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Metropolitan Transportation Authority

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**PLANNING AND PROGRAMMING COMMITTEE  
NOVEMBER 20, 2013**

**SUBJECT: SUPPLEMENTAL MODIFICATIONS TO TRANSIT PROJECTS POLICY**

**ACTION: ADOPT POLICY**

**RECOMMENDATION**

Adopt the policy contained in Attachment A which provides direction for considering requests from local jurisdictions, third parties, and other stakeholders for supplemental modifications to transit corridor projects at various stages in the project development process.

**ISSUE**

Supplemental Modifications to transit corridor projects such as betterments or enhancements to the project scope are often requested by cities, other agencies, and outside parties – sometimes after the project definition is approved and the environmental review is certified by the Board, after the project has received a Record of Decision (ROD) from the Federal Transit Administration (FTA), or after the design is frozen at the release of advanced design and construction procurement documents.

For our two most recent projects, the Crenshaw/LAX and Regional Connector, we have received such requests. This will become more prevalent as we continue to deliver the Measure R Transit projects.

A policy is needed to clearly outline the formal process Metro will follow upon receipt of any request, including the process for evaluating the Supplemental Modification, agreement on the scope, cost allocation and Board approval. This will ensure that all parties receive the same consideration. The Policy is designed to be consistent with all existing processes (such as environmental review), policies (such as the Grade Crossing Safety Policy and Uniform Cost Management Process and Policy), and agreements (such as Master Cooperative Agreements with local cities and utilities), which contain requirements related to Betterments. This Policy codifies existing practices and processes associated with Master Cooperative Agreements (MCAs) with cities. It does not override the MCAs. It is intended to clarify existing practice and to highlight a consistent approach. Further, it is consistent with the Uniform Cost

Management Process and Policy with regard to how scope reductions are addressed. Board approval of the Policy is being requested.

## **DISCUSSION**

Metro currently addresses “Betterments” in its Master Cooperative Agreements. As we move through the delivery of the Measure R Transit Corridors, we are receiving requests to make design modifications or enhancements to the approved project definition. These requests which may be much larger in scope than utility infrastructure are being made after the design has been frozen and procurements released and/or awarded to contractors. They could result in contract modifications which may require Board approval and increased cost and risk to project delivery and potentially to federal funding and loans. This policy is intended to encourage early stakeholder participation so that the appropriate analysis can be performed earlier, minimizing the need to request Supplemental Modifications late in the project development process.

## **DETERMINATION OF SAFETY IMPACT**

The adoption of this policy will have no impact on the safety of our customers and employees.

## **FINANCIAL IMPACT**

There is no impact to the FY14 budget. This policy captures and clarifies past Board policy, practices, and agreements. It clarifies roles and responsibilities as well financial responsibility for supplemental modifications to the scope of a project requested by other entities.

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

There is no impact to the bus and rail operating and capital budget.

## **ALTERNATIVES CONSIDERED**

The Board could choose not to adopt the Policy. This is not recommended. As we develop and implement the Measure R Transit Corridor projects, requests for changes to the approved Project Definition will continue to be received. A consistent framework for addressing these requests is needed for uniformity and to avoid last-minute requests that cannot be considered. Further, a policy as to who is financially responsible for the changes also needs to be adopted to ensure clarity.

## **NEXT STEPS**

Upon Board approval, we will continue applying all existing policies, processes, and procedures within this adopted framework. We will also share this policy with cities, entities, and stakeholders affected by all Measure R Transit Corridor projects in the

planning and design phase to provide clarity as to how supplemental modifications are to be considered.

**ATTACHMENT**

A. Supplemental Modifications to Transit Projects Policy

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## Supplemental Modifications to Transit Projects Policy

### Introduction

The Los Angeles County Metropolitan Transportation Authority (LACMTA) will follow a uniform process and policy for defining and evaluating whether requests by outside entities for Supplemental Modifications to a Transit Project (Project) may be incorporated into the Project's scope of work either as part of the Project itself or as a separate activity that might be implemented concurrently with the Project.

### Definition of Supplemental Modifications

For the purpose of this Policy, Supplemental Modifications are defined as physical elements or features that are being requested to be added to the Project Scope of Work and which are outside of the approved scope (definition) of a transit project, as they were not included in the most recent project description or requirements approved under the Project's most recent environmental review documents and under the Project's Record of Decision (for projects completing federal [National Environmental Policy Act – NEPA] review), but are being requested to be implemented with the Project by a local jurisdiction, agency, or a third party.

Supplemental Modifications typically fall under two general categories – Betterments and project revisions:

- A Betterment is specifically defined in the LACMTA's Master Cooperative or Utility Agreements as an upgrade of an existing city or utility's facility or the property of a Third Party, be it a public or private entity, that will increase or upgrade the service capacity, capability, appearance, efficiency or function of such a facility or property of a third party. Examples of facilities that can be classified as betterments would include such items as utilities, street infrastructure, development sites, and other types of infrastructure elements within a community.
- Project Revisions are defined as potential revisions to a Project's Scope of Work that may or may not have been originally considered during the environmental review process, but were either rejected or were raised after the Project's Notice of Determination or after the issuance of a Project's Record of Decision. Project Revisions may or may not ultimately be classified as Betterments depending upon what kind of infrastructure is identified in the request for inclusion. Project Revisions may also include requests for improvements where the primary feature is something other than another element of infrastructure. Project Revisions might include features which benefit the Transit Project, but are not necessary for its implementation, purpose or usefulness and were not included in the LACMTA Board approved Project Definition or Life-of-Project budget.

LACMTA defines Betterments in Master Cooperative Agreements (MCAs) established with local, regional and state related jurisdictions or third parties wherein the Project will be constructed. This policy is not intended to override or supersede MCAs with partner entities. For ease of use, many of the principles, processes, and terms that define how Betterments are addressed may be applied to Project Enhancements as well.

Entities Requesting Supplemental Modifications

Requests for Supplemental Modifications may come from a single source or a combination of sources. Examples of groups that have requested Supplemental Modifications include, but are not limited to:

- Private individuals
- Private entities (e.g., developers, businesses, etc.)
- Utilities
- Other Governmental entities
- Elected Officials
- Community Groups
- Other Third Parties

When considering a request for a Supplemental Modification, it is important to note whether or not the Supplemental Modification should be considered as an element of another entity’s own work program or could be classified as an additional requirement for mitigation of another entity’s work program. In these cases, whether or not implementation has already been approved, such a requested Supplemental Modification should be referred to the other entity.

Stages of Project Definition and Supplemental Modification Consideration

Projects are defined with an increasing level of detail through several stages. While coordination with stakeholders, third parties and other entities is ongoing, specific milestones define discrete points at which the scope of a Project is defined or refined.

<b>Milestone</b>	<b>Level of Scope Definition</b>
At the end of Alternatives Analysis	Definition of Alternatives for Environmental Review (Received by Board)
At the end of Draft Environmental Review	Adopted Locally Preferred Alternative (LPA) and preliminary mitigations
At the end of Final Environmental Review (Environmental Impact Statement/Environmental Impact Report [EIS/EIR])	Adopted Project Definition and Mitigation Monitoring Plan, Notice of Determination (per CEQA), and Record of Decision (for federally cleared projects)

<b>Milestone</b>	<b>Level of Scope Definition</b>
DESIGN FREEZE – At the end of Preliminary Engineering/issuance of Procurement Documents	Preliminary Engineering Design (incorporating design refinements and value engineering) and additional detail on Project Mitigations are finalized for contract purposes. (Preliminary Engineering is defined in Master Cooperative Agreements, Exhibit C.)
Award of Construction Contracts	Detailed Design of the Project and Project mitigations. For Design/Build Contractors, the Contractor will complete the design and construction begins.

### Requests for a Supplemental Modification

Any entity which desires to request a Supplemental Modification to a Project Scope of Work shall do so at the earliest possible point in the project development process. However, LACMTA is not obligated, nor does this Policy require it to accept or implement the requested Supplemental Modification. The timing of the request for a Supplemental Modification, with respect to certain Project Milestones, will affect how it may be evaluated:

- Supplemental Modifications that are requested after the adoption of the Project Definition, relevant mitigation measures and certification of the EIR and Record of Decision, are more likely to require additional environmental review and have the potential for significant Project construction delays associated with them than if they were offered up prior to these final project milestones.
- Supplemental Modifications which are not incorporated into a Project prior to implementation of the Design Freeze milestone, and especially after the award of a contract, are expected to have significantly higher costs due to greater schedule impacts, and could ultimately jeopardize funding or loan agreements, and therefore introduce significant financial risk.
- Supplemental Modifications that are not included and incorporated into the Project's construction contract for implementation by the award of the construction contract (including design/build contracts) can only be added by way of a contract change, which will likely result in higher Project costs, require additional funding source(s) beyond the Board approved project budget, and may require further consideration and approval by the LACMTA Board of Directors. Requests for changes to a Project which rise to the level of a Supplemental Modification and are proposed toward the end of the procurement process may

also contain the potential for reopening the procurement process, or at least may necessitate a contract change.

LACMTA is under no obligation to accept or implement any Supplemental Modifications. Such modifications may:

- Create a delay in obtaining Project approval by the LACMTA Board of Directors, or any state and/or federal agency responsible for approving and funding the Project;
- Require deferring or delaying approval of a Project's Notice of Determination and/or Record of Decision;
- Require additional environmental review, resulting in cost and schedule impacts;
- Require use of a Project's unallocated contingency and/or changes to the approved Project's Life-of-Project Budget;
- Conflict with the requirements of any grant or loan obtained in support of the Project;
- Require a material redesign of the Project, which would necessarily involve a significant delay in implementation of the Project Contract or the need to initiate an entirely separate solicitation and contract.

### Evaluation Process

The proposed process for evaluating the viability of a Supplemental Modification will consist of a methodical review that will be undertaken in accordance with the particular point in the process described in the previous chart and will not require an additional set of rules or criteria. The final determination will be made after assessing whether a requested Supplemental Modification should be included as part of the Project Work Scope, treated as an element to be handled and addressed separate from the Project, or dropped from further consideration.

Should a Supplemental Modification be recommended prior to reaching a Project milestone, LACMTA will consider each requested Supplemental Modification subject to a three-part evaluation. The three parts of the evaluation process are intended to ensure that:

(1) Requests for Supplemental Modifications are evaluated according to a consistent and rigorous analysis to determine a) whether they are necessary, b) whether they will have an impact on the provision of the particular service provided by the Project or c) whether the added work can be incorporated without significantly delaying or altering the nature of the Project;



(2) Elements that are determined not to be necessary to accomplish the Project will only be included in the work scope if LACMTA receives written commitments (including any associated and necessary funding) by the requesting entity that are sufficient to ensure there is no risk to the Project's schedule and budget; and

(3) Board direction is required to authorize any Supplemental Modification in all other circumstances.

The three parts of the evaluation are described below:

#### PART 1 – Evaluation of Necessity of Supplemental Modifications

The first step in the evaluation of a Supplemental Modification is a determination of whether a requested modification should be added to the Project Definition. A modification to the Project Definition may occur if it is required by ANY of the criteria described below:

- **Physical Necessity:** Essential for the basic function or operation of the project;
- **Capacity:** Required to provide the level of capacity (throughput) required for projected demand or projected operation of the system for the horizon year of analysis;
- **Policy:** Required to satisfy LACMTA's existing Policies related to planning and design of transit facilities (e.g., the Grade Crossing Safety Policy) and the operation of service on those facilities;
- **Environmental Mitigation:** Required as a result of analysis of the environmental impacts which will only be resolved through the approval of the modification
- **Standards:** Required by existing adopted and published standards which are identified and incorporated into the contractually established Design Freeze. Such standards must be adopted and published prior to or by the Design Freeze date and must also be determined to apply to LACMTA.

If a requested Supplemental Modification meets any of these requirements and fits within the project budget and is not part of another entity's required work program or mitigation requirements, it shall be considered necessary in the case that the full Project is implemented as proposed.

The inclusion of the Supplemental Modification depends upon LACMTA's ability to accommodate the cost of the modification within the Project Budget. Should the Project Budget be insufficient to cover the cost of the inclusion of the entire scope of the

Project plus the requested modification, then the entire Project (if a Measure R project) shall be analyzed in accordance with the Unified Cost Management Process and Policy for Measure R Transit Projects.

