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Los Angeles County
Metropolitan Transportation Authority

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**PLANNING AND PROGRAMMING COMMITTEE
JANUARY 16, 2013**

SUBJECT: DIVISION 7 JOINT DEVELOPMENT

**ACTION: AUTHORIZE THE CHIEF EXECUTIVE OFFICER TO EXECUTE AN
EXCLUSIVE NEGOTIATING AGREEMENT**

RECOMMENDATION

Authorize the Chief Executive Officer to:

1. Execute a twenty-four-month Exclusive Negotiating Agreement (ENA), with an option to extend for up to two additional six (6)-month terms, with Cohen Brothers Realty Corporation of California (CBRCC) to:
 - a. Explore the feasibility of developing a Master Plan for a proposed mixed-use development to co-exist with the Metro Division 7 Maintenance and Operations facility and the adjacent West Hollywood Sheriff's Station site, both located north of the Pacific Design Center Campus in the City of West Hollywood, and
 - b. Negotiate the key terms and conditions of a Joint Development Agreement (JDA) and Ground Lease(s) which respect MTA's interests relating to both interim and long-term operational and fiscal requirements associated with the proposed facilities and development; and
2. Amend the FY13 budget to allow any deposits that may be collected from CBRCC to be expensed to cover any out-of-pocket costs that may be incurred. These deposits are currently estimated at \$50,000

The general form of the Exclusive Negotiating Agreement, subject to final drafting and approval as to form by County Counsel and proposed to be executed by CBRCC is attached. (See Attachment A)

ISSUE

CBRCC expressed interest in developing a mixed-use project on the Division 7 site and submitted an unsolicited proposal in October 2011. MTA staff and the Maintenance and Design Group, LLC, a consulting firm hired by the MTA to update the Division 7 Master Plan, reviewed the proposal and found that there are significant design, operating, and cost issues that need to be fully addressed before MTA can properly evaluate the proposal. Addressing these issues, however, will require from CBRCC considerable effort and cost. An ENA will provide CBRCC the time and legal framework to adequately address these issues.

In addition to the other key terms and conditions of a JDA, CBRCC is required to address the following issues to MTA's satisfaction and in MTA's sole discretion and provide documentation of these efforts as well as incorporate them into the CBRCC proposal, as appropriate:

1. Submit for MTA's approval a Division 7 facility design that, in MTA's sole discretion as to operational viability, appropriately incorporates MTA's design standards and operating criteria as will be set forth in Addendum 1 (currently in process of revision) to the 2012 Master Plan Report and Update (Master Plan), which will amend the recently completed report by increasing the capacity of the facility from 250 to 280 buses to accommodate anticipated future requirements;
2. In coordination with MTA, develop an interim operating plan, acceptable to MTA in its sole discretion, that guarantees the continuation of transportation services at the site, or at an interim site, or both, at not less than current capacity during the project construction period and until such time as the new transportation facility is completed;
3. Develop a project that does not compromise MTA operations and provides not less than the square footage, circulation and vehicle clearance specifications specified for all division elements set forth in the Master Plan. At all times, MTA shall determine the appropriateness of any proposed facilities or operations plan in its sole discretion;
4. Provide MTA full compensation for any increased operating costs incurred by MTA during construction and during operation of the project in its final configuration, utilizing a baseline of the current 250-bus facility, and;
5. MTA shall be responsible for costs attributable to accommodate the additional 30 busses and CBRCC and MTA agree to engage independent recognized experts in bus facility planning and operations to determine the appropriate allocation of such costs.

BACKGROUND

In 2008, responding to inquiries on the possibility of joint development on MTA's Division 7 site, staff hired RNL Design, a multi-disciplinary architectural firm with extensive experience in the planning and design of transportation and public works-related maintenance facilities, to evaluate MTA's current and future needs. The goal was to develop alternative conceptual approaches to reconfigure facilities on the current site and identify residual areas (including air space) that could be available for potential transit-oriented mixed use development. In addition, staff asked that RNL provide rough-order-of-magnitude (ROM) estimates of the cost of redeveloping the site to allow shared uses. The study, completed in February 2009, provided alternative conceptual designs for the redevelopment of Division 7 as well as ROM estimates. Although reconfiguring the maintenance facility appeared physically feasible, the replacement cost was deemed too high for a private development to support and remain viable.

An update of the 2008 Master Plan Report was completed in 2012 based on a 250-bus facility. Staff anticipates completion in approximately 3 months of an amendment to the 2012 Master Plan Update to develop a space program for a 280-bus facility that will accommodate future capacity. This document will provide guidance in the design of a new Division 7 facility at the current site in conjunction with a potential multi-use private development.

CBRCC believes that it has the expertise and financial capacity to replace Division 7 onsite and develop a viable mixed-use project. Among its many credits, CBRCC successfully built the 1.2 million square foot Pacific Design Center and is in the final stage of completing the Red Building, a million square foot office building and parking structure, both of which are adjacent to the MTA Division 7 maintenance facility. It has extensive experience in the planning, design, financing, construction, and management of large buildings for various or multiple uses as evidenced by projects it has successfully completed throughout the country. (See Attachment B) For this project, it has engaged the services of Gruen Associates, a design and planning firm with vast experience in a wide variety of projects including mixed-use developments, performing arts and cultural centers, transit stations, civic centers, office buildings, condominiums and apartments, shopping centers, and parking structures. (See Attachment C)

On the combined MTA Division 7 maintenance facility and the adjacent L.A. County Sheriff Station site, CBRCC proposes to build "Design Village," a two-phased master planned mixed-use project

Phase 1 of this proposed development is currently envisioned to replace the existing bus facility in the southeast corner of the site with a new multi-level partially underground facility. During construction, CBRCC will be responsible for providing a plan, acceptable to Metro in its sole discretion, for continuing operations at not less than current capacity.

Phase 2 is envisioned to be built on top of and around the new MTA facility and preliminarily is planned to include residential/hotel space, significant commercial office space linked to the PDC via a wide sweeping paseo lined with retail spaces and including a movie theater complex and amphitheater as well as a Sheriff's Station. Attached as Exhibits D and E are conceptual renderings of the proposed development plan.

Policy Implications

The recommended action is consistent with the MTA Joint Development Policies and Procedures as revised and adopted in May 2009. Following the procedures outlined in the policy document for unsolicited proposals and based on staff's evaluation and recommendation, the CEO has made a finding that the CBRCC proposal meets the principles of exception from the competitive solicitation process and that acceptance of the unsolicited proposal is consistent with the MTA Joint Development Policies and Procedures and thus a recommendation to the Board is appropriate. CBRCC, due to the adjacency and magnitude of its property and the unique advantages thereby conferred, possesses a significantly enhanced ability to provide a feasible project plan.

DETERMINATION OF SAFETY IMPACT

Approval of this item will have no impact on safety because no improvements will be constructed as a result of entering into an ENA. Approval of this item will allow the needed analysis of safety impacts to be completed and submitted to the Board if negotiations for a JDA and ground lease are successful.

FINANCIAL IMPACT

Funding for joint development activities related to the ENA and the proposed development is included in the FY13 budget in Cost Center 2210 (New Business Development), under Project 610011 (Economic Development). The Chief, Real Property Management and Development, will be accountable for budgeting any costs beyond the end of FY13 or the term of the ENA.

Impact to Budget

MTA project planning activities and related costs will be funded from local right-of-way lease revenues and the Developer's Deposit as appropriate. Execution of the ENA will not impact ongoing bus and rail operating and capital costs, and Propositions A and C and TDA or Measure R administration budgets.

ALTERNATIVES CONSIDERED

The Board could choose not to proceed with the recommended action and reject CBRCC's proposal. Once rejected, staff could seek alternative proposals through a competitive process or keep the current Division 7 maintenance facility as it is. Staff does not recommend this as seeking alternative proposals, given the cost of rebuilding the MTA maintenance facility, is unlikely to yield viable proposals from developers with no adjacent complementary interests. Keeping the maintenance facility as it is, while cost-neutral, delays MTA's response to necessary improvements and future capacity requirements.

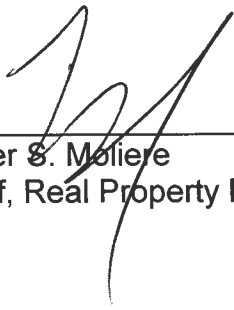
NEXT STEPS

Upon approval of the recommended action, staff will form an internal Division 7 Joint Development Committee to formulate development guidelines for the replacement maintenance facility and review CBRCC's efforts related to planning, design, and construction of the multi-use project to ensure that the facility's capacity is maintained and its operations uncompromised during construction and upon operation of both phases of the proposed development. CBRCC will next seek an ENA with the Los Angeles County for the development of the Sheriff Station site. Upon execution of the ENA with the County, CBRCC will proceed to further explore the feasibility of the project and prepare an Environmental Impact Report following appropriate guidelines in the California Environmental Quality Act. If the project is feasible, staff will commence negotiations with CBRCC and, upon successful completion of such negotiations, return to the Board for its approval of a Joint Development Agreement and Ground Lease(s).

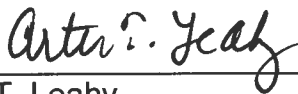
ATTACHMENTS

- A. Exclusive Negotiating Agreement
- B. List of Major Developments, CBRCC
- C. List of Representative Projects, Gruen Associates
- D. View from Santa Monica Boulevard
- E. Conceptual Overall Site Plan

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Arthur T. Leahy
Chief Executive Officer

EXCLUSIVE NEGOTIATING AGREEMENT

EXCLUSIVE NEGOTIATION AGREEMENT AND PLANNING DOCUMENT

This Exclusive Negotiation Agreement and Planning Document ("**ENA**") is made and entered into as of _____ 2013 ("**Effective Date**") by and between Cohen Brothers Realty Corporation of California, a _____ ("**Developer**"), and the Los Angeles County Metropolitan Transportation Authority, a California county transportation authority existing under the authority of Sections 130050.2 et seq. of the California Public Utilities Code ("**LACMTA**"), each individually a "**Party**" and collectively the "**Parties**".

