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REVISED  
~~MEASURE R PROJECT DELIVERY COMMITTEE~~  
**PLANNING AND PROGRAMMING COMMITTEE**  
**MARCH 17 18, 2010**

**SUBJECT: FUNDING AND MASTER COOPERATIVE AGREEMENT TERM SHEETS FOR THE DESIGN AND CONSTRUCTION OF THE GOLD LINE FOOTHILL EXTENSION**

**ACTION: AUTHORIZE THE CEO TO EXECUTE FUNDING AND MASTER COOPERATIVE AGREEMENTS FOR THE DESIGN AND CONSTRUCTION OF THE GOLD LINE FOOTHILL EXTENSION BASED ON ATTACHED TERM SHEETS**

**RECOMMENDATION**

- A. Approve Funding Agreement term sheet (Attachment A) and Master Cooperative Agreement term sheet (Attachment B) to allow MTA to finalize agreements with the Pasadena Metro Blue Line ~~Foothill Extension~~ Construction Authority ("Construction Authority") for construction of the Gold Line from its current terminus at Sierra Madre Villa in Pasadena to Azusa.
- B. Authorize the CEO to concurrently execute Funding and Master Cooperative Agreements with the Construction Authority predicated upon the conditions set forth in the Board approved Funding Agreement and Master Cooperative Agreement term sheets.

**ISSUE**

The Metro Gold Line Foothill Extension Phase 2A, funded through Measure R, consists of two components: the freeway bridge and the alignment, including stations and parking structures. The freeway bridge design/build RFP has been issued and is slated to begin construction in June 2010. The Phase 2A alignment of the Foothill Extension extends the line from Pasadena to Azusa and is scheduled to be advertised as a design/build contract in the Spring of 2010. In order for the project to proceed, Funding and Master Cooperative Agreements are needed between the MTA and the Construction Authority. The Funding Agreement provides the guidelines and mechanism by which MTA will fund the project and would be based on the funding agreement term sheet included as Attachment A. The Master

Cooperative Agreement provides the guidelines and mechanism by which MTA would oversee the design, construction, testing, and start-up of the project and would be based on the master cooperative agreement term sheet included as Attachment B.

Upon MTA Board approval of the term sheets, final funding and master cooperative agreements will be drafted by County Counsel and executed concurrently by the CEO.

### **POLICY IMPLICATIONS**

This action is consistent with the Board's commitment to implement projects receiving funding through Measure R, October 2009 Long Range Transportation Plan (LRTP) Board motion and Board action relative to the LRTP adoption requesting MTA to make every effort to assist the Construction Authority in its efforts to open Phase 2A prior to 2017 within the proposed LRTP cash flow for the project.

### **OPTIONS**

The Board could decide to delay approval of the term sheets. However, this option is not recommended as it would be inconsistent with Board direction given at the time of LRTP adoption and delay the project's schedule.

The Board could provide a level of funding consistent with the LRTP. However, this option is not recommended due to the current economic conditions which preclude MTA from providing project funding at the higher levels adopted in the LRTP.

### **FINANCIAL IMPACT**

As indicated in Exhibit A of the Funding Agreement Term Sheet, MTA will be providing \$690 million in Measure R and other local funds between FY10 and FY22 to the Construction Authority on a reimbursement basis for this project. However, the first \$10 million of the Payment Schedule will be disbursed instead of reimbursed to the Construction Authority pursuant to the Payment Schedule. MTA will incur an estimated \$146.1 million as LACMTA Project Costs to be withheld from the \$690 million in FY 2011 through 2014.

The LRTP provided \$810.5 million in project funds by FY18. However, due to shortfalls in revenue resulting from the current economic downturn and the ongoing

State of California budget structural deficit the proposed monthly reimbursements for this project have been extended over four additional fiscal years (FY 19-22). With the exception of FY 2011, the total of the LACMTA Project Costs and annual reimbursements to the Construction Authority are commensurate with or lower than those originally indicated in the LRTP as illustrated in Figure 1.

In order to pay for critical elements of the project, MTA will hold back approximately \$146.1 million in project funds to pay for LACMTA Project Costs. This is the estimated amount needed to pay for MTA staffing costs for project coordination and oversight (e.g., planning, construction oversight, real estate, rail operations, and public outreach), purchase of railcars and other MTA furnished/required equipment, cost of relocating BNSF storage track, and the Construction Authority's share of the cost to purchase land for the operation and maintenance facility and expansion of the Rail Operations Center (ROC). LACMTA Project Costs also includes \$2.55 million as payment from the Construction Authority for surplus funds available from the Phase 1 (Union Station to Sierra Madre Villa) Gold Line Project. The LACMTA Project Costs are discussed in further detail in Exhibit B of the Funding Agreement Term Sheet.

MTA will also be responsible for its share of the costs of acquisition and construction for the operation and maintenance facility while the Construction Authority will be responsible for land acquisition, relocation, site preparation, design, and construction. The total cost has not been determined; however, MTA will pay 75% of the total cost while the Construction Authority will pay 25% of the total since this facility is intended to service trains used on the existing Gold Line, Gold Line Eastside Extension, Foothill Extension, and potentially the Regional Connector. MTA's share will be provided to the Construction Authority from non-Gold Line Foothill Extension project funds. The Authority's 25% share of construction costs are included in the \$690 million project cost and the Authority's 25% share of land acquisition costs are included as part of the LACMTA Project Costs. Staff will return to the Board to seek approval of a budget for the acquisition and purchase price, mitigations, and design/construction of the operation and maintenance facility once the O & M Facility has been environmentally cleared.

The FY10 Budget includes funding of \$10 million for this project in Cost Center 0441 (Non-Departmental), in Project 460200 (Gold Line Foothill LRT Extension), in Account 54001 (Subsidies Others). In FY09 there were no expenditures for this project. Since this is a multi-year project it will be the responsibility of the cost center manager and the Chief Planning Officer to budget expenditures in future years.

#### Impact to Bus and Rail Operating and Capital Budget

The current year funding for this project will come from Measure R Transit Capital

Funds 35%. These are the funds that have been identified for this project, therefore, no other sources were considered. The FY10 activities proposed in this report will have no impact on bus and rail operating and capital costs.

## **BACKGROUND**

Measure R, approved by Los Angeles County voters in November 2008, allocated \$735 million (\$810.5 million escalated) for the Gold Line Foothill Extension. The Funding Agreement only addresses Phase 2A, therefore the grant amount is \$690 million, the estimated project cost for Phase 2A. If at any time it appears that Phase 2A budget may exceed \$690 million, either because the Construction Authority requires additional funds or MTA requires additional funds for LACMTA Project Costs, such requests shall be made to the LACMTA Board, along with proposals for cost recovery, including without limitation, a re-scope of the Project, or alternatively, Construction Authority may request approval of the LACMTA Board to use those funds allocated to the Project in excess of \$690 million but not to exceed \$810.5 million.

State law grants the responsibility for awarding and overseeing design and construction contracts for the project to the Construction Authority. In an effort to expedite project construction, the Construction Authority will utilize a design/build/finance method known as gap financing, wherein the design-builder provides gap financing to cover the differential between the funds available for current payments and the amount owed to the design-builder. This type of financing has been used on other infrastructure projects including the I-75 in Florida and the San Joaquin Hills toll road in Orange County.

Specifically, this type of financing allows the Authority to defer all or part of an invoice for work performed. Deferred amounts would incur interest. Effectively, the design-builder is paying itself for any deferred amounts until such time as the Authority can repay such amounts plus interest accrued thereon. If at any time the aggregate deferred amount is greater than 50% of the earned value of the Contract Price, Design-Builder has the right to either (a) continue work or (b) send Authority written notice that Design-Builder intends to suspend all work. MTA funding for the project is contingent upon inclusion in the MTA Board approved annual budget. If the Authority is unable to procure a contractor using the design/build/finance method, MTA would expect the Construction Authority to return to the MTA Board to consider other alternatives.

The Construction Authority will be responsible for constructing the freeway bridge and the Phase 2A alignment, including **the Operation and Maintenance Facility,**

stations and parking structures. The freeway bridge would be constructed in the City of Arcadia over the I-210 right-of-way approximately one-half mile west of Santa Anita Avenue and would connect the existing alignment running in the median of the freeway and continuing south of the I-210. The Construction Authority has released a conceptual design of the bridge and is working with various stakeholder groups, including Caltrans and MTA, to advance the design.

The alignment would extend the existing Gold Line from Sierra Madre Villa in Pasadena to the City of Azusa approximately 11.3 miles along the former Burlington Northern Santa Fe railroad Pasadena subdivision, generally paralleling Interstate 210. There would be six stops in the cities of Arcadia, Monrovia, Duarte, Irwindale, and Azusa.

In addition, a new operation and maintenance facility will need to be constructed to accommodate and service Gold Line trains. The Construction Authority will be responsible for the land acquisition, relocation, site preparation, design, and construction of the operation and maintenance facility and will conduct all negotiations for the acquisition of real property necessary to construct and operate the facility. To date, the exact costs have not been determined, however, the cost would include all of these items and any associated mitigations.

As the Construction Authority has the responsibility of awarding and overseeing design and construction contracts for the project, a funding agreement between MTA and the Construction Authority is needed for MTA to pay for project oversight, design, and construction costs. The final funding agreement will be based on the attached funding agreement term sheet. The following items are covered in the term sheet:

1. Funding amount – MTA will grant up to \$690 million less any LACMTA Project Costs to the Construction Authority for the project. Funds will be provided monthly on a reimbursement basis in accordance to the payment schedule included as Exhibit A of the Funding Agreement Term Sheet; however, exact funding amounts will be determined on an annual basis and will not be provided until funds are included in the MTA Board approved annual budget. Any proposed expenditure by the Construction Authority that would exceed \$690 million must be presented to the LACMTA Board for approval.
2. MTA will withhold funds from the \$690 million to pay for LACMTA Project Costs to cover staffing costs for project coordination and oversight (e.g., planning, construction, real estate, rail operations, and public outreach), purchase of railcars and other MTA furnished/required equipment, cost of relocating BNSF storage track, and the Construction Authority's share of the cost of land acquisition of the operation and maintenance facility and ROC expansion. MTA will also retain \$2.55 million in project funds as payment from

the Construction Authority from surplus funds available from the Phase 1 (Union Station to Sierra Madre Villa) Gold Line Project. Further detail on the LACMTA Project Costs can be found in Exhibit B of the Funding Agreement Term Sheet. The total LACMTA Project Costs are estimated to be \$146.1 million.

