

# **Attachment 1**

**MEMORANDUM OF AGREEMENT  
FOR THE ADVANCE UTILITY RELOCATION PHASE  
OF THE PURPLE LINE EXTENSION PROJECT – SEGMENT 1  
BETWEEN  
THE CITY OF BEVERLY HILLS  
AND  
THE LOS ANGELES COUNTY METROPOLITAN  
TRANSPORTATION AUTHORITY**

THIS MEMORANDUM OF AGREEMENT (“Agreement”), dated, \_\_\_\_\_, 2014 (“Effective Date”) is made by and between the Los Angeles County Metropolitan Transportation Authority (“LACMTA”), and the City of Beverly Hills (“City”).

**ARTICLE I  
Recitals**

City and LACMTA desire to develop this Memorandum of Agreement to accommodate the Advanced Utility Relocation Phase of the Purple Line Extension Project - Segment 1 (the “Project”). It is anticipated that this Agreement will form the basis for two or more subsequent agreements to address a similar scope through the completion of Segment 1.

The Purple Line Extension Project - Segment 1, is defined as a Heavy Rail Project extending from the existing Wilshire/Western station and traversing through the City of Los Angeles and the City of Beverly Hills and ending at the La Cienega Station. LACMTA has informed City that the Advanced Utility Relocation Phase is necessary to relocate and rearrange existing utilities that interfere with the construction of the permanent transit facilities anticipated to be constructed during the construction of Segment 1.

LACMTA proposes to utilize various methods of project delivery to design and construct the relocation and rearrangement of existing City utilities and various existing public/private utilities. Portions of these utilities will pass in, on, under, over or along public streets, (ROW) of the City of Beverly Hills.

The Parties desire to cooperate to the end that such relocations and rearrangements are consistent with City requirements and that when relocations and rearrangements are required, both Parties mutually agree on the scope of relocations and rearrangements.

This Memorandum of Agreement for the Advanced Utility Relocation Phase of the Purple Line Extension Project - Segment 1, addresses the following:

- (a) designation of the City Representative and LACMTA Representative and the development of an emergency contact list;
- (b) procedures which LACMTA and City will follow in identifying, planning, designing and effecting relocations and rearrangements of City utilities

and various public and private utilities, including plan review, permitting process and permit fees;

- (c) manner in which City will be reimbursed for the reasonable costs for activities associated with the Project;
- (d) Construction staging and traffic control requirements;
- (e) Allowable work hours and workdays, including the process for requesting work outside of the allowable work hours/days;
- (f) Noise limits, noise and light spill mitigation measures;
- (g) Advanced notification process for all construction activities, including any planned service interruptions, and establishment of a public hotline;
- (h) Inspection during construction;
- (i) Operation and maintenance of City utilities;
- (j) Indemnity, Warranties and Insurance requirements;
- (k) Federal and Other Requirements.

## **ARTICLE II**

### **Term of Agreement and Definitions**

The initial term of this Agreement (the “Initial Term”) shall commence on the Effective Date and shall terminate on December 31, 2015. This Agreement shall automatically be renewed for one year terms commencing on the day following the last day of the Initial Term and on each subsequent anniversary of such day, unless either Party provides written notice of termination to the other no later than ninety (90) days prior to the end of any term (including the Initial Term).

For the purposes of this Agreement, the following terms shall have the meanings set forth below:

- (a) “Advanced Utility Relocation Phase” means that phase of the Project during which LACMTA will relocate and rearrange existing utilities that interfere with the construction of the permanent transit facilities anticipated to be constructed during the construction of the Project.
- (b) “Approval” except as otherwise provided, means written approval by the City Representative or LACMTA Representative, as applicable.
- (c) “City Facility” means a Facility under the ownership or the exclusive operation of City. City facilities may include, but are not limited to, public streets, curbs and gutters, sidewalks, traffic signals, signing, roadways, bridges, retaining walls, alleys, water lines, storm drains, sanitary sewers, parking lots, parks, public

landscaping and trees, traffic control devices/systems, street lighting systems, and public, police and fire alarm systems.

- (d) “City Representative” means the person designated by the City Manager pursuant to Article III of this Agreement, to represent the City who shall manage and coordinate interactions between the City and LACMTA concerning the Project and each component thereof in a timely manner, in accordance with Article III.
- (e) “City Rights-of-Way” means real property owned by the City, whether title is held in fee, easement, right-of-way, or otherwise.
- (f) “City Standards” means the rules, regulations, ordinances and codes of City, including but not limited to the City’s standard plans, specifications, general provisions, and approved materials for public works projects.
- (g) “Construction” means the work of removal, demolition, replacement, alteration, realignment, building, fabricating, landscaping and all new fixed facilities to be built and systems and equipment to be procured and installed that are necessary to complete the Project in accordance with approved plans and specifications.
- (h) “Construction Staging Plans” means construction phasing/sequencing and traffic management plans developed pursuant to Article VI.
- (i) “Costs” shall mean Indirect Costs and Direct Costs.
- (j) “Days” means calendar days including Saturdays, Sundays, and legal holidays. See also definition of Working Days.
- (k) “Design” means that engineering, architectural and other design work and the resulting maps, plans, specifications, special provisions, drawings, calculations, computer software, and estimates which are needed to construct the Project.
- (l) “Direct Costs” means labor costs and costs of purchasing equipment and/or materials, without markup or overhead of any kind.
- (m) “Effective Date” shall mean the date set forth in the Preamble.
- (n) “Facility” means real or personal property now or in the future to be located within the City Right-of-Way, including but not limited to roadways, pipes, mains, services, meters, regulators and any equipment, apparatus and/or structure appurtenant thereto or associated therewith.
- (o) “Fiscal Year” means July 1 through June 30.
- (p) “Governmental Authority” means any government or political subdivision, whether federal, state, or local, or any agency or instrumentality of any such government or political subdivision, or any federal, state, or local court or arbitrator, other than the City and LACMTA.