RECITALS

A. LACMTA owns certain real property located at 8800 Santa Monica Boulevard, West Hollywood, Los Angeles, California, depicted in Exhibit "A" attached hereto and incorporated herein by reference ("**LACMTA Site**"). LACMTA currently uses the LACMTA Site for its Division 7 bus operations and maintenance facility ("**Division 7**").

B. The County of Los Angeles (the "**County**") owns certain real property located at 780 North San Vicente Boulevard, West Hollywood, Los Angeles, California, depicted on Exhibit "B" attached hereto (the "**County Site**"). The County currently uses the County Site for a County of Los Angeles Sheriff Station.

C. Developer has submitted an unsolicited written joint development project proposal to LACMTA dated October 25, 2011 ("**Proposal**"). The proposed project contemplates using both the LACMTA Site and the County Site (together, the "**Development Site**") which totals 10.9 acres. The development is anticipated to be built in phases and is planned to ultimately include approximately 600,000 square feet of residential/hotel space, 400,000 square feet of commercial office space in two towers, 120,000 square feet of retail shops, a 2,500 seat movie theater complex, an 800-seat open amphitheater, a replacement 50,000 square foot Sheriff's station. The development will also include a new 3-level below-grade bus maintenance and operations facility which will replace the existing Division 7 facility. It will include all of the same amenities currently found at Division 7, including, without limitation, ___[to be filled in]_. The Developer will construct the development in such a manner that LACMTA can maintain full operations from the existing Division 7 during construction until such time that LACMTA can transfer its operations to the new bus maintenance and operations facility once the facility is fully operational and ready for use. The proposed development as described in this Recital is referred to herein as the "**Project**".

D. The LACMTA and the Developer desire to negotiate and document the transaction regarding the LACMTA Site in the JDA, as defined in Recital G and other agreements. The transaction to be entered into between the LACMTA and the Developer is referred to herein as the "**LACMTA Transaction**". LACMTA understands the Project will also require the cooperation of the County and the transaction to be entered into between the Developer and the County for the County Site is referred to herein as the "**County Transaction**." The LACMTA Transaction and the County Transaction are sometimes referred to herein as the "**Transactions**."

E. LACMTA desires to explore the possibility of the Developer's proposed use of the LACMTA Site to further LACMTA's goals to: (i) promote and enhance transit ridership; (ii) enhance and protect the transportation corridor and its environs; (iii) enhance the land use and economic development goals of surrounding communities and conform to applicable local and regional development plans (as such plans may be amended from time to time); and (iv) generate value to LACMTA based on a fair market return on public ownership and investment (defined in Pub.L.101-73 as "most probable value").

F. On January __, 2013, the LACMTA Board of Directors ("**LACMTA Board**") approved the selection, on a sole source basis, of the Developer and authorized execution of this ENA with Developer for the purpose of analyzing the potential development of the Development Site and allowing planning activities that will include working with the Developer to plan and consider the terms and conditions of a potential joint development agreement between LACMTA and Developer for the Project ("**JDA**"), including the form of a proposed ground lease for the LACMTA Site ("**Ground Lease**").

G. LACMTA will be a responsible agency under the California Environmental Quality Act ("**CEQA**") in connection with the consideration and analysis of the environmental impacts of the development of the Project. Because LACMTA has not completed its review as a responsible agency, this ENA does not constitute or evidence an approval by LACMTA of, or commitment of LACMTA to, any action for which prior environmental review is required under CEQA. LACMTA retains the absolute sole discretion to make decisions under CEQA, which discretion includes (i) deciding not to proceed with the Project (known as the "no build" alternative), (ii) deciding to proceed with development of the Project and /or any of the agreements contemplated in this ENA, and (iii) deciding to proceed with any alternative development of any portion of the LACMTA Site (the "**Potential LACMTA Actions**"). There shall be no approval or commitment by LACMTA regarding the development of the Project or any of the agreements contemplated in this ENA or any alternative development of any portion of the LACMTA Site, unless and until LACMTA, as a responsible agency, and based upon information resulting from the CEQA environmental review process, considers the impacts of the Potential LACMTA Actions.

In consideration of, and subject to, the above Recitals, the Parties hereby agree as follows:

AGREEMENT

1. Agreement to Negotiate Exclusively: Good Faith Negotiations.

A. Exclusive Negotiations. During the Term, as defined below, and so long as Developer is negotiating in good faith and is not otherwise in default of its obligations under this ENA, LACMTA will not solicit offers of proposals from other parties concerning development of the LACMTA Site. The Parties will negotiate exclusively and in good faith in accordance with this ENA regarding the terms of the LACMTA Transaction and drafting of a JDA for development of the Project on the Development Site. Developer acknowledges, however, that LACMTA may, from time to time, be contacted by other developers respecting the LACMTