together, the new features of this new MCA are intended to improve cost and schedule performance on all transportation

projects initiated by Metro within the City of Los Angeles.

The proposed MCA with the City has terms and conditions that build upon the approach under other recent cooperative agreements executed, or currently being negotiated, between Metro and other Cities, such as those within the West Santa Ana Branch Corridor, but with additions to address a wider suite of projects on a programmatic basis.

Below is a summary of key terms included in the new MCA. Capitalized terms defined below and not defined in this report have the meaning given in the new MCA.

- 1. Scope of Agreement** - Similar to the previous MCA, the City agrees to designate transportation projects as high priority public works projects and to provide LACMTA with expedited review and approval procedures. The new MCA will apply to the design and construction of LACMTA projects, including light rail, heavy rail (including subway), busway and bus supportive infrastructure, tram, highway, high occupancy toll lanes (including Express Lanes/FasTrak, etc.), bike path, active transportation or other forms of transportation or mobility systems delivered under any project delivery method.
- 2. Duration of Agreement** - Term of ten years. Parties may request an extension to the Term or enter into a replacement MCA at the end of the term in which the Parties will negotiate in good faith.
- 3. Governance** - The agreement establishes an MCA Executive Task Force, a standing task force that will meet quarterly and will, among other matters, review lessons learned, opportunities and challenges, and look-ahead to upcoming transportation projects and long-range resource planning. The Executive Task Force will be comprised of City department General Managers, Executive Directors of the public works bureaus, Assistant General Managers and LACMTA Deputy Chief Planning Officer or Deputy Chief Program Management Officer and Chief Planning Officer or Chief Program Management Officer.
- 4. Project Governance** - LACMTA and the City will designate a project liaison responsible for facilitating coordination between the Parties. The City may also appoint a City Project Liaison on a programmatic basis for overall coordination of the transportation projects.
- 5. Issue Resolution** - If not resolved at the project working-level, issues will be escalated to the "Level 1 Decision Makers" (Deputy Chief-level for LACMTA; Assistant General Manager or Deputy Chief Engineer for the City) and then to the "Level 2 Decision Makers" (Chief-level for LACMTA; General Manager or Chief Engineer for the City). If a dispute arises that is not resolved through the resolution procedures, either Party may refer the dispute to the alternative dispute resolution.
- 6. Early Involvement** - LACMTA and the City will cooperate and coordinate during the Planning & Advanced Conceptual Engineering Phase, including LACMTA and the City each exchanging information, participating in coordination meetings and performing other activities to identify, in a 'Project Definition' document, the scope of rearrangements, the applicable City Standards and other design requirements applicable to those rearrangements for inclusion in the procurement documents released by LACMTA. During this process, the Parties will discuss

the anticipated project schedule and resourcing needs.

7. **Utility Adjustments** - The new MCA sets out procedures for the Parties to cooperate and coordinate to identify utility conflicts and ensure utility owners implement the utility adjustments required to address utility conflicts.
8. **Design** - LACMTA will Design any rearrangements, although the City may, if LACMTA requests, perform some level of Design work (this is anticipated to be the exception). LACMTA will comply with the Design Requirements for Rearrangements, including compliance with the defined City Standards. The new MCA sets out the procedures for submittal of the Designs of Rearrangements to the City and the City's review.
9. **City Standards** - The City agrees not to adopt any new City Standards or amend City Standards for the sole purpose of affecting LACMTA's Transportation Projects. Subject to exclusions set out in the definition of "Betterment", changes to the City Standards after the establishment of the Project Definition of a Transportation Project will be considered a Betterment.
10. **Construction** - LACMTA will be responsible for the Construction of any Rearrangements, although LACMTA may request that the City construct a Rearrangement and/or perform additional Construction work for a Transportation Project. The new MCA sets out Construction requirements for rearrangements or any other Construction work performed in the public right-of-way and procedures for the inspection and acceptance of the Construction of Rearrangements.
11. **Betterments** - In accordance with Federal Transit Administration requirements, all Betterments will be at the cost of the City. The new MCA sets out the procedure for identification, review, and approval of potential Betterments. LACMTA may refuse Betterments that are incompatible with the Transportation Project, do not comply with Applicable Law, or that are requested after establishing the Project Definition.
12. **Special Permitting Process** - LACMTA and the City agree on the design and Construction requirements for Rearrangements of City facilities, agree on the permits that will be waived by the City and any required City fees applicable to transportation projects.
13. **Inspection and Acceptance** - The Parties agree all Rearrangements performed by LACMTA or a LACMTA Contractor will be inspected to ensure the work was performed in accordance with the approved Designs and terms of the of the MCA.

## **DETERMINATION OF SAFETY IMPACT**

The recommended action has no impact on safety.

## **FINANCIAL IMPACT**

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There is no change to the current budgeting or funding mechanisms that have supported MCA functions in the past. Funds relevant to city department and bureau services under this MCA shall be provided under yearly LACMTA Board approved Annual Work Plans (AWP). All yearly funds identified within these AWP's shall be adopted through respective project budgets. Since these are multiyear projects, the Project Managers and the Chief Program Management Officer will be responsible for budgeting all yearly costs.

## **EQUITY PLATFORM**

The MCA governs the delivery of all transportation projects that traverse City boundaries. Each approved transportation project is evaluated through LACMTA's Equity Platform framework and focuses on equity outcomes. The MCA acknowledges equity as a shared public policy goal of the parties and includes cultural competency language regarding LACMTA's approach to the implementation of its projects for its contractors.

## **IMPLEMENTATION OF STRATEGIC PLAN GOALS**

This action supports all 5 of Metro's Strategic Plan Goals:

1. Provide high-quality mobility options that enable people to spend less time traveling;
2. Deliver outstanding trip experiences for all users of the transportation system;
3. Enhance communities and lives through mobility and access to opportunity;
4. Transform LA County through regional collaboration and national leadership; and
5. Provide responsive, accountable, and trustworthy governance within the Metro organization.

## **ALTERNATIVES CONSIDERED**

The Board could choose not to approve this recommendation. This alternative is not recommended as this action strengthens the partnership between LACMTA and the City and provides for continuity of City support for Transportation Projects.

## **NEXT STEPS**

Upon Board approval of this recommendation, the City and LACMTA shall execute the MCA and commence training for and implementation of the new processes. In addition, staff is currently in discussions with the Los Angeles Department of Water and Power, who are not a part of this MCA agreement, in regards to entering into a similar Master Utility Cooperation Agreement with a goal of agreement in 2024.

LACMTA and the City also identified the need for a Master Operations and Maintenance Agreement

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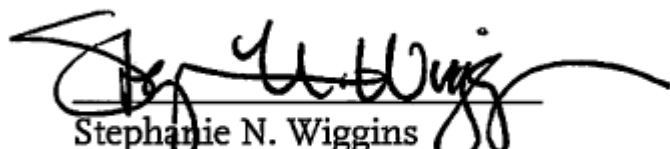
to have clear guidelines (a) for long-term maintenance to ensure the public right-of-way is properly constructed and maintained in a state of good repair, and (b) to provide more certainty related to the review and approval process of LACMTA capital project design plans. While the MCA is complete and ready for consideration by the Board as part of this action, the Operations and Maintenance Agreement remains in active negotiation between LACMTA and the City and is expected to be ready for consideration by the Board by Winter 2023.

## **ATTACHMENTS**

Attachment A - Master Cooperative Agreement between the City of Los Angeles and LACMTA

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