3. Construction Authority will not be permitted to expend funds on the project until both of the following conditions are met: 1) MTA and BNSF have executed an agreement for BNSF's discontinuance of rail service/abandonment between Arcadia and Irwindale; and 2) Construction Authority has acquired ~~all the real~~ **at least 50% of the** property needed to construct the O&M Facility. **The entire site shall be approximately 27 acres in area.** However, the Construction Authority will be permitted to spend up to \$38.44 million on the design and construction of the freeway bridge and design and preconstruction activities for the O&M facility and alignment prior to the satisfaction of these conditions.
4. MTA will work with the Construction Authority to develop an approved budget for all estimated acquisition and construction costs for the operations and maintenance facility. If the MTA Board approves the budget, MTA will be responsible for 75% of the approved budget. MTA Board action is required in a separate action to approve the O&M facility budget.
5. Proper expenditure of funds – funds to be used solely for engineering, construction, professional services, staffing, equipment, and related costs.
6. Reporting and oversight – Both Construction Authority and MTA will provide monthly reports on their respective use of funds and both parties to have audit rights. In addition, the Construction Authority shall provide quarterly reports ~~for~~ **to the** LACMTA Board ~~action~~. If either the monthly or quarterly reports identify a potential cost overrun, such report shall include a recovery proposal which may include a re-scope of the Project, or alternatively, the Construction Authority may request approval of the LACMTA Board to use those funds allocated to the Project in excess of \$690 million but not to exceed \$810.5 million.
7. MTA will allow the Construction Authority to spend funds on Phase 2B (Azusa to Claremont) if the Construction Authority can demonstrate to MTA's reasonable satisfaction that Phase 2A can be built within an amount equal to \$690 million plus any amounts approved by the LACMTA Board. If so, up to \$6 million may be spent on CEQA/NEPA compliance and preliminary engineering and planning for Phase 2B. Reimbursement is specified in the Funding Agreement term sheet.

In addition to the funding agreement, a master cooperative agreement between MTA and the Construction Authority is also needed. This document identifies the guidelines and processes by which MTA would oversee the design, construction,

testing, and start-up of the project. The following items are covered in the master cooperative agreement term sheet:

1. MTA inspection rights – MTA will have the right to inspect the project at any time and will address all concerns and issues directly with Construction Authority staff. In addition, an integrated project office ~~will~~ **may** be created wherein MTA will be provided office space by the Construction Authority at both its main office and field office(s).
2. Design review, approval and changes – MTA to review and ~~approve~~ **comment on** the contents of RFP(s) for Phase 2, including the O&M Facility, as more particularly described in the Cooperative Agreement term sheet. MTA will also actively participate as a voting member on selection committees for all design build contracts. MTA ~~has approval rights over~~ **will review and comment on** the ~~conformed contract documents and 100% design~~ **submittals up to 100% design**. Any disputes between **the parties on issues other than a Significant Change shall be handled by staff, if possible, and by the CEOs, if staff is unable to resolve the dispute.**

**Both MTA and the Construction Authority have the right to identify “Significant Changes” to the project. Any disputes over the identification of a significant change or approval/disapproval of a significant change by the MTA shall be brought** through a “Solution”

Process. The Solution Process will require staff from both agencies to work on the dispute. If the staff cannot work out the dispute, then the issue will go to the CEOs of both agencies. If the CEOs cannot resolve the dispute, then the issue will go to a Solution Committee comprised of three LACMTA Board members (~~which LACMTA Board members shall not also serve on the Construction Authority Board and at least one LACMTA Board member will be from the San Gabriel Valley subregion~~) and two Construction Authority Board members. (~~which Construction Authority Board members may serve on the LACMTA Board~~). ~~The Solution Committee shall have authority to decide disputes provided total project costs are an amount equal to \$690 million plus any amounts approved by the LACMTA Board or less. The LACMTA Board shall have authority to decide disputes provided total project costs are \$690 million plus any amounts approved by the LACMTA Board or more.~~ If during the design review process MTA requests changes that results in change orders to the baseline documents, MTA will be responsible for the costs of those changes.

3. MTA shall have the right to review and approve/reject any and all “Significant Changes” to the project.
4. The Construction Authority will be responsible for the land acquisition, design and construction of the operation and maintenance facility and will conduct all

negotiations for the acquisition of real property necessary to construct the facility. The MTA Board will approve the budget for such costs. Furthermore, the O&M Facility and a minimum one mile of adjacent test track must be constructed to support the testing and commissioning of new light rail vehicles at least 9 months prior to Phase 2A ROD (Revenue Operations Date), and the O&M Facility and adjacent test track must be fully operational at least 3 months prior to Phase 2A ROD.

5. Testing and start-up – The design-build contractor for the project will be responsible for all factory, construction, systems integration, and systems performance tests in accordance with MTA test standards and will provide training to MTA staff. MTA will monitor and coordinate with the Construction Authority and design-build contractor on these tests.
6. Construction Authority will be required to use MTA furnished/required equipment to ensure uniformity and compatibility with the existing rail system including train control and communications equipment, traction power substations, fare vending equipment, and SCADA (Supervisory Control and Data Acquisition) equipment. MTA will establish and make available to the design-build contractor IDIQ (Indefinite Delivery Indefinite Quantity) contracts for train control and communications equipment.

The final Funding and Master Cooperative Agreements will be developed based on these and other factors outlined in the term sheets.

## **NEXT STEPS**

If the Board approves this recommendation, we will work with representatives of the Construction Authority to develop the final Funding and Master Cooperative Agreements based upon the term sheets approved by the MTA Board for the MTA CEO to execute concurrently.

## **ATTACHMENTS**

Figure 1: Comparison of Funding Scenarios

- A. Draft Funding Agreement Term Sheet
- B. Draft Master Cooperative Agreement Term Sheet

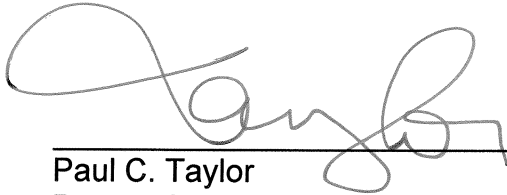
### **Prepared by:**

Philbert Wong, Transportation Planning Manager, San Gabriel Valley Area Team  
Shahrzad Amiri, Deputy Executive Officer, San Gabriel Valley Area Team



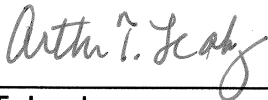
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Douglas R. Failing, P.E.  
Interim Chief Planning Officer



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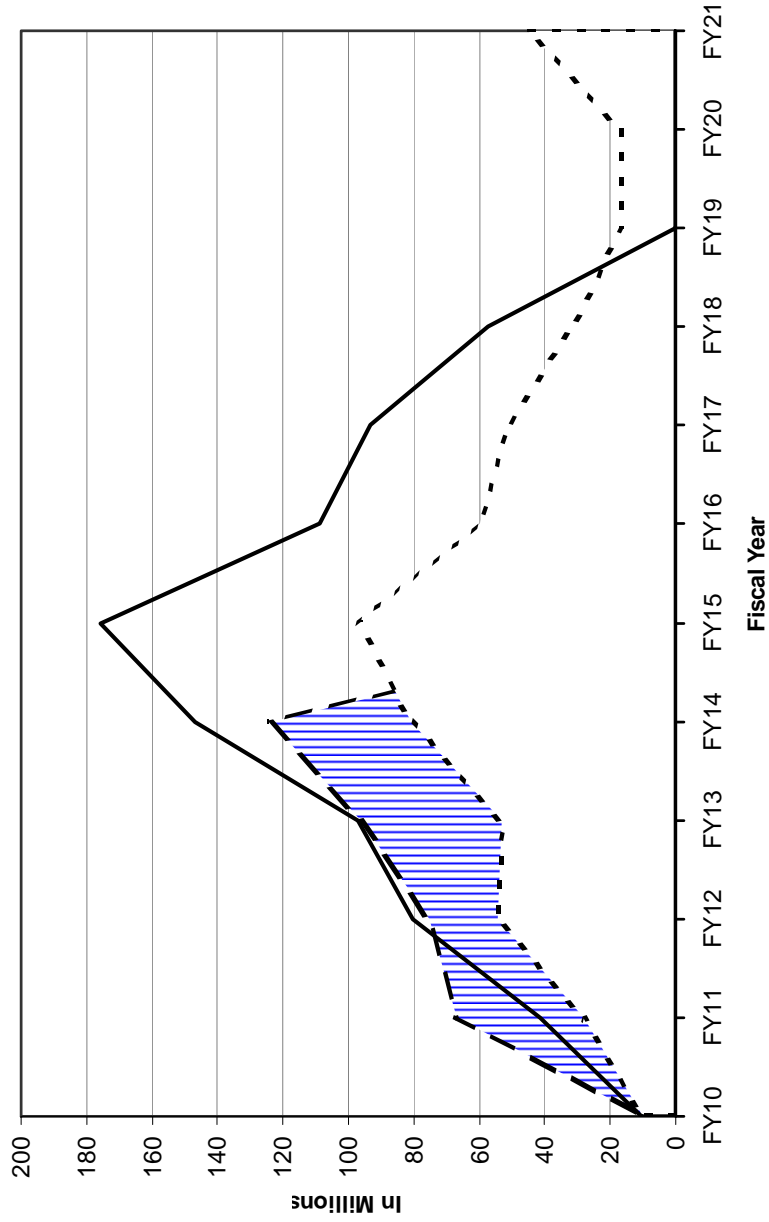
Paul C. Taylor  
Deputy Chief Executive Officer



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Arthur T. Leahy  
Chief Executive Officer

**Figure 1  
Comparison of Funding Scenarios (Gold Line Foothill Extension Phase 2A)**



Construction Authority Funds Plus LACMTA Project Costs  
 Payments to Construction Authority  
 L RTP

## **ATTACHMENT A**

### **FUNDING AGREEMENT TERM SHEET**

#### **METRO GOLD LINE FOOTHILL EXTENSION**

1. The Funding Agreement is entered into pursuant to Public Utilities Code Section 130350.5 and LACMTA Ordinance No, 08-01.
2. LACMTA will grant up to \$690 million less any LACMTA Project Costs as set forth in paragraph 5 below (the "Funds") to the Construction Authority for the Project. The Funds are to be provided to the Construction Authority monthly on a reimbursement basis within 30 days after LACMTA's receipt of each monthly invoice, in accordance with the payment schedule attached as Exhibit A (the "Payment Schedule"). However, the first \$10 million of the Payment Schedule shall not be provided on a reimbursement basis. Such amounts shall be distributed to Construction Authority pursuant to the Payment Schedule. Any proposed expenditure by the Construction Authority that would cause total Project costs to exceed \$690 million but not \$810.5 million must be presented to the LACMTA Board for approval. LACMTA has no obligation to allocate more than \$810.5 million for the Project.