- (q) “Indirect Costs” means all costs that are not Direct Costs, including but not limited to administration (such as overhead, salaries and benefits), legal, and program management.
- (r) “LACMTA Representative” means the person designated by the Chief Executive Officer of LACMTA pursuant to Article III of this Agreement to represent LACMTA in all dealings with the City for purposes of this Agreement, in accordance with Article III.
- (s) “Laws” means any law, rule, regulation, ordinance, statute, code or other requirement of any Governmental Authority.
- (t) “Project” means the Advanced Utility Relocation Phase of the Purple Line Extension Project – Segment 1, as described in Article I of this Agreement.
- (u) “Project Right-of-Way (ROW)” means the real property required to relocate and rearrange utilities to complete the Project.
- (v) “Rearrangement” means the alteration, removal, replacement, reconstruction, support or relocation of a City Facility or portion thereof, whether permanent or temporary, which facility LACMTA determines must be rearranged in order to complete the Project.
- (w) “Traffic Management Plan” means a plan that addresses traffic control requirements in Construction areas through a Worksite Traffic Control Plan (“WTCP”), and along detour routes through a Traffic Circulation Plan (“TCP”). A WTCP is a site-specific Design for temporary traffic control and diversion of vehicular and pedestrian traffic through or adjacent to a work area, incorporating base conditions, temporary conditions, construction impact areas, and all temporary/permanent traffic controls and advisory signage. On a larger scale, a TCP addresses operation along alternate routes which bypass(es) a work area, or multiple intersections affected by concurrent Construction, by means of striping, signing, signals, delineators, barricades, warning lights or other traffic control devices.
- (x) “Work Order” means the document(s) which the LACMTA will issue upon agreement by the Parties as to Scope of Work and Direct and Indirect Costs, which document authorizes City to perform any work, and to be reimbursed therefor, on the preparation and/or review of design plans, operation plans, or other agreed to work plans, and to provide materials, labor inspection, and/or Rearrangements under the terms and conditions of this Agreement.
- (y) “Working Days” means those days that Beverly Hills City Hall is open for business.

### **ARTICLE III**

#### **Designation of City Representative and LACMTA Representative; Emergency Contact List**

The City Manager shall designate as the City Representative a person, or the holder of a specified office or position, to act as the City Representative for the Project. The City Representative(s) will have the responsibility to manage and coordinate City interaction with LACMTA concerning the Project and each component thereof in a timely manner. The City Representative(s) will also have the responsibility to manage the City review and approval process for Design and Construction documents submitted by LACMTA for City review and approval. City may change its designated representative by providing seven days written notice to LACMTA.

The Chief Executive Officer of LACMTA shall designate a person, or the holder of a specified office or position, to act as the LACMTA Representative for the Project. The LACMTA Representative will have the responsibility to manage and coordinate LACMTA interaction with City, and to cause production of the necessary Design and Construction documents for City review and/or approvals as called for under this Agreement, to issue Work Orders, and to make Approvals as required by this Agreement. LACMTA may change its designated representative by providing seven days written notice to City.

As authorized by this Agreement, the LACMTA Representative and the City Representative shall establish general guidelines, working relationships, administrative policies, standards of design and construction, approval procedures with respect to Design review, coordination of Construction; and Rearrangement of City Facilities pursuant to this Agreement in order to permit the timely design, Construction and implementation of the Project.

The LACMTA Representative and the City Representative shall establish an emergency contact list. Contact information for all organizations involved in the Project or organizations that have facilities in the Project area including agencies, utility companies, contractors, sub-contractors, consultants and any other entity shall be included. The parties shall request that each organization shall designate an emergency contact process that provides for the availability of resources twenty-four (24) hours per day/seven (7) days per week in the event of an emergency.

### **ARTICLE IV**

#### **Procedures for Identifying, Planning, Designing and Effecting Relocations and Rearrangements including Plan Review, Permitting Process and Permit Fees**

Coordination of Design and the development of the Design plans and specifications shall be accomplished by the LACMTA Representative (who shall confer from time to time with the City Representative). LACMTA (or its consultants and/or contractors) shall Design all Rearrangements.

LACMTA's plans and specifications for Construction located within, on, under or over City Rights-of-Way shall be submitted for City's review and comment as provided in this Section. Notwithstanding, the City Standards shall not be superseded by any LACMTA contract document or this MOA.

The Parties shall develop a mutually agreeable process, including a schedule and format, for submittal of plans to the City for review and comment for all Construction and each Rearrangement of Facilities, and for final inspection and acceptance of all Rearrangements in accordance with the following:

- (a) Within ten (10) Working Days after receipt of an application for Construction or a Rearrangement, (i) City shall inform LACMTA whether the application, including the plans and specifications, is sufficiently complete for City technical review purposes, and (ii) if not sufficiently complete, City shall so notify LACMTA, or shall return the application to LACMTA together with an identification of those portions that are not sufficiently complete and a description of the missing information listing the deficiencies.
- (b) Within thirty (30) Days after receipt of each complete application, City staff shall complete its review, and (i) inform LACMTA that Staff is recommending to the City Council approval of the application or (ii) transmit its comments in the form of a comment matrix and annotated plans (as appropriate) to LACMTA.
- (c) Before the thirty (30) Day review period ends, the City and LACMTA may mutually agree to an extension of the review period.
- (d) Within thirty (30) Days after City staff has completed review and informed LACMTA that Staff is recommending approval of the application, an agenda report will be presented to the City Council for consideration of the application and issuance of required permits.
- (e) Within seventy-two (72) hours after approval by City Council, the City will issue a permit(s) or transmit a letter to LACMTA approving the application, including any conditions of approval.

The provisions of this Section will also apply to any re-submittal of an application by LACMTA, whether in response to a City notice or return of incomplete plans and specifications, or in response to City comments. Re-submittals shall include the City's comment matrix, City's annotated plans, and confirmation of comment resolution. LACMTA will use its best efforts to ensure that City comments are resolved prior to re-submittal. LACMTA may conduct comment resolution meetings to address concerns with City comments for the purpose of reaching a satisfactory resolution.

LACMTA, its consultants, and its contractors, will be responsible for errors and omissions in the application materials, including plans, specifications, submittals, and all other related contract documents that they prepare.

Following City approval and issuance of a permit(s), changes in Design shall require approval by both LACMTA and City. All changes required to accommodate differing existing site conditions are the responsibility of LACMTA, its consultants, and contractors. Field changes required due to differing site conditions must be reviewed and approved by the City in accordance with the provisions of this Section.

City hereby waives the payment of any Costs for permits provided that City staffing and processing Costs will be reimbursed as provided for in this Agreement.

**ARTICLE V**  
**Manner in which City will be Reimbursed for Costs**

Consistent with its own staffing and workload requirements and the reimbursement provided by LACMTA, City shall reasonably allocate staff and other resources to endeavor to provide the level of service required to meet the scope of work and schedules as submitted by LACMTA.

LACMTA agrees to reimburse the City in the manner provided by this Agreement for its Cost (Direct and Indirect) for all staff performing work associated with the Project consistent with this Agreement. Direct Costs shall include direct labor costs. Indirect Costs shall be calculated [*discussion required between the parties*]. Unless the Internal Revenue Service or the California Public Utilities Commission issue regulations or rulings to the contrary, reimbursable Costs will not include taxes purportedly arising or resulting from LACMTA's payments to City under this Agreement.

The City agrees to provide, and LACMTA agrees to reimburse the City for, two full-time positions for the purpose of meeting the City's obligations under this Agreement. The two positions include: 1) Principal Civil Engineer to coordinate and facilitate plan review/approval and construction management/observation; and 2) Senior Public Works Inspector to observe and approve the installation of City Facilities. Additionally, the City agrees to provide and LACMTA agrees to reimburse the City for Direct and Indirect Costs of other as-needed City staff performing work or providing services associated with the Project consistent with this Agreement.

To assist the LACMTA and City in estimating the level of service to be provided for the Project which will require work by City pursuant to this Agreement, LACMTA and City will cooperate to develop a mutually agreeable annual work plan for each LACMTA Fiscal Year for which such work by City will be required, in accordance with the following provisions:

- (a) Not later than sixty (60) Days after execution of this Agreement, and again on February 28 of each calendar year during the term of this Agreement, LACMTA shall provide City with information regarding anticipated Project requirements. LACMTA's provided information shall include a list of each item of work that LACMTA anticipates to request from City for the Project during the upcoming Fiscal Year and the estimated start and finish dates for the work item that LACMTA anticipates to request from the City. Within thirty (30) Working Days after receiving the required information from LACMTA, City shall submit a preliminary annual work plan to LACMTA for required work by City during the upcoming LACMTA Fiscal year, which would include an estimated amount of money that City will require for reimbursement of work performed and purchase of requested items.
- (b) For each LACMTA Fiscal Year, following LACMTA's receipt of the preliminary annual work plans, City and LACMTA shall each negotiate in good faith such

issues as are necessary in order to attempt to finalize such annual work plans, not later than April 30 prior to the commencement of such LACMTA Fiscal Year.

- (c) For each LACMTA Fiscal Year, within sixty (60) Days after City's submittal to LACMTA of the final annual work plans agreed upon by the Parties, LACMTA shall issue to City a Work Order identifying each item of work LACMTA anticipates City will perform through the end of the LACMTA Fiscal Year, the amount of money City and LACMTA estimate that City will be reimbursed therefore, and the anticipated schedule for performance of such work. For funding purposes, such Work Orders may be made effective as of the estimated work start date for the described activities upon City sign off. City and LACMTA acknowledge that, due to the dynamics of the Project and related Construction, such Work Orders will be subject to amendments (including additions, deletions and modifications), and additional Work Orders may be issued throughout the LACMTA Fiscal Year as deemed appropriate by LACMTA and as approved by City by signing off the amendment to the Work Order or additional Work Order.