In following the Unified Cost Management Process and Policy, it is important to note that should existing project features be removed from the Project Definition in order to accommodate a requested Supplemental Modification, such a decision must also be analyzed using the criteria outlined in Part I. Elements that are determined not to be “necessary” per these criteria may be eligible to be removed from the Project scope. Depending on the size of the requested Supplemental Modification or the significance of the impacts arising from its incorporation into the Project, findings shall be reported to the Board.

In the case that the analysis according to the Unified Cost Management Process and Policy finds that additional funding is still required to implement the Project with the Supplemental Modification, staff shall analyze whether funding for the inclusion of the modification would require :

- a. Cost reductions within the same transit corridor; and/or
- b. Cost reductions within the same sub-region;

In either of these two cases, prior to the submission of a staff recommendation regarding funding for the proposed Supplemental Modification for a final decision by the LACMTA’s Board, the Board shall seek the concurrence from the sub-region either through the sub-regional Council of Governments (COG) or the established entity representing the subregion.

## PART 2 – Consideration of Non-Required Supplemental Modifications

For Supplemental Modifications which, upon initial review, are determined not to be included as part of the Project per the Part 1 analysis, then the requested modification will be analyzed in accordance with all of the conditions below, prior to incorporation of into the Project Work Scope:

- Funding – The Modification is (1) cost neutral, (2) results in a reduction in the Project cost, or (3) committed funding is identified from sources outside the Project Budget to cover the cost of the full Supplemental Modification and all related Project cost impacts;
- Lack of Need for Additional Environmental Review – Upon review of the modification request, it is determined that there is no basis for additional changes or supplements to the environmental review that could jeopardize the



implementation of the Project. (Supplemental Modifications that do require additional public disclosure and environmental analysis may create additional schedule risk and may increase the scope of the project and thus the cost and therefore may be found unacceptable);

- Lack of Impact to Contract Procurement – Analysis indicates that implementation of the modification will cause no delays or negative impacts on the procurement process for final design and construction of the project;
- Lack of Schedule Impact –The analysis indicates that implementation of the modification will cause no delays, have no negative impacts on the Contractor's approved schedule and will not extend the Project beyond the projected Revenue Service Date;
- Adopted Agreement – An agreement is adopted between Metro and the requesting entity that defines roles, responsibilities and funding contributions for the Supplemental Modification. In the case of Betterments, Master Cooperative Agreements define how Betterments are negotiated and incorporated; and
- Funding and Program Requirements – That the cost and associated schedule issues required by inclusion of the Supplemental Modification will not jeopardize the ability of LACMTA to meet any project requirements for any funding, grant programs (e.g., New Starts), or loan programs (e.g., TIFIA [Transportation Infrastructure Finance and Innovation Act loans] that apply to the Project.

If a Supplemental Modification meets ALL of these requirements, it may be recommended for inclusion into the Project Work Scope (either as a modification to the Project Definition or as a parallel work effort to the defined Project.) This would need LACMTA Board approval and the approval of any project implementation and funding partners (e.g., appropriate state and federal agencies involved with environmental review and grant and loan programs).

### PART 3 – Supplementary Board Direction

The LACMTA Board may consider the inclusion of additional work scope at any publicly-noticed meeting and as such, may provide additional direction to the Project staff that either supplements, rejects or overrides the analytical criteria described in Parts 1 and 2 above. LACMTA Board direction to pursue any specific Supplemental Modification shall include and identify all relevant funding to cover the cost of inclusion of the Supplemental Modification in the same action. It is important to note that LACMTA Board direction is required for any Supplemental Modification that exceeds the contractually-specified dollar value limit after the award of Project Construction Contracts (including Design/Build Contracts) because such a modification would necessarily result in contract change orders.

### Funding Supplemental Modifications

As indicated by the evaluation process described above, LACMTA will not pay for or bear the Cost of any Supplemental Modification that is not explicitly required by any policy, standard, regulation, or law in operation relied upon to define any element of the approved Project. Funding shall be committed by requestors of Betterments or Supplemental Modifications in those cases where the request results in an increase in cost, except as otherwise directed by the Board.