Due to uncertainties in sales tax receipts, sales tax based borrowing, and other fund sources and project costs, LACMTA has every intention of meeting the payments set forth in the Payment Schedule; however, the Payment Schedule will be reviewed annually by the parties no later than August 1 of each year (the "Payment Schedule Annual Review"). During the Payment Schedule Annual Review, the LACMTA Board may approve funds sufficient for the Authority to meet specified logical Project milestones that would require more than one year to achieve. LACMTA is not obligated to provide any Funds in any year until such Funds have been included in the LACMTA Board approved annual budget for the applicable year or authorized through a specified logical Project milestone.

Prior to the reimbursement of any Funds, Construction Authority shall (i) submit an expenditure plan as required by California PUC § 130350.5(f), and in accordance with LACMTA reasonable requirements; and (ii) Construction Authority and LACMTA shall have executed the Funding Agreement. Upon LACMTA Board approval of this term sheet, however, Construction Authority shall be permitted to engage a design consultant for preliminary design work for the O&M Facility (to the extent such work does not violate CEQA), and such costs shall be eligible for reimbursement under the Payment Schedule once all of the following conditions are met: (i) after LACMTA has received the expenditure plan, (ii) the parties have executed the Funding Agreement; and (iii) the LACMTA Board has approved the O&M Facility in compliance with CEQA.

3. LACMTA understands Construction Authority desires to accelerate construction of Phase 2A through private financings. To ensure such private financing is consistent with each party's intent, such private financing shall be subject to the following conditions:

- A. It is the mutual goal of the parties to reduce financing costs whenever possible. Construction Authority and LACMTA will work together during the Payment Schedule Annual Review; including, without limitation, reviewing whether LACMTA can accelerate funding under the Payment Schedule at a lower interest or opportunity costs and reviewing the status of funding availability. The Payment Schedule will be modified accordingly subject to LACMTA Board approval.
  - B. Any interest earned by the Construction Authority on any private financings will be subject to the same use restrictions as the Funds.
  - C. LACMTA anticipates it may need to use lower cost tax-exempt debt financing to provide at least a portion of its funding commitments to the Authority and shall have the right to review and comment on the financing aspects of all proposed agreements, contracts and other documentation of any design-build-finance (or similar) arrangement and/or any private financings prior to execution by Construction Authority. LACMTA shall ~~include such review of the financing aspects within the same review process and schedule set forth in the Cooperative Agreement Term Sheet to review the RFP and the Conformed Contract Documents,~~ **have 10 business days for its initial review of any such proposed agreements, contracts and other documentation. If LACMTA has previously reviewed the documents, LACMTA will focus its subsequent review to any changes to the previously reviewed documents, and such review shall be conducted in 5 business days.** LACMTA shall have the right to disapprove any such arrangements, financings, agreements, contracts or documentation if they would violate the provisions of the Funding Agreement, Public Utilities Code Section 130350.5, or LACMTA Ordinance No. 08-01. Further, if the proposed financing arrangements permit the use of tax-exempt bond proceeds without resulting in increased costs to Construction Authority, and LACMTA thereafter determines to provide the Authority with the proceeds of a tax-exempt bond or other debt issue, Construction Authority shall diligently work with LACMTA to ensure that the proposed financing arrangement does not jeopardize the tax-exempt nature of the Funds as specified in Exhibit C or unnecessarily preclude the use of lower cost tax-exempt financing.
4. The Project is currently defined as Phase 2A (Pasadena to Azusa). The description of Phase 2A shall be as defined in the Cooperative Agreement. The Funding Agreement shall acknowledge that Phase 2B (Azusa to Claremont) is not yet environmentally cleared, and that once Phase 2B is environmentally cleared and subject to receiving LACMTA Board approval, the Funding Agreement will be amended to include Phase 2B in the Project definition and authorize the allocation of any unspent Funds remaining from Phase 2A plus any funds in excess of \$690 million but not to exceed \$810.5 million may be spent on Phase 2B. The funding for Phase 2A and 213 shall not exceed \$810.5 million. Before Phase 213 is included as part of the Project, Funds may only be spent on Phase 2A, and if Construction Authority can demonstrate to LACMTA's reasonable satisfaction that Phase 2A can be built for an amount equal to \$690 million plus any increased amount authorized by the LACMTA Board or less (the "Phase 2B Test"), then no more than \$6 million in Funds not needed for Phase 2A may be spent on

CEQA/NEPA compliance and preliminary engineering and planning for Phase 2B. If Construction Authority spends its own funds on Phase 2B CEQA/NEPA compliance and preliminary engineering and planning for Phase 2B prior to meeting the Phase 2B Test, such amounts shall be eligible for reimbursement from the Funds provided Construction Authority meets the Phase 213 Test.

5. LACMTA shall incur costs and expenses for the Project as set forth below (the “LACMTA Project Costs”).
  - A. During FY2011 through Fy2014, LACMTA shall withhold the LACMTA Project Costs from payments to the Construction Authority as costs are incurred. Under no circumstances, however, shall LACMTA withhold more than the amounts set forth in the column on Exhibit A entitled “LACMTA Project Costs”, without prior approval by the Construction Authority Board and the LACMTA Board. LACMTA Project Costs will be included in the Payment Schedule Annual Review.
  - B. The LACMTA Project Costs, including all interest thereon, are to be used solely for:
    - i. LACMTA staff time and other direct costs involved in design and construction review, and construction inspection, training, security prior to Revenue Operation Date (“ROD”) (to the degree not provided by the Construction Authority), outreach and communication efforts, real estate, finance, safety, legal, planning and rail operations, pre-revenue testing, rail activation and start up activities associated with Phase 2A and any post-ROD services and support necessary to close-out Phase 2A. LACMTA commits to an efficient use of staff resources, with a designated point of contact for each category of activities, minimizing redundant review and comments, and ensuring the timely delivery of comments to the Construction Authority.
    - ii. Cost of relocating BNSF storage track.
    - iii. Construction Authority’s share of the cost of acquiring real property for the O&M Facility to the extent those costs are not incurred directly by the Construction Authority. Construction Authority share is 25%, the percentage agreed to by the parties as the Construction Authority’s fair share of costs associated with Phase 2A.
    - iv. Payment of \$2.55M authorized for LACMTA by the Construction Authority from surplus funds available from the Phase 1 (Union Station to Sierra Madre) Gold Line Project.
    - v. To ensure uniformity of major equipment and to ensure compatibility with the existing rail system, LACMTA requires Construction Authority to use the LACMTA Furnished/Required Equipment including 15 LRVs and other related equipment, more particularly described in Exhibit B.

- vi. Construction Authority's share of the cost to expand LACMTA's Rail Operations Center (ROC) which will be an amount based on the proportionate share of the ROC devoted to operation of Phase 2A, and in any event shall not exceed \$2 million.
  - C. The initial LACMTA Project Costs is estimated to be \$146.1 million and shall be reviewed annually. If LACMTA Project Costs exceed the estimated amount, the LACMTA, subject to Construction Authority approval which approval shall not be unreasonably withheld, shall request authority for additional funds from the LACMTA Board.
6. Reports from Construction Authority.
- A. Monthly Reports. Construction Authority shall provide monthly Project progress reports informing the LACMTA Board of the Project progress, use of funds during the previous month, the milestone progress vs. costs, expenditures to date, funds committed and forecast at completion, updated Project schedule and identifying any major problems (such as cost impacts of \$10 million or more, a schedule impact of 90 days or more, a quality issue which materially deviates from the Metro Design Criteria or Standard Drawings or a previously LACMTA approved submittal, any safety issue which deviates from the Metro Design Criteria or Standard Drawings or a previously LACMTA approved submittal), and proposed solutions. Such monthly report shall describe any and all areas of concern, proposed solutions and next steps including actions requiring approval of the Construction Authority and LACMTA Boards. If a potential cost overrun is identified, the monthly report will include a recovery proposal, including, without limitation, a re-scope of the Project or alternatively, Construction Authority may request approval of the LACMTA Board to use those funds allocated to the Project in excess of \$690 million but not to exceed \$810.5 million. LACMTA shall be responsible for submitting a request for an increase in the LACMTA Project Costs beyond the estimate in Section 5.C in accordance with that Section, and shall not require a request from the Construction Authority pursuant to this Section 6.A.
  - B. Quarterly Reports. Construction Authority shall also provide quarterly reports in person to the LACMTA Board on the state of the Project consistent with the information contained in the Monthly Reports along with additional information describing schedule and cost variances from the last Quarter, including impacts of the performance towards key milestones or increases to the Life-Of-Project (LOP) Budget.  
  
~~The Quarterly report shall be subject to LACMTA Board approval.~~ Such quarterly report shall also describe any and all major problems, as described above, areas of concern, proposed solutions and next steps including actions requiring approval of the Construction Authority and LACMTA Boards. If a potential cost overrun is identified, the quarterly report will include a recovery proposal, including, without limitation, a re-scope of the Project or alternatively, Construction

Authority may request approval of the LACMTA Board to use those funds allocated to the Project in excess of \$690 million but not to exceed \$810.5 million. LACMTA shall be responsible for submitting a request for an increase in the LACMTA Project Costs beyond the estimate in Section 5.C in accordance with that Section, and shall not require a request from the Construction Authority pursuant to this Section 6.B.