LACMTA shall issue Work Orders to City, following City's submittal of an estimate in the form required by LACMTA, to authorize the performance of all work and the purchase of all materials and equipment required under the terms and conditions of this Agreement. City may perform any work so authorized. Each Work Order shall specify the work to be performed and any materials or equipment to be acquired, the amount of money that City will be reimbursed therefore, and a schedule, including the estimated starting and finishing dates for work so authorized. Work Orders shall include estimated schedules, which are consistent with and supportive of the LACMTA Design and Construction schedule and will require City acceptance through sign off of the Work Order. Except for the two full time positions set forth above in this Article V, 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, not requested by Work Order, unless otherwise mutually agreed in writing. City shall not be required to perform any work not requested by Work Order or otherwise to be reimbursed pursuant to written agreement. City shall be reimbursed for all Costs for work requested by Work Order, regardless of whether such Costs exceed the agreed upon estimate.

City shall be reimbursed for all Costs incurred in developing and executing this Memorandum of Agreement within thirty (30) days of the date of this Agreement. City shall be reimbursed for all Costs incurred for work related to preparing and implementing the annual work plans, within thirty (30) days of the approval of the annual work plan by both LACMTA and City.

## **ARTICLE VI**

### **Construction Staging and Traffic Control Requirements**

LACMTA, through its consultants, contractors, subcontractors or agents, shall develop Construction staging plans and Traffic Control Plans and submit such plans in conjunction with each application pursuant to Article IV that involves Construction. The Construction Staging Plans shall be considered an element of the application. Construction Staging Plans and Traffic Control Plans shall provide, among other things, for the handling of vehicular and pedestrian traffic on streets adjacent to Construction with the Traffic Control Plans showing street closures,

detours, warning devices, employee parking and other pertinent information (including Worksite Traffic Control Plans). Such plans shall incorporate actions to maintain access to businesses adjacent to the Construction areas, and actions to ensure safe access and circulation for pedestrians and vehicular traffic as described in the worksite traffic control plans. LACMTA will ensure that the plans accommodate elements of public awareness as well as mechanisms to assist affected Parties in complaint resolutions.

LACMTA shall comply with the following requirements in the development of its Construction Staging Plans and Traffic Control Plans:

- (a) The minimum traffic lane requirements for streets impacted by Construction activities shall be:

**Wilshire Boulevard (San Vicente Blvd. to Robertson Boulevard)**

9:00 PM to 6:00 AM - One Lane each direction  
6:00 AM to 10:00 AM - Three Lanes each direction  
10:00 AM to 3:00 PM - Two Lanes each direction  
3:00 PM to 7:00 PM - Three Lanes each direction  
7:00 PM to 9:00 PM - Two Lanes each direction

**La Cienega Boulevard (Clifton Way to Olympic Boulevard)**

9:00 PM to 6:00 AM - One Lane each direction  
6:00 AM to 10:00 AM - Three Lanes each direction  
10:00 AM to 3:00 PM - Two Lanes each direction  
3:00 PM to 7:00 PM - Three Lanes each direction  
7:00 PM to 9:00 PM - Two Lanes each direction

**San Vicente Boulevard (Clifton Way to Wilshire Boulevard)**

9:00 PM to 6:00 AM - One Lane each direction  
6:00 AM to 10:00 AM - Three Lanes each direction  
10:00 AM to 3:00 PM - Two Lanes each direction  
3:00 PM to 7:00 PM - Three Lanes each direction  
7:00 PM to 9:00 PM - Two Lanes each direction

- (b) No streets may be proposed for complete closure during Construction. Access to all commercial properties adjacent to Wilshire Boulevard from Wilshire Boulevard and nearby side streets must be maintained except as provided in subsection (d) below.
- (c) The Construction Staging Plan or Traffic Control Plan shall include a parking control plan that observes the following requirements:

On-street metered parking regulations in the commercial area and permit parking restrictions in the residential area shall be observed. No changes or restrictions shall be made to parking in residential areas. If on-street parking must be removed from a commercial area in order to accommodate construction, then a parking control plan shall provide for equivalent replacement parking within a reasonable distance from the location where parking has been removed.

(d) Detours:

City may consider limited, temporary street closures if necessary to accommodate Construction. If approved, street closures may occur from 11:00 p.m. to 5:00 a.m. Proposed detour routes must be submitted and approved in accordance with this Agreement as part of the street closure request. Detour routes must not use residential streets. Advanced notification of street closures in accordance with a City reviewed and approved notification process is required.

(e) Preliminary Haul routes and overloads routes:

Haul routes and overload/oversized vehicle routes must be reviewed and approved by the City. The following streets are designated for use by vehicles exceeding a maximum gross weight, including the vehicle and its load, of three (3) tons:

La Cienega Boulevard;  
Olympic Boulevard;  
Robertson Boulevard;  
San Vicente Boulevard;  
Santa Monica Boulevard (north and south roadways);  
Wilshire Boulevard

**ARTICLE VII**  
**Allowable Work Hours and Workdays**

In order for LACMTA to meet the Construction schedule for the Project, LACMTA, its contractors or others may need to perform a significant amount of work after business hours, on weekends, and/or by multiple shifts spanning up to twenty-four (24) hours per day and up to seven (7) days per week. LACMTA shall secure from the City authorization for night and weekend work and will cooperate with City to minimize such work where reasonably requested and to provide mitigation for the impact of such work.

The major nuisances associated with nighttime construction are noise, vibration, and illumination. Noise problems are normally caused by the operation of heavy equipment, including vehicle and machine backup-alarms. Vibration problems are primarily a result of pile driving, blasting operations, or the use of vibratory rollers. While good illumination is necessary for the work to proceed at night and for the safety of the traveling public, proper work zone illumination can be very intrusive to Project neighbors.

LACMTA shall comply with the following requirements:

- (a) No person shall engage in construction, maintenance or repair work which between the hours of six o'clock (6:00) p.m. and eight o'clock (8:00) a.m. of any day, or at any time on a Sunday or public holiday unless such person has been issued an after-hours construction permit. In addition, no person shall engage in such work within a residential zone, or within five hundred (500) feet of a residential zone, at any time on a Saturday unless such person has been issued an

after-hours construction permit. For the purpose of this section, “public holiday” shall mean:

New Year’s Day  
Martin Luther King Jr. Day  
President’s Day  
Memorial Day  
The first two days of Passover  
Independence Day  
Labor Day  
Rosh Hashanah  
Yom Kippur  
Thanksgiving Day  
The Friday after Thanksgiving Day  
Christmas Day

- (b) No person employed for the purposes of the Construction shall enter the Project site prior to eight o’clock (8:00) AM.
- (c) The City Representative, after consultation with appropriate City officials, and approval by the City Council, may issue an after-hours construction permit authorizing work and/or entrance to a work site otherwise prohibited by this section if the City Representative determines that the public interest will be served by such a permit. Situations in which the public interest may be served by the issuance of such an after-hours construction permit include, but are not limited to, Construction near school grounds, and Construction that may interfere with vehicular or pedestrian traffic in heavily traveled public rights of way.
- (d) Applications for an after-hours construction permit issued pursuant to subsection (c) of this section shall be in writing and shall set forth how the public interest will be served by issuing the permit. Applications for an after-hours construction permit will be processed in accordance with the following:
  - (i) Within five (5) Working Days after receipt of an after-hours construction permit application, (i) City shall inform LACMTA whether the application is sufficiently complete for City review purposes, or (ii) if not sufficiently complete, City shall so notify LACMTA, or shall return the application to LACMTA together with an identification of those portions that are not sufficiently complete and a description of the missing information listing the deficiencies.
  - (ii) Within ten (10) Working Days after receipt of a complete application, City staff shall complete its review of the application and (i) inform LACMTA that City staff is recommending approval of the application to the City Council or (2) transmit its comments to LACMTA with a written explanation of why the City staff is not recommending approval to the City Council.

- (iii) Within thirty (30) Days after City staff has completed review and informed LACMTA that staff is recommending approval of an after-hours construction permit, an agenda report will be presented to the City Council recommending approval and issuance of the permit.
- (iv) Within seventy-two (72) hours after approval by the City Council, the City will issue a permit(s) or transmit a letter to LACMTA authorizing the after-hours work, including any conditions of approval.

An after-hours construction permit may be revoked or suspended by the City Representative if the City Representative determines that activity conducted pursuant to the permit violates any condition of the permit or otherwise detrimentally affects the public health, safety or welfare.

Notwithstanding the provisions set forth above in subsection (c) and this subsection (d), LACMTA may file an application for an afterhours construction permit concurrently with an application for Construction or Rearrangement pursuant to Article IV and the application for an afterhours construction permit shall be processed concurrently with such application and pursuant to the schedule set forth in Article IV.

### **ARTICLE VIII Noise and Light Control Plans and Mitigation Measures**

LACMTA, through its consultants, contractors, subcontractors or agents, shall develop noise and light control plans and submit such plans in conjunction with each application pursuant to Article IV that involves Construction or Rearrangement.

In evaluating the effectiveness of a noise control plan, the factors which may be considered include, but are not limited to, the following:

- A. The volume of the noise;
- B. The intensity of the noise;
- C. Whether the nature of the noise is usual or unusual;
- D. Whether the origin of the noise is natural or unnatural;
- E. The volume and intensity of the background noise, if any;
- F. The proximity of the noise to residential sleeping facilities;
- G. The nature and zoning of the area within which the noise emanates;
- H. The density of the inhabitation of the area within which the noise emanates;
- I. The time of the day or night the noise occurs;
- J. The duration of the noise;
- K. Whether the noise is recurrent, intermittent, or constant; and
- L. Whether the noise is produced by a commercial or noncommercial activity.

#### Noise Mitigation Measures

The following source control mitigation measures shall be employed to reduce the impact of construction noise:

<u>Source</u>	<u>Mitigation Measure</u>
Backup alarms	Use manually-adjustable alarms. Use self-adjusting alarms. Use an observer instead of backup alarms between the hours of 6:00 p.m. and 8:00 a.m. Configure traffic pattern to minimize backing movement.
Slamming tailgates	Establish truck cleanout staging areas. Use rubber gaskets. Decrease speed of closure. Use bottom dump trucks.
Pavement breakers (jackhammers)	Fit with manufacturer approved exhaust muffler. Prohibit within 500 feet of a noise sensitive location during nighttime hours. Enclose with a noise tent.
Vibratory rollers and packers	Avoid use near vibration sensitive areas
Impact Pile Driving	No impact pile driving will be used. Drill piles or use sonic or vibratory drivers where geological conditions permit their use
Prolonged idling of Equipment	Reduce idling. Locate equipment away from noise sensitive areas.
Construction Operations Planning	Route truck traffic away from residential streets. Movement of Construction equipment into and through the Construction site is prohibited between 6:00 PM and 8:00 AM except pursuant to a permit issued pursuant to Article IV or Article VII. Use modern equipment equipped with state of the art engine insulation and mufflers. No generators larger than 25 KVA shall be used and, where a generator is necessary, it shall be equipped with maximum noise muffling capability. Operate equipment at the lowest possible power levels. Provide noise muffling enclosures for fixed equipment.

Due to the nature of construction, source noise controls are frequently inadequate to sufficiently minimize noise impacts because of the close proximity of the construction to residences and businesses. The following path mitigation techniques shall be employed to reduce the impact of construction noise:

Use of temporary noise barriers and sound control curtains or an equivalent form of solid object to either destroy part of the sound energy by absorption, or to redirect part of the energy by wave deflection.

All jackhammers and pavement breakers used at the construction site shall be enclosed with shields, acoustical barrier enclosures, or noise barriers.

Enclose activities likely to create a noise disturbance and enclose stationary equipment.

#### Lighting Spill Mitigation Measures

Construction activities during evening and nighttime hours may require the use of temporary lighting. To minimize the impact of temporary lighting on adjacent properties, the following mitigation measures shall be implemented:

Lighting will be directed downwards and shielded. Care shall be taken in the placement and orientation of portable lighting fixtures to avoid directing lights toward sensitive receptors.

Temporary lighting will be limited to the amount necessary to safely perform the required work.

### **ARTICLE IX**

#### **Advanced Notification Process for all Construction Activities, including any Planned Service Interruptions, and Establishment of a Public Hotline**

The project area is a sensitive area for residents, businesses, commuters, and visitors. LACMTA and its contractors and consultants will be required to minimize any inconvenience to the public and provide advance notification to the public of construction activities and planned service interruptions. Within sixty (60) Days after execution of this Agreement, LACMTA shall develop a community outreach plan, satisfactory to City. The plan shall include regular public meetings to provide project construction information to residents and businesses nearby the Project.

LACMTA shall be responsible for all advance notifications to the public for work associated with the Project. The method of notification and the notification distribution area (notification plan) shall be reviewed and approved by the City. Project information and Construction notifications may be provided in multiple formats including, mail, electronic mail, Project website, social media and on-street portable changeable message boards. Notifications shall conform to any applicable local ordinance and, whether delivered orally or in writing, shall include appropriate information concerning the Project and/or service interruptions and instructions on how to limit inconvenience caused.

The following minimum advanced notifications to the appropriate distribution area shall be provided when Construction activity is scheduled to occur and shall be supplemented as provided in the notification plan:

<u>Activity</u>	<u>Advance notification</u>	<u>Method</u>
Start of Construction (for each major activity)	21 calendar days 14 calendar days (1st notice) 2 calendar days (2nd notice)	On-street changeable message boards Mail or hand deliver Mail or hand deliver
Lane Closures	7 calendar days	On-street changeable message boards
Driveway Closure	7 calendar days (1st notice) 2 calendar days (2nd notice)	Mail or hand deliver Mail or hand deliver
Sidewalk Closure	7 calendar days 7 calendar days (1st notice) 2 calendar days (2nd notice)	On-street signs Mail or hand deliver Hand deliver
No Parking (public)	7 calendar days	On-street sign
No Parking (private)	7 calendar days (1st notice) 2 calendar days (2nd notice)	Mail or hand deliver Hand deliver
Utility Service Interruptions (Water, Sewer, Electric, Gas, Telephone, Data)	30 calendar days (1 <sup>st</sup> notice) 7 calendar days (2nd notice) 2 calendar days (3rd notice)	Mail or hand deliver Mail or hand deliver Hand deliver

LACMTA shall maintain and update a Project website for the duration of the Project. Additionally, LACMTA shall prepare and mail a quarterly update/newsletter to adjacent properties within a distribution area established in the notification plan. The update/newsletter shall include information on the Project schedule and future Construction related activities.

#### Establishment of a Public Hotline

LACMTA shall identify a public liaison and a toll-free hotline that is available twenty-four (24) hours a day, to respond to concerns related to construction disturbances. The hotline shall be answered by a person, not a recorded message; during all times that Construction is taking place. Contact information for the public liaison person and hotline shall be included in all Construction notices. LACMTA shall respond to complaints in a timely manner. LACMTA will log the complaint, notify the City Representative of the complaint, and provide documentation to the City Representative that the complaint was effectively resolved.

### **ARTICLE X Inspection during Construction**

City and LACMTA agree that all work on City Facilities will conform to standard policies and practices of the City inspector as it relates to inspection, sampling, and testing. LACMTA agrees to require adherence to such policies and practices by its contractors.

Notwithstanding City inspection or approval of any Construction, all work performed by either Party for Construction of the Project shall be subject to LACMTA inspection and final approval. LACMTA also may inspect the Construction of Rearrangements to ensure that the work has been performed in accordance with the approved Designs.

All Rearrangement and Construction of City Facilities by LACMTA shall be inspected by City. Reimbursed inspection services shall be authorized by LACMTA under an appropriate Work Order. Upon issuance of an appropriate Work Order, City shall provide inspectors dedicated to the Project, who will be available throughout Project Construction, at LACMTA's expense and as needed to observe and inspect the Rearrangement of City Facilities so that upon completion of Construction, City will have a basis for acceptance of the work. City's inspectors shall coordinate with the LACMTA Representative and LACMTA's contractors. City's inspection shall also include planned field reviews for compliance with Construction Staging Plans, and Traffic Control Plans. Inspection will involve the verification of the safety and adequacy of vehicular and pedestrian access and circulation immediately adjacent to the Construction area, and maintenance of appropriate access to businesses, as provided in the Construction Staging Plans and Traffic Control Plans. All City inspectors performing services in accordance with a work order shall submit copies of daily written inspection reports to LACMTA, each within twenty-four (24) hours after the subject inspection.

During any inspection, each Party shall cooperate to quickly resolve any deviations from, or violations of, any approved plans discovered in the course of such inspection. City will provide immediate verbal notice of any deviation, violation or nonconformance to LACMTA's Construction manager as well as to LACMTA staff (as designated by the LACMTA Representative), followed by a written notice not later than twenty-four (24) hours after discovery. Each notice shall include an explanation of the resolution desired by the inspector.

As soon as the work of any specific Rearrangement has been completed (and tested when called for by the approved Design), the Party which performed the Construction work, shall notify the other Party in writing that the Rearrangement is ready for final inspection. The final inspection of any Rearrangement shall be attended by the LACMTA Representative and the City Representative, at LACMTA's expense. Each Party will provide to the other Party's Representative immediate verbal notice of any deficiencies or discrepancies in any Construction work or any other issues discovered in the course of the final inspection, followed by a written notice within five (5) Days thereafter. Each notice shall include an explanation of the resolution desired by the notifying Party. Both Parties' inspectors shall be available to observe and inspect any corrective work performed, as needed to support LACMTA's schedule for the Project. Promptly upon completion of the Rearranged City Facility (including if applicable, completion of any corrective work performed), the City shall furnish its written notice that Construction of the City Facility is accepted. City's acceptance is contingent upon LACMTA submitting to City and securing City's approval on all required post Construction documents, such as the as-built drawings and warranties.

## **ARTICLE XI**

### **Operation and Maintenance of City Utilities**

LACMTA proposes to relocate and rearrange existing City owned utilities including, water distribution pipelines and facilities, sanitary sewer collection systems, storm drain pipelines, traffic signal systems, fiber optic communications facilities and street light systems. LACMTA and the City recognize that relocation/rearrangement of City Facilities and other Facilities is necessary to accommodate the construction of the La Cienega Station. LACMTA and the City further acknowledge that certain relocated/rearranged City Facilities and other Facilities will remain within the limits of Station construction in a long-term, temporary condition and may rely on the Station excavation shoring system for support. Upon completion of the La Cienega Station construction, the City Facilities and other Facilities in the long-term, temporary condition will be relocated and rearranged to their permanent location and constructed in accordance with City Standards.

LACMTA agrees to be responsible, at LACMTA's expense, for operation and maintenance of City Facilities and other Facilities in a long-term, temporary condition within or adjacent to the limits of the Station construction. The responsibility includes financial responsibility for any water quality or other regulatory violations that result from operation and maintenance problems while the Facilities are in a long-term, temporary condition and remedying the cause of any such violations. The responsibility for operation and maintenance begins when the existing Facilities are modified in any way or if access to existing Facilities is not available due to subway related construction. The responsibility for operation and maintenance ends when the City Facilities and other Facilities are relocated/rearranged to their permanent location and accepted in accordance with this Agreement. LACMTA further agrees to coordinate with the City and conduct utility operation or maintenance, including regulatory compliance measures, when the City Facilities or other Facilities are in a long-term, temporary condition.

LACMTA and its contractors and consultants will be required to operate and maintain City Facilities in accordance with City Standards and provide uninterrupted service to the maximum extent feasible by minimizing any utility service interruptions caused by or during Construction. Additionally, LACMTA agrees to provide emergency response twenty four hours per day, seven days per week, to utility operation and maintenance issues for the City Facilities and other Facilities under its control in accordance with City service standards.

## **ARTICLE XII**

### **Indemnity, Warranties and Insurance Requirements**

LACMTA agrees to indemnify, defend and save harmless City, its officers, agents and employees from and against any and all liability, expenses (including engineering and defense costs and legal fees), claims, losses, fines, suits and actions of whatever kind, and for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with the Construction and any Rearrangement.

In contemplation of the provisions of Section 895.2 of the Government Code ("Gov't Code") of the State of California 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 Gov't Code, the Parties hereto, pursuant to the authorization contained in Sections 895.4 and 895.6 of the Gov't Code, assign liability arising directly or indirectly from Construction or Rearrangement or LACMTA's negligent or wrongful act or omission occurring in the performance of this

Agreement. The provisions of Section 2778 of the California Civil Code are part hereof as if fully set forth herein.

LACMTA and its contractors will provide warranties for excavations and Rearrangements as follows:

- (a) In lieu of providing a bond normally required by the City for excavations in or adjacent to City Rights-of-Way, LACMTA warrants that any work within City Rights-of-Way or affecting the structural stability of City Rights-of-Way shall be free from defect. The warranty is for a period of two (2) years following City acceptance. Pursuant to this warranty and for the warranty period only, LACMTA, at its sole expense, shall remedy any damage to City Rights-of-Way and Facilities to the extent caused by a failure of such structural support or failure of any Facility installed by LACMTA during the warranty period.
- (b) In connection with Rearrangements performed by LACMTA or its contractors, warranties supplied by contractors shall be made for the benefit of both City and LACMTA. Additionally and again in connection solely with Rearrangements performed by LACMTA or its contractors, LACMTA warrants for a period of one year from and after acceptance of the work, unless otherwise specified, that any work performed by or for LACMTA shall be free from defect. Pursuant to this warranty, LACMTA shall remedy any discovered defect at its sole expense.

Any Design or Construction contract entered into by LACMTA in connection with a Rearrangement or other Construction shall contain a provision which requires the general contractor, as part of the liability insurance requirements, to provide an endorsement to name the City as an additional insured on all general liability insurance policies and on each policy of insurance which names LACMTA as an additional insured. Unless otherwise mutually agreed by the Parties, Construction general contractors shall provide evidence of insurance in at least the following amounts: \$5,000,000 in General Liability, \$1,000,000 in Workers' Compensation/Employer's Liability, and \$1,000,000 in Combined Single Limit (CSL) in Auto Liability. Unless otherwise mutually agreed by the Parties, Design contractors shall provide evidence of insurance in the following amounts: \$5,000,000 in General Liability, \$1,000,000 in Workers' Compensation /Employer's Liability, \$1,000,000 (CSL) in Auto Liability, and \$5,000,000 in Professional Liability. No insurance shall be reduced in scope or cancelled without thirty (30) days prior written notice to LACMTA and City. City recognizes and agrees that insurance can be provided by LACMTA through an owner-controller insurance program.

### **ARTICLE XIII Federal and Other Requirements**

This Agreement may be subject to a financial assistance agreement with the U.S. Department of Transportation, Federal Transit Administration, and is therefore subject to the following terms and conditions:

City agrees to comply with all financial record keeping, reporting and such other requirements as may be imposed as a condition to or requirement of funding obtained by LACMTA from third

parties, but only if LACMTA gives reasonable notice and evidence of such requirements to City. In that event, City shall permit the authorized representatives of LACMTA, the U.S. Department of Transportation, the Comptroller General of the United States, and any other government agency providing funding or oversight on the Project, to inspect, audit and copy, during normal business hours and upon reasonable notice, all cost and other relevant records relating to performance by City, its contractors and subcontractors under any Work Order issued to City for the Project or Rearrangements of City Facilities related thereto, from the date of this Agreement through and until expiration of three years after the accepted completion of all Rearrangements for the Project, or such later date as is required by the rules and regulations of any such government agency (provided that LACMTA gives reasonable notice of such later date to City). Examination of a document or record on one occasion shall not preclude further examination of such document or record on subsequent occasions. By providing any of its records for examination, City represents and warrants that such records are accurate and complete. City shall insert into any contracts it enters into for the performance of work hereunder the above requirements and also a clause requiring the contractors (or consultants) to include the above requirements in any subcontracts or purchase orders. In the case of such contractors, consultants, subcontractors and suppliers, the records subject to the above requirements shall include, without limitation, any relevant records as to which a tax privilege might otherwise be asserted.

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

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

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

In connection with the performance of this Agreement, City will cooperate with LACMTA in meeting all applicable federal regulations with regard to the utilization of disadvantaged business enterprises, to the extent reasonably practicable.

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



To LACMTA:

Notices given by certified mail shall be deemed delivered on the date of delivery or attempted delivery shown on the return receipt. Notices given by messenger or reputable overnight delivery service shall be deemed delivered one (1) business day after delivery to the messenger or overnight delivery service unless a later actual delivery date is confirmed by the records of the messenger or overnight delivery service, in which case that actual delivery date shall govern. Any signatory hereto may from time to time, by notice given to the other signatories hereto change the address to which communications to such signatory are to be sent or designate one or more additional persons or entities to which communications are to be sent.

Time is of the essence of each provision hereof in which time is a factor.

If any provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable by any court of competent jurisdiction, the validity of the other provisions of this Agreement shall in no way be affected thereby.

No alteration, amendment or modification of this Agreement shall be valid unless evidenced by a written instrument executed by the parties hereto with the same formality as this Agreement,

No waiver by any party of the rights, conditions, or the performance of any covenant or promise herein shall be effective unless contained in a writing signed by such party. No such written waiver shall reduce the rights or remedies of the parties nor shall it invalidate this Agreement, nor shall it be deemed to be a waiver by such party of any other rights, conditions, or the performance of any covenant or promise (whether preceding or succeeding and whether or not of the same or similar nature). No failure or delay by one party to exercise any right or remedy it may have by reason of the default of any other party shall operate as a waiver of default or modification of this Agreement or shall prevent the exercise of any right or remedy by such party while the other party continues to be so in default.

Except as otherwise expressly provided in this Agreement, the parties do not intend by any provision herein to confer any right, remedy or benefit upon any third party (express or implied), and no third party shall be entitled to enforce or otherwise shall acquire any right, remedy or benefit by reason of any provision of this Agreement.

The Parties agree that specific performance and injunctive relief should be available to enforce the rights of the parties under this Agreement, including the provisions of any Construction Staging Plan or Traffic Control Plan or other measure developed pursuant to this Agreement. .

The section headings used in this Agreement are for convenient reference only and shall not be used in construing this Agreement. The words “include,” “including” or other words of like import are intended as words of illustration and not limitation and shall be construed to mean “including, without limitation.”

**WHEREOF, the Parties have caused this Agreement to be executed as of the dates set forth below.**

City of Beverly Hills

LACMTA

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Approved as to Form:

Approved as to Form:

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