7. Monthly reporting by LACMTA on use of LACMTA Project Costs during previous month, using applicable forms and procedures as required of Construction Authority for monthly reporting.
8. Construction Authority to expend the Funds solely for design, engineering, construction, professional services, staffing, equipment, public outreach and related costs necessary for the completion of the Project. Funds may not be used for lobbying or, to the extent LACMTA provides Construction Authority with bond or commercial paper proceeds (as set forth in Section ~~3-3.C~~), Funds may not be used to reimburse for any costs that jeopardize the tax-exempt nature of such financings as reasonably determined by LACMTA and its bond counsel. The Funding Agreement shall include a project budget specifying how Funds will be spent.
9. Once Construction Authority demonstrates it has expended local funds of \$25.5M, LACMTA will acknowledge that Construction Authority has satisfied its local contribution contemplated in the Expenditure Plan. To date, Construction Authority has provided documentation that it has expended a portion of the local funds and have commitments for the balance of the local funds. For purposes of the Funding Agreement, "local funds" shall mean cash under the sole control of Construction Authority, in-kind contributions from any of the jurisdictions adjacent to the ROW, and the appraised value of land; provided, however, land provided by LACMTA under the trust does not count toward the local funds.
10. For Phase 2A, the Funding Agreement shall include schedule and performance milestones, including an anticipated construction completion date of 2014.
11. LACMTA agrees to operate Phase 2A upon completion and acceptance of the Project by LACMTA; provided the O&M Facility and a minimum one mile of adjacent test track are constructed to support the testing and commissioning of new light rail vehicles at least 9 months prior to Phase 2A ROD, and the O&M Facility and adjacent test track are fully operational at least 3 months prior to Phase 2A ROD. The Construction Authority shall not apply for federal New Starts funding for Phase 2A or Phase 2B.

The term "to support the testing and commissioning of new light rail vehicles" shall be defined as set forth in Section IV of the MCA.

12. Both parties shall have audit rights.
13. The Funding Agreement shall include an "escape clause".

- A. The “escape clause” shall provide that Construction Authority shall not be permitted to expend the Funds until both of the following conditions (collectively, the “Funding Conditions”) have been met:
- i. LACMTA and BNSF have executed an agreement for BNSF’s discontinuance of rail service/abandonment of the BNSF’s interest in the rail-right-of-way; and
  - ii. Construction Authority has acquired ~~all~~ **at least 50% (measured by area) of** the real property needed to construct the O&M Facility by either:
    - a. the Construction Authority entering into fully executed purchase and sale agreement(s) for the parcel of land ~~and the conditions to closing set forth therein have been satisfied;~~ **or; or**
    - b. the Construction Authority has commenced eminent domain proceedings, and the Construction Authority has obtained an order for possession of the parcel of land, in accordance with Sections 1255.4 10 et seq. of the California Code of Civil Procedure and no objections to the Construction Authority’s right to take have been made or if objections are made, then such objections have been withdrawn or have been overruled by the Court; or
    - c. any combination of (a) and (b).
- B. Nothing in the Funding Agreement shall be construed as requiring the Construction Authority Board to commence eminent domain proceedings or seek and order for possession as to any parcel of land, and the Construction Authority may, in its sole discretion, determine not to commence eminent domain proceedings or to seek and order for possession as to any of parcel of land.
- C. Notwithstanding the foregoing, prior to satisfaction of the Funding Conditions, Construction Authority shall be permitted to spend Funds on the following:
- i. the design and construction of the 210 Bridge;
  - ii. design of the alignment;
  - iii. preconstruction activities for the alignment;
  - iv. O&M Facility design and acquisition activities, so long as the LACMTA Board has approved the O&M Facility in compliance with CEQA;
  - v. O&M Facility preliminary design (to the extent necessary for CEQA analysis) and pre-acquisition activities. Pre-acquisition activities are limited to: appraisals, site investigations, title investigations, obtaining relocation estimates, and offer letters (which offer letters must be conditioned upon CEQA compliance).

Provided, however, that the aggregate amount of the Funds spent on (i) through (v) above shall not exceed \$38.44 million. Upon LACMTA Board approval of the proposed Budget, this cap shall be increased by 25% of the amount of the LACMTA Board Approved Budget for the O&M facility,

14. Construction Authority shall be responsible for the construction of the O&M Facility, and for the acquisition of the parcels of land needed to construct and operate the O&M Facility.

A. Upon compliance with CEQA, Construction Authority shall submit to LACMTA a description of the parcels to be acquired for the O&M facility, and a budget (“Budget”) of all estimated acquisition and construction costs for the O&M Facility. ~~The proposed Budget shall constitute Construction Authority’s commitment to acquire the parcels for, and construct, the O&M Facility, for the amount of the proposed Budget. Unless specifically authorized by LACMTA in writing, the Construction Authority shall not reduce the number of parcels and consequently the size of the collective site which~~ **proposed site for the O&M Facility shall be approximately 27 acres in area, and** shall be consistent with ~~the~~ preliminary site layout design ~~as~~ approved by LACMTA. To the extent all costs are not ready for inclusion in the proposed Budget but will need to be added at a later point in time when a good estimate is available (the “Excluded Costs”), Construction Authority shall notify LACMTA of the Excluded Costs at the time it submits the proposed Budget. Construction Authority may submit one or more additional budget requests for the Excluded Costs, when documentation is available upon which to base a budget for those costs. Any budget requests for Excluded Costs will be subject to LACMTA Board approval and once approved, such Excluded Costs budget shall be added to the Approved Budget amount. Construction Authority shall provide documentation to support any proposed Budget for LACMTA’s review and approval. Nothing herein prevents LACMTA from performing its own independent analysis of the proposed Budget.

B. If LACMTA approves the proposed Budget, which is based upon an O&M facility designed to provide the necessary space and facilities to serve LACMTA’s future rail transit needs (the “Approved Budget”), such approval shall constitute LACMTA’s agreement that it will be responsible for 75% of the Approved Budget. That portion of the remaining 25% of the Approved Budget attributable to Construction Authority’s share of the acquisition costs shall be paid by LACMTA and deducted from Construction Authority’s scheduled funding as part of the LACMTA Project Costs. That portion of the remaining 25 % of the Approved Budget attributable to Construction Authority’s share of the design and construction costs shall be paid by the Construction Authority, and not included in the LACMTA Project Costs.

C. Once the parties have an Approved Budget, LACMTA shall pay to Construction Authority LACMTA’s share (75%) of the Approved Budget attributable to the design and construction costs in quarterly payments of equal amounts spread over the proposed construction schedule, commencing on the date that is 90 days after

a notice to proceed is issued for the design build contract that includes the O&M Facility, and each 90 days thereafter.

- D. Once the parties have an Approved Budget. LACMTA shall reimburse funds up to the amount of the proposed Budget attributable to acquisition costs as follows:
- i. As needed, but not more frequently than monthly, Construction Authority shall submit a request to LACMTA for a disbursement based on actual costs incurred during the period or obligated for the next period, but which costs may not have been expended by Construction Authority. The total amount of disbursements shall not exceed in the aggregate the portion of the Approved Budget attributable to the acquisition costs. Each such request shall be accompanied by appropriate supporting documentation. Examples of supporting documentation include: a fee proposal or invoice from a consultant if the request is for consultant fees; purchase agreement or settlement agreement if the request is for the purchase price; resolution of necessity and offer letter if the request is for a deposit with the court for an order of prejudgment possession; and so forth.
  - ii. Within thirty (30) days of receipt of an authorized LACMTA form of disbursement request and supporting documentation, LACMTA shall disburse the requested amount to Construction Authority, by check or wire transfer, as mutually agreed by the parties.
  - iii. Construction Authority shall include its expenditures of the acquisition portion of the Approved Budget in its monthly reports provided pursuant to Section 6.
- E. LACMTA shall have no obligation to approve the proposed Budget until both Construction Authority and LACMTA have taken all actions necessary to comply with CEQA. LACMTA shall have no obligation for acquisition, design, or construction costs of the O&M Facility that exceed the amount of the Approved Budget except for LACMTA requested change orders and Betterments. If the total amount of costs incurred by Construction Authority for the acquisition, design, and construction of the O&M Facility exceeds the amount of the Approved Budget, Construction Authority shall be responsible for 100% of such excess costs (the “~Excess Costs”). LACMTA requested change orders and Betterments for the O&M Facility shall not be included in the Excess Costs.
15. Fee title to any parcel acquired by the Construction Authority for the O&M Facility shall be held by the Construction Authority, as trustee. All properties for Phase 2A shall be conveyed to LACMTA in accordance with the terms of the Property Trust Agreement. Six (6) months before Phase 2A ROI, the parties shall meet to initiate transfer of the Trust Property for Phase 2A, including, without limitation, the O&M Facility and the underlying real property to LAMCTA.

16. The Funding Agreement shall provide that all approvals and determination of either party shall not be unreasonably withheld.

**Exhibit A**

**Monthly Reimbursements for Metro Gold Line Foothill Extension  
Phase 2A Expenses**

(In Year of Expenditure Dollars, Millions)

<b>Month</b>	<b>Year</b>	<b>Proposed Monthly Reimbursements to Construction Authority</b>	<b>Fiscal Year Subtotal</b>	<b>LACMTA Project Costs</b>	<b>Total Phase 2A Payments</b>	<b>Cumulative Monthly Total Inclusive of LACMTA Project Costs</b>
January	2010	\$-				\$-
February	2010	\$1.00				\$1.00
March	2010	\$2.00				\$3.00
April	2010	\$2.25				\$5.25
May	2010	\$2.50				\$7.75
June	2010	\$2.50	\$10.25	0	\$10.25	\$10.25
July	2010	\$3.25				\$13.50
August	2010	\$3.25				\$16.75
September	2010	\$3.00				\$19.75
October	2010	\$3.00				\$22.75
November	2010	\$2.50				\$25.25
December	2010	\$2.25				\$27.50
January	2011	\$2.00				\$29.50
February	2011	\$1.75				\$31.25
March	2011	\$1.50				\$32.75
April	2011	\$1.50				\$34.25
May	2011	\$0.50				\$34.75
June	2011	\$3.69	\$28.19	\$38.75	\$66.94	\$77.19
July	2011	\$4.68				\$81.87
August	2011	\$4.68				\$86.55
September	2011	\$4.68				\$91.23
October	2011	\$4.68				\$95.91
November	2011	\$4.69				\$100.60

December	2011	\$4.69				\$105.29
January	2012	\$4.69				\$109.98
February	2012	\$4.69				\$114.67
March	2012	\$4.69				\$119.36
April	2012	\$4.69				\$124.05
May	2012	\$3.69				\$127.74
June	2012	\$3.69	\$54.24	\$21.25	\$75.49	\$152.68
July	2012	\$4.45				\$157.13
August	2012	\$4.44				\$161.57
September	2012	\$4.44				\$166.01
October	2012	\$4.45				\$170.46
November	2012	\$4.44				\$174.90
December	2012	\$4.44				\$179.34
January	2013	\$4.45				\$183.79
February	2013	\$4.44				\$188.23
March	2013	\$4.44				\$192.67
April	2013	\$4.45				\$197.12
May	2013	\$4.44				\$201.56
June	2013	\$4.44	\$53.32	\$43.09	\$96.41	\$249.09
July	2013	\$6.73				\$255.82
August	2013	\$6.73				\$262.55
September	2013	\$6.73				\$269.28
October	2013	\$6.73				\$276.01
November	2013	\$6.73				\$282.74
December	2013	\$6.73				\$289.47
January	2014	\$6.73				\$296.20
February	2014	\$6.73				\$302.93
March	2014	\$6.73				\$309.66
April	2014	\$6.73				\$316.39
May	2014	\$6.73				\$323.12
June	2014	\$6.73	\$80.76	\$43.09	\$123.85	\$372.94
July	2014	\$8.05				\$380.99
August	2014	\$8.05				\$389.04

September	2014	\$8.05				\$397.09
October	2014	\$8.05				\$405.14
November	2014	\$8.05				\$413.19
December	2014	\$8.05				\$421.24
January	2015	\$8.05				\$429.29
February	2015	\$8.05				\$437.34
March	2015	\$8.05				\$445.39
April	2015	\$8.05				\$453.44
May	2015	\$8.05				\$461.49
June	2015	\$8.05	\$96.60	0	\$96.60	\$469.54
July	2015	\$4.97				\$474.51
August	2015	\$4.97				\$479.48
September	2015	\$4.97				\$484.45
October	2015	\$4.97				\$489.42
November	2015	\$4.98				\$494.40
December	2015	\$4.98				\$499.38
January	2016	\$4.98				\$504.36
February	2016	\$4.98				\$509.34
March	2016	\$4.98				\$514.32
April	2016	\$4.98				\$519.30
May	2016	\$4.98				\$524.28
June	2016	\$4.98	\$59.72	0	\$59.72	\$529.26
July	2016	\$4.28				\$533.54
August	2016	\$4.27				\$537.81
September	2016	\$4.27				\$542.08
October	2016	\$4.28				\$546.36
November	2016	\$4.27				\$550.63
December	2016	\$4.27				\$554.90
January	2017	\$4.28				\$559.18
February	2017	\$4.27				\$563.45
March	2017	\$4.27				\$567.72
April	2017	\$4.28				\$572.00

May	2017	\$4.27				\$576.27
June	2017	\$4.27	\$51.28	0	\$51.28	\$580.54
July	2017	\$2.62				\$583.16
August	2017	\$2.62				\$585.78
September	2017	\$2.62				\$588.40
October	2017	\$2.62				\$591.02
November	2017	\$2.62				\$593.64
December	2017	\$2.62				\$596.26
January	2018	\$2.62				\$598.88
February	2018	\$2.62				\$601.50
March	2018	\$2.63				\$604.13
April	2018	\$2.63				\$606.76
May	2018	\$2.63				\$609.39
June	2018	\$2.63	\$31.48	0	\$31.48	\$612.02
July	2018	\$1.41				\$613.43
August	2018	\$1.41				\$614.84
September	2018	\$1.41				\$616.24
October	2018	\$1.41				\$617.65
November	2018	\$1.41				\$619.06
December	2018	\$1.41				\$620.47
January	2019	\$1.41				\$621.88
February	2019	\$1.41				\$623.28
March	2019	\$1.41				\$624.69
April	2019	\$1.41				\$626.10
May	2019	\$1.41				\$627.51
June	2019	\$1.41	\$16.90	0	\$16.90	\$628.92
July	2019	\$1.41				\$630.32
August	2019	\$1.41				\$631.73
September	2019	\$1.41				\$633.14
October	2019	\$1.41				\$634.55
November	2019	\$1.41				\$635.96
December	2019	\$1.41				\$637.36

January	2020	\$1.41				\$638.77
February	2020	\$1.41				\$640.18
March	2020	\$1.41				\$641.59
April	2020	\$1.41				\$643.00
May	2020	\$1.41				\$644.40
June	2020	\$1.41	\$16.90	0	\$16.90	\$645.81
July	2020	\$7.50				\$653.31
August	2020	\$7.50				\$660.81
September	2020	\$7.50				\$668.31
October	2020	\$7.50				\$675.81
November	2020	\$7.50				\$683.31
December	2020	\$6.69	\$44.19	0	\$44.19	\$690.00
Total		\$543.82	\$543.82	\$146.18	\$690.00	

## **Exhibit B: LACMTA Project Costs**

LACMTA will hold back a portion of the Gold Line Foothill Extension project funds to pay for LACMTA costs and expenses associated with the Project (“LACMTA Project Costs”). These expenses include MTA staff costs, the Construction Authority’s share of the costs to purchase real estate for an operation and maintenance facility and to expand the LACMTA Rail Operations Center, LACMTA furnished/required equipment purchases, and the relocation of BNSF storage track. The estimated annual LACMTA Project Costs are as follows:

FY 11: \$ 38,750,000  
FY 12: \$ 21,250,000  
FY 13: \$ 43,090,080  
FY 14: \$ 43,090,080  
**Total: \$146,180,000**

The LACMTA Project Costs also includes \$2.55 million in project funds as payment from the Construction Authority from surplus funds available from the Phase 1 (Union Station to Sierra Madre Villa) Gold Line Project. With the exception of FYI I, the total of the LACMTA Project Costs and annual reimbursements to the Construction Authority do not exceed the annual amounts provided in the LRTP as shown in Figure 1.

### **I. LACMTA staff costs**

LACMTA staff costs are those costs needed to oversee the planning, design, construction, and testing of the project in coordination with the Construction Authority. This includes regional communications (outreach, signage, marketing, media, graphic design, and printing), construction oversight, finance, planning, rail operations, real estate, safety, and legal.

### **Operation and Maintenance facility**

A new operations and maintenance facility to service Gold Line trains will need to be constructed and operational in accordance with Section 11. The Construction Authority will be responsible for the land acquisition, relocation, site preparation, design, and construction of the operation and maintenance facility and will conduct all negotiations for the acquisition of real property necessary to construct and operate the facility. To date, the exact costs have not been determined. Because this facility is intended to service trains used on the existing Gold Line, Gold Line Eastside Extension, Foothill Extension, and potentially the Regional Connector, LACMTA and the Construction Authority will each pay its respective share of the cost of acquiring the land, relocating, preparing the site, designing, and constructing the facility. LACMTA will pay 75% of the total cost to acquire the land and to construct the facility while the Construction Authority will pay 25% of such total cost. LACMTA’s 75% share for land acquisition and construction will be provided from non-Gold Line Foothill Extension project funds. The Construction Authority’s 25% share of the acquisition costs shall be included in LACMTA Project Costs. Construction Authority shall pay for its 25% share of construction costs from the \$690 million provided under the Funding Agreement. To the extent all or any portion of Phase 2B is funded with funds remaining from the \$810.5 million, the Construction Authority’s share of the O&M Facility will be adjusted upon amendment of the applicable portion of Phase

2B into the Funding Agreement, to factor in the increase of Construction Authority's share of the O&M Facility costs represented by additional vehicles needed for the applicable portion of Phase 2B.

## **II. LACMTA furnished/required equipment**

To ensure uniformity of major equipment and to ensure compatibility with the existing rail system, LACMTA will hold back funds to purchase equipment needed for system operation, including:

- a. The purchase of 15 vehicles for the initial operation of Phase 2A including a portion of LACMTA oversight and consultant costs, spare parts, tools & special equipment, and carbuilder non-recurring costs. The number of vehicles will be adjusted if the number of vehicles needed for Phase 2A increases or if all or any portion of Phase 2B is approved.
- b. Ticket Vending Machines/Stand Alone Validators/Fare Gates
- c. Traction Power substations and SCADA (Supervisory Control and Data Acquisition) equipment
- d. Other equipment as determined during the course of design and construction as mutually agreed to by the parties.

## **III. Relocation of BNSF storage track**

The preferred alternative for the Foothill Extension calls for the discontinuance of BNSF freight service on the Pasadena subdivision line between the cities of Arcadia and Irwindale. Though LACMTA owns this line, the current shared use agreement between LACMTA and BNSF stipulates that LACMTA must construct and provide an equivalent substitute track for BNSF's use should freight service be terminated. LACMTA is currently in discussions with BNSF on this issue and has not yet determined an exact cost for this item.

## **IV. Payment of \$2,550,000 owed to LACMTA from the Construction Authority**

Under Resolution No. 2003-R-06, surplus funds from the Gold Line Phase I Project were to be divided between the City of Los Angeles, City of Pasadena, City of South Pasadena and the LACMTA. The parties agree that the \$2,558,000 of surplus funds due to LACMTA shall be paid by the Construction Authority as part of the LACMTA Project Costs.

## **V. Expansion of Rail Operations Center**

The LACMTA Project Costs include a not-to-exceed amount of \$2 million as the Construction Authority's share of LACMTA's expansion of the Rail Operations Center that is attributable to the Project.

## **Exhibit C**

### **Bond requirements**

The provisions of this Exhibit C apply only if and to the extent some or all of the funds are derived from Bonds or other debt, the interest on which is tax exempt for federal tax purposes as set forth in Section 3C. Construction Authority acknowledges that some or all of the Funds may be derived from bonds or other debt the interest on which is tax-exempt for federal tax purposes. Construction Authority further acknowledges its understanding that the proceeds of tax-exempt bonds or other debt are subject to certain ongoing limitations relating to the use of the assets financed or provided with such proceeds (“Project Costs” or “Project Components”) in the trade or business of any person or entity other than a governmental organization (any such use by a person or entity other than a governmental organization is referred to as “Private Use”). Private Use will include any sale, lease or other arrangement pursuant to which a nongovernmental person or entity receives a legal entitlement of a Project Component and also includes certain agreements Pursuant to which a nongovernmental person will operate or manage a Project Component. Each monthly invoice submitted by Construction Authority to reimburse prior expenditures (or to be received as an advance) shall provide information regarding the specific Project Costs or Project Components to which the Funds which pay that invoice will be allocated and whether there is or might be any Private Use associated with such Project Costs or Project Components. Construction Authority will, for the entire time over which LACMTA’s tax-exempt bonds or other debt remains outstanding, (1) notify and receive LACMTA’s approval prior to entering into any arrangement which will or might result in Private Use and (2) maintain records, including obtaining records from contractors and subcontractors as necessary, of all allocations of Funds to Project Costs or Project Components and any Private Use of such Project Costs or Project Components in sufficient detail to comply and establish compliance with Section 141 of the Internal Revenue Code of 1986, as amended (the “Code”), as determined by the LACMTA in consultation with its bond counsel.

With respect to the investment of any Funds advanced to the Construction Authority pursuant to Section 14 hereof or otherwise, and any earnings derived from the investment of such Funds, the Construction Authority will record and maintain the following information such that LACMTA can comply and establish compliance with Section 148 of the Code, as determined by LACMTA in consultation with its bond counsel: (i) the purchase date of each investment, (ii) the purchase price, (iii) information establishing that the purchase price is the fair market value as of such date (for example, the published quoted bid by a dealer in such investment on the date of purchase), (iv) any accrued interest paid, (v) the face amount of, (vi) the coupon rate, (vii) the periodicity of interest payments, (viii) the disposition price, (ix) any accrued interest received upon disposition, and (x) the disposition date. Construction Authority will make such information available to the LACMTA promptly after request. Construction Authority will also adhere to any investment instructions or limitations, as directed by LACMTA, which are necessary to comply and establish compliance with Section 148 of the Code, as determined by LACMTA in consultation with its bond counsel.

Construction Authority will designate one or more persons that will be responsible for compliance with the obligations described in this Exhibit and notify LACMTA of such designations.

## ATTACHMENT B

### MASTER COOPERATIVE AGREEMENT TERM SHEET METRO GOLD LINE FOOTHILL EXTENSION

#### I. Overview

- A. Master Cooperative Agreement (“MCA” or “Cooperative Agreement”)
1. The Cooperative Agreement is entered into pursuant to California Public Utilities Code Section 132435.
  2. The Cooperative Agreement shall be for Phase 2A (the “Project”), and will include a description of each party’s roles and responsibilities. Upon CEQA/NEPA clearance and approval ~~by the LACMTA Board~~ of Phase 2B funding by the LACMTA Board, the Cooperative Agreement will be amended to incorporate ~~such portion of Phase 2B that can be constructed with the unspent portion of the \$810.5 million to be provided by LACMTA and such other funding as the Construction Authority is able to obtain, exclusive of Federal New Starts Funding. This shall not be construed as a commitment by LACMTA to provide funds in excess of the \$810.5 million.~~Phase 2B.
  3. As the Project will be turned over to LACMTA for its use and operation as part of an overall existing transit system and LACMTA will be providing funds for the construction of the Project, it is important to LACMTA that it ~~participates in~~provides input into the design and construction of the Project.— as it pertains to operability and compatibility with the existing system.
  4. LACMTA shall participate in the Project, and the Construction Authority will provide the opportunity for LACMTA to participate, in the areas set forth below and as will be more particularly described in the Cooperative Agreement. The purpose of such LACMTA participation shall be to ensure the Project will be compatible, functionally connected and operative with LACMTA’s existing Metro rail system. ~~Subject to the procedures set forth in this term sheet, the~~The LACMTA participation in the Project includes:
    - inspection rights
    - coordination meetings
    - receipt of status reports

- Construction Authority reporting at LACMTA construction committee
- receipt of finance reports per the funds transfer agreement
- participation in testing
- design review and approval comment rights as set forth in Section II
- ~~office space in the Project's Integrated Project Office~~
- ~~notification of key personnel changes~~
- review and approval of "Significant Changes":
- ~~review of changes~~
- participation in certain third party applications and agreements, where appropriate
- participation in the substantial completion walk through, safety certification and final acceptance process for the Project
- ~~approval of acceptance of spare parts, training plans, as built documentation and operation and maintenance manuals~~

5. ~~5.~~ — Construction Authority to contract with Design Build Contractor ("DB Contractor").

6. ~~6.~~ — DB Contractor to design and construct Project per the Baseline Documents.

## B. Definitions

1. "Baseline Documents" shall mean any ~~approved~~ Change Orders to the Conformed Contract Documents for ~~design, design/build or construction~~ and/or design and the Conformed Contract Documents for ~~design, design/build or construction~~ and/or design, which includes, without limitation, all of the following documents: the adopted Environmental Impact Reports, as amended or supplemented from time to time, the advanced conceptual engineering ("ACE"), the preliminary engineering, the performance specifications, LACMTA design criteria and standards, and contractor's proposal as amended by Contractor's best and final offer.
2. "Significant Change" means (i) any ~~proposed material change in the of~~ mode or technology from the Baseline Documents; (ii), or any other ~~proposed~~ substantive change that ~~directly and materially affects and/or impacts~~ affects the connectivity, and operation, ~~maintenance or safety~~ of the Project as ~~described in the Baseline Documents or as part of the overall transit system operated by LACMTA;~~ (iii) any ~~proposed deviations from LACMTA design~~

criteria, standards and directives; (iv) any proposed changes that may have a direct effect on the Project in a manner that will result in inappropriate substitution of any proposed equipment, system or operational arrangement of functional project elements that would have a substantial effect on the cost and quality of the LACMTA's operation of the Project; or (v) any combination of (i) (iv). Construction, or any combination of those things. Design and construction of the Project that is consistent with the Baseline Documents shall not be deemed to be a Significant Change. and shall not require concurrence by LACMTA.

3. The "Solution Process" means the following process which shall be used to resolve disputes between LACMTA and the Construction Authority, including whether a decision of the other party is unreasonable. for resolution of disputes between the parties regarding a Significant Change:
  - a. Construction Authority will respond to LACMTA'S comments within 15 calendar days. If Construction Authority fails to respond to LACMTA's comments within such time period and LACMTA provides a written warning notice that clearly states **[in at least 14 point type, bolded]** that unless Construction Authority responds within 10 calendar days Construction Authority shall be deemed to have accepted LACMTA's comment, then if Construction Authority fails to respond during that additional 10 day period it shall be deemed to have accepted LACMTA's comment. Notice shall be provided in accordance with the notice provisions of the Agreement.
  - b. If Construction Authority rejects any LACMTA comment(s), and LACMTA asserts that the Construction Authority unreasonably rejected the LACMTA comment, LACMTA may notify the Construction Authority within 3 business days of the receipt of the Construction Authority's written rejection that it wishes to conduct comment resolution meetings. The date of LACMTA's Notice shall be the "LACMTA Notice Date." In that event, the parties shall conduct comment resolution meetings which will start no later than 3 business days from the LACMTA Notice Date and continue until the first to occur of (i) LACMTA is reasonably satisfied with the resolution of its comments, or (ii) 10 calendar days after LACMTA receives Construction Authority's written rejection.
    - a. Within 5 business days after Construction Authority determines there has been or will be a Significant

**Change, Construction Authority shall inform LACMTA by written notice and request approval therefor. Within 5 days after LACMTA has received such notice and request, LACMTA shall convey in writing to the Construction Authority either its approval / disapproval of the Significant Change or indicate that LACMTA does not consider the change to be a Significant Change.**

b. **At any time, LACMTA may determine independently that there has been or will be a Significant Change. Within the 21 day review period for design submittals pursuant to Section II.A, or within 5 business days after making such a determination for changes not included in a design submittal under review pursuant to Section II.A, LACMTA shall convey its determination in writing to Construction Authority, together with its approval / disapproval of the Significant Change.**

c. e. — **In the case of disagreement between LACMTA and Construction Authority as to whether a given change is a Significant Change or in the case of an LACMTA disapproval of a Significant Change, Construction Authority may notify convey in writing to LACMTA within 3 business days of the receipt of LACMTA's written disapproval or written notice that LACMTA has independently determined that a given change is a Significant Change that it wishes to conduct comment-resolution meetings. The date of Construction Authority's Notice shall be the "Construction Authority Notice Date." In that event, the parties shall conduct comment-resolution meetings, which will start no later than 3 business days from the Construction Authority Notice Date and continue until the first to occur of (i) Construction Authority is reasonably satisfied with the resolution, or (ii) 10 calendar days after Construction Authority receives LACMTA's written disapproval or written notice indicating that LACMTA considers a given change to be a Significant Change.**

d. — **If the parties fail to reach a mutual solution, the issue(s)/dispute(s) matter shall be raised automatically raised to the CEO of each agency for final-resolution. If the parties fail to reach a mutual solution within five business days, the issue(s)/dispute(s) shall be automatically brought 5 business days after the matter is raised to the CEOs, Authority shall be deemed to have accepted**

**LACMTA’s disapproval or determination that a given change is a Significant Change unless either CEO refers the matter to the Solution Committee for resolution within 3 business days thereafter.**

~~e.~~ e. The Solution Committee shall render a decision within 10 calendar days after a matter is forwarded to it for consideration.

~~4.~~ 4. Solution Committee

~~4.~~ a. The “Solution Committee” shall ~~be~~ mean a committee consisting of three LACMTA Board members (which LACMTA Board members shall not also serve on the Construction Authority Board and at least one LACMTA Board member will be from the San Gabriel Valley) and two Construction Authority Board Members (which Construction Authority Board members may serve on the LACMTA Board). The CEOs of the two agencies can participate on members of the Metro Board of Directors, at least one of who shall be from the subregion, and two members of the Authority Board of Directors. The members shall be appointed in accordance with the procedures of their respective Boards. The CEOs of both parties are non-voting members of the Solution Committee on a non-voting basis.

~~5.~~ b. The Solution Committee shall have the authority to resolve disputes provided the Project costs, including any disputed amounts, are within an amount equal to \$690 million plus any increased amounts authorized by the LACMTA Board. Any disputes where Project costs, including any disputed amounts, will exceed \$690 million shall be brought to the LACMTA Board for final resolution. Project Management Plan (“PMP”). Construction Authority shall provide LACMTA with copies of the PMP and any amendments thereto.

~~6.~~ c. The Cooperative Agreement shall provide that all approvals and determinations of either party shall not unreasonably be withheld.

~~C.~~ D. LACMTA Participation Generally

1. Meetings:

a. Monthly meetings with executive management to include LACMTA General Manager Rail Operations, LACMTA Executive Officer Construction, and Metro Gold Line Construction Authority Project Management management team or their respective

~~designee.~~ **designees shall hold monthly meetings with LACMTA representatives.**

- b. ~~b.~~—Construction Authority CEO or designee will report quarterly at LACMTA’s monthly Construction Committee meeting.
2. Reports to be provided by Construction Authority ~~areas~~ specified in the Funding Agreement.
  3. Copies of the DB Contractor’s deliverables to be sent to LACMTA.

The Construction Authority will provide electronic copies to LACMTA and/or include LACMTA as an assigned user if Construction Authority uses a Project Management collaborative internet access program for document review.

4. LACMTA inspection rights: LACMTA shall have rights to inspect the Project at any time, in accordance with the following:
  - a. LACMTA may participate in the Construction Authority’s inspection program for all Project elements with proper coordination with the appropriate Construction Authority field staff. LACMTA shall address all concerns and issues directly with the Construction Authority field staff and not with the DB Contractor.
  - b. LACMTA may, at its election, reasonably participate on pre-construction activities, including review of Construction Work Plans.—
  - c. Construction Authority to notify LACMTA of all systems factory testing, local field tests, and integration tests. Construction Authority does not need to notify LACMTA of daily, ongoing material testing. ~~If LACMTA participates in the inspection process, LACMTA will know when material testing is planned and can participate through the appropriate Construction Authority field staff.~~ LACMTA shall address all concerns and issues directly with the Construction Authority field staff and not with the DB Contractor.
5. Integrated Project Office to include space for LACMTA personnel.
  - a. Construction Authority ~~will~~may provide one office with two desks, two lockable filing cabinets, a phone and a

computer in Construction Authority's main office, and in the field office.

~~b.~~ ~~\_\_\_\_\_ In the event the~~ The Construction Authority wishes has the right to remove ~~an~~ a LACMTA person or persons assigned to work at the Integrated Project Office, the Construction Authority shall write a letter to the Chief Executive Officer (or his/her designee) requesting the removal. This request shall include cause and reasons for the removal. Approval of such request shall not work at the integrated Project Office. Such right shall not be exercised unreasonably withheld.

6. Construction safety and security documents/quality control documents.

All Project design and construction documents that relate to the security of the operation of the Project as a portion of the system shall be treated as Security Sensitive documents to protect LACMTA's and Construction Authority's interests. Construction Authority, Contractor, Subcontractor, Consultant/subconsultants to sign confidentiality/non-disclosure agreements. LACMTA shall provide the written policy for incorporation into the DB Contract.

~~7. \_\_\_\_\_ LACMTA and Construction Authority shall inform each other of all key personnel and any changes to such personnel~~

~~LACMTA and Construction Authority to have right of reasonable prior notice of any potential impact on Project via loss of key Project personnel. \_\_\_\_\_~~

~~7.~~ 8. Procurements/Solicitations/~~Confirmed Contract~~

a. LACMTA to actively participate as a voting member(s) on selection committees for all design-build contractors for the Project.

b. LACMTA to review and ~~approve the contents of the RFP(s) for terms and conditions, general requirements, LACMTA Design Criteria and Standards, advanced conceptual engineering/preliminary engineering, other technical documents, and all documents issued with the RFP but, excludes the Instructions to Proposers and Environmental Impact Report for design, design/build or construction of Phase 2A, which shall include the O&M Facility but exclude the iconic Bridge Structure, as follows: LACMTA's approval shall not extend to Construction Authority's Instructions to Proposers/Bidders.~~

- ~~i. LACMTA staff shall review and comment on the industry review draft of the RFP drafts of **RFQs/IFBs/RFPs for the design/build contract**, during the industry review period. Construction Authority shall incorporate all of LACMTA comments to the extent Construction Authority agrees and for those comments in dispute, the Solution Process shall be used to decide the dispute. Construction Authority shall provide LACMTA with all other comments received during the industry review. If LACMTA staff has any concerns with any comment received during the industry review, the Construction Authority shall address all such concerns.~~
- ~~ii. LACMTA Board shall approve the RFP, including all terms and conditions, general requirements, technical documents and all documents issued with the RFP except the Instructions to Proposers/Bidders and the Environmental Impact Report. LACMTA Board shall take action within 30 days on the RFP.~~
- ~~iii. The Construction Authority may issue the RFP pending LACMTA Board approval; provided, however, Construction Authority shall conform the RFP to the LACMTA Board approved RFP by addenda.~~
- ~~iv. The LACMTA approved RFP and subsequently approved addenda shall be the basis for the applicable design build proposal.~~
- ~~v. LACMTA staff shall have the right to review and approve all addenda to the LACMTA approved RFP. LACMTA shall have 5 days from receipt of a draft addendum to either provide its comment or approval.~~
- ~~vi. Prior to contract execution, LACMTA staff shall have 10 days to review the final conformed contract documents for Phase 2A to confirm such final conformed contract documents for Phase 2A contains all prior approvals made by LACMTA and to confirm there are no~~

~~unapproved material changes. If there are any issues with a previously provided LACMTA comment or any unapproved material changes, LACMTA shall either provide its comment or its approval within such 10 day review period.~~

~~vii. If LACMTA fails to provide comments or its approval within the time periods set forth above and provided the Construction Authority has given LACMTA the standard 14 point type, bolded font warning that failure to respond will be deemed approval at least 3 days before the end of the applicable review period, then LACMTA shall be deemed to have approved the applicable document.~~

c. **LACMTA to review and comment on significant changes to the industry review drafts of the RFQs/IFBs/RFPs for the design/build contract that are included in the RFQs/IFBs/RFPs that are issued, within 10 business days after the RFQs/IFBs/RFPs are issued, and within 7 calendar days after any addenda thereto are issued.**

8. ~~9.~~ Third Party Agreements and Applications

LACMTA to review and approve any ~~applications to and~~ agreements with Caltrans, CPUC, SCRRRA, BNSF, utility companies, or any other third parties, to the extent ~~these applications and agreements create an ongoing impact or, commitment/relationship after the Construction Authority turns the Project over to LACMTA.~~ **such approval is required by Section 4.2.4 of the Property Trust Agreement. Nothing in this section is intended to amend or modify PUC Section 132445.**

9. ~~10.~~ Outreach/Communications.

In order to ensure consistency of information, Construction Authority will provide **project and** construction related outreach and communication while LACMTA will provide outreach and communication regarding operational aspects, including, ~~without limitation,~~ ridership projections, opening/service start updates, bus/rail interface, safety, system maps, how to ride, Measure R/regional/systemwide information, **related** press releases, etc.

Signage will conform to most up to date Metro System Signage Standards and Metro Rail Design Criteria.

11. ~~LACMTA shall have the right to review and approve the following documents:~~

- ~~a. The contents of RFP(s) for Phase 2A, including the O&M Facility, exclusive of the Instructions to Bidders in accordance with the process described in Section IE8b above.~~
- ~~b. Conformed Contract Documents for Phase 2A, including the O&M Facility in accordance with the process described in Section IE8b above.~~
- ~~c. Design and testing submittals up to 100% Design in accordance with Section II.A.~~
- ~~d. Advanced Conceptual Engineering/Preliminary Engineering.~~
- ~~e. Performance specifications.~~
- ~~f. LACMTA Design Criteria and standards~~
- ~~g. LACMTA Designated betterments.~~
- ~~h. Significant Changes in accordance with Section II.C.~~

II. Design Review and Contractor Submittal Review and ~~Approval~~**Comment** during Construction

- A. LACMTA to have ~~30~~**21** calendar ~~day~~**days to** review and ~~approval rights for~~**comment on** any Project design submittal at each level, up to and including 100% design submittal, as design moves forward, including without limitation, O&M Facility, ~~the 210 Bridges~~**structures**, the alignment, stations, art and aesthetics (but only to the extent that any such art and aesthetic design issues may result in a **material adverse** financial impact to the permanent maintainability of the Project), communications, signage and parking structures.
  - 1. The Construction Authority may deem LACMTA's ~~approval~~**acceptance** to have occurred only after LACMTA's review period has expired with no response and the Construction Authority provides **(or has included in the transmittal of the document at issue)** a written warning notice **[in at least 14 point type, bolded]** that clearly states that unless LACMTA responds within ~~10~~**the original 21** calendar days, deemed approval

will occur. ~~Notice shall be provided in accordance with the notice provisions of the Agreement.~~

2. LACMTA's ~~approval of~~ **comments on** any document is limited to ensuring consistency with the Baseline Documents, and that the design complies with the Baseline Documents.
3. If during the design review process LACMTA requests changes to the submittals and such changes result in a change order to the Baseline Documents, Construction Authority will not be obligated to make such change unless LACMTA agrees it shall be responsible for paying the cost of such change and any delay claim associated with the LACMTA requested change.
4. **In addition to LACMTA's right to approve Significant Changes pursuant to Section II.B,** Construction Authority shall not implement any alternative technical concepts ~~and~~ or value engineering changes **that are not a Significant Change** without LACMTA's ~~prior written approval.~~ **ability to comment on such change.**

~~B. LACMTA shall receive copies of any Request for Information and any Request for Change.~~

~~C. LACMTA shall have the right to review, approve/reject any and all "Significant Changes".~~

~~B. LACMTA shall have the right to review and approve or reject any and all Significant Changes.~~ In the event that LACMTA does not grant approval of a Significant Change, LACMTA will give the Construction Authority written notice of its disapproval, which shall result in a cessation of all construction activity related to the Significant Change ~~and~~. **Any dispute regarding a Significant Change shall be resolved in accordance with** the Solution Process ~~shall be used to resolve the dispute.~~

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### III. Annual Work Plan for LACMTA Staffing

- A. LACMTA to develop an annual work plan for LACMTA's performance of its obligations pursuant to the Cooperative Agreement. LACMTA and Construction Authority to determine LACMTA staffing level needs during the LACMTA's budget cycle to ensure there is a sufficient level of LACMTA assistance to meet the ~~Gold Line~~ Construction Authority's Project needs for the upcoming fiscal year. LACMTA to provide Construction Authority its Labor Information Management System ("LIMS") report on a monthly basis. Construction Authority shall review and approve or reject the annual workplan. ~~If the parties cannot agree on~~

~~the annual work plan, either party may invoke the dispute resolution process.~~

- B. Staffing need estimates will be tied to LACMTA's budget process.
- C. Funding for the Annual Work Plan will be included as part of LACMTA Project Costs.

IV. **Operation and Maintenance ("O&M") Facility and Light Rail Vehicle Commissioning**

- A. Design and construction of the O&M Facility will be included in the Alignment DB Contract. The conceptual site plan will be an exhibit to the Cooperative Agreement.
- B. Construction Authority, as Trustee, will acquire all real property necessary to construct an O&M facility, as more particularly addressed in the Funding Agreement.
- C. ~~C.~~—Light Rail Vehicle Commissioning

To support the testing and commissioning of new Light Rail Vehicles, the following is required by the LACMTA at least 9 months prior to ROD, **unless a shorter period is mutually agreed upon.**

1. Installation of two tracks located inside the O& M facility that span the inside length of the facility:
  - a. One energized over a full length maintenance pit; and
  - b. A second to be non-energized, but constructed with an in-floor hoist that spans the length of the facility which shall accommodate a three car consist.
2. Reasonable accommodations to support a commissioning team of approximately 10 individuals to work on the vehicles.
3. An energized lead track that connects the two inside tracks (noted above) to the Mainline.
4. Storage tracks that can accommodate up to 15 Light Rail Vehicles.
5. Approximately one mile of Mainline track sufficient to permit the testing of LRVs up to 55 MPH.
6. An in-floor turntable for the purposes of installing and replacing LRV trucks.

7. The Construction Authority and its Contractor shall not have to provide train control or communications.

D. ~~D.~~—Light Rail Vehicle Delay Claims

To avoid delay claims under the future Light Rail Vehicle Manufacturer (LRVM) contract, the facilities identified for “Light Rail Vehicle Commissioning” shall be ready to support the testing and commissioning of new light rail vehicles 9 months prior to the Phase 2A ROD— **(unless a shorter period is mutually agreed upon)**. Metro intends to contract with the future LRVM contractor to provide them with a fixed delivery location and means to test and commission the new LRVs. LACMTA will include in its future LRV contract that the initial date for delivery of the LRVs will be no later than July, 2014. LRV Delivery Delay claims shall be assumed to be no more than \$5,000 per day and will only be charged to the Authority should a valid LRVM delay claim occur.

**Should LACMTA fail to deliver LRV’s for testing (need not be new vehicles) by the Testing & Start up date established by the Authority, LACMTA shall reimburse the Authority for all delay costs attributable to the delay in delivering the LRV’s.**

V. Testing and Start Up

A. DB Contractor role

1. DB Contractor responsible for Factory Tests, Construction Tests, Systems Integration Tests and System Performance Tests.
2. DB Contractor’s tests will be based on LACMTA test standards and procedures, to be provided by LACMTA for incorporation into the DB contract; **to the extent they are reasonable as determined by standard industry practice** and requires coordination with LACMTA.
3. Provide training to LACMTA staff in (i) System Familiarization and Configuration, (ii) equipment operation; and (iii) equipment maintenance.

B. Construction Authority Role

Oversee DB Contractor and ensure adherence to LACMTA test standards.

~~C.~~—LACMTA role

C. **LACMTA role**

LACMTA to be provided the opportunity to monitor any testing of components and systems related to train operations and maintenance of trains and property.

D. ~~D.~~—Stress Testing and pre-revenue operations period allows LACMTA to test operating systems for revenue service and operate trains for a 3-month window or as is mutually determined by the parties.

1. Commences upon Substantial Completion or systems substantial completion if such a milestone is created or as mutually agreed upon by the parties.
2. For the Phase 2A alignment contract, LACMTA can add punch list items in accordance with the terms of the contract during this period up until 90 calendar days after ROD ~~at which point no punch list items can be added except for items that are not completed or constructed such that punch list items could not have been discovered during that period. For such items completed or constructed after ROD, LACMTA shall have 90 days from completion to add punch list items at~~ Final Acceptance, whichever comes first, after which point no punch list items can be added. For the Bridge contract and the parking garage contracts, LACMTA can add punch list items in accordance with the terms of this contract during this period up until Substantial Completion at which point no punch list items can be added. This is contingent upon Contractor having no design or construction work remaining, other than punchlist work.
3. DB Contractor must comply with LACMTA's rail safety rules for access to ROW, as applicable. LACMTA must provide such rail safety rules for incorporation into the DB Contract.
4. Construction Authority, DB Contractor and LACMTA to have weekly revenue readiness meetings

E. ~~E.~~—Warranties

1. ~~1.~~—Commences on Substantial Completion and continues for the later of final acceptance or ~~2 years~~ at least 1 year after substantial completion; provided, however, for major equipment, if the factory warranty (which should conform to industry standards) is longer than the warranty term set forth above, the factory warranty shall be provided and will control for such major equipment. The factory warranties shall be a proposal and contract requirement clearly identifying the equipment warranties that shall extend beyond the period stated above. If the Construction Authority requests a warranty for a term of 1 year after substantial completion, it shall also solicit proposals for a 2-year warranty as an option.

- ~~2.~~ ~~2.~~—~~End~~**At the end** of each year warranty in effect, parties to walk through and create punch list of warranty items.
- ~~3.~~ ~~3.~~—LACMTA to manage warranty process similar to the warranty process used with Phase ~~1~~**I**.
- ~~4.~~ ~~4.~~—Warranties shall run to the benefit of LACMTA
- ~~F.~~ ~~F.~~—Turn back language as set forth in the Phase 1 Operations Agreement shall be used for Phase 2A.

VI. Insurance/indemnification

- A. LACMTA **hereby** approves implementation of a Contractor Controlled Insurance Program (“CCIP”) for Phase 2A.
- B. Insurance language for DB Contractor’s insurance program to be reviewed ~~and approved by LACMTA’s Risk Management Department. Approval not unreasonably withheld.~~ **Any recommended changes shall be submitted to the Authority.**
- C. LACMTA to receive copies of all insurance certificates and bond documents from Construction Authority, Contractors and Consultants, naming LACMTA as an additional named insured.
- D. Indemnity to LACMTA needed from Design-Build Contractors to cover the design and construction work.
- E. Mutual indemnity between LACMTA and Construction Authority for their respective actions.

VII. Dispute Resolution

- A. The Solutions Committee shall be used to resolve disputes **regarding Significant Changes** as described in Section ~~B4b~~**I.B.3. All other disputes shall be resolved amongst staff if possible, and by the CEOs if staff is unable to resolve the dispute.**

VIII. LACMTA Furnished/Required Equipment

- A. To ensure uniformity of major equipments and to ensure compatibility with the existing rail system, LACMTA requires Construction Authority to use the LACMTA Furnished/Required Equipment which includes without limitation:
  - 1. The purchase of 15 vehicles for use on Phase 2A including a portion of LACMTA oversight and consultant costs, spare parts, tools & special equipment, and carbuilder non-recurring costs.

2. Ticket Vending Machines/Stand Alone Validators/Fare Gates
  3. Mobile & Portable radios
  4. Other equipment as determined during the course of design and construction as mutually agreed to by the parties.
- B. For Systems Equipment, LACMTA will procure Indefinite Delivery Indefinite Quantity (“IDIQ”), (or similar procurement approach) contracts for specific equipment procurements, such as LRT Train Control Equipment and LRT Communications Equipment. The DB Contractor will be required to contract with the IDIQ vendors for the procurement of the equipment identified by LACMTA no later than 15 calendar days after execution of the Alignment Contract, at the IDIQ price. The DB Contractor shall be responsible for the cost to purchase and install the equipment purchased from the IDIQ vendors. If the IDIQ contracts are not in place at the later of (i) August 15, 2010; or (ii) 15 calendar days prior to the date proposals are due in response to the Phase 2A Alignment RFP, the DB Contractor can procure its own systems equipment consistent with the contract performance specifications at Construction Authority’s cost. Provided Construction Authority has not made any “Significant Changes” which might change the requirements or specifications of a equipment to be purchased from an IDIQ vendor without LACMTA’s approval, LACMTA shall be responsible for any delay claims by the DB Contractor associated with not providing such equipment under an IDIQ contract in a timely manner.
- C. LACMTA will procure as ~~LACMTA~~LACMTA Project Costs the Traction Power Substations for the Project, which the DB Contractor will be required to install. LACMTA shall be responsible for any delay damages and additional costs if unable to deliver the TPSS in accordance with the DB Contractors schedule.
- D. Construction Authority shall provide the O&M Facility as set forth in Section 11 in the Funding Agreement term sheet. The DB Contract shall include a clause providing that, if the Initial O&M Phase is not constructed and operating sufficiently for LACMTA to receive and test light rail vehicles by the agreed upon date, and if LACMTA incurs delay damages under its contract with the vehicle supplier as a result, the DB Contractor shall incur liquidated damages in the amount of such delay damages.

#### IX. Buy America Provisions

The Project shall incorporate Buy American Provisions, to the extent legally permissible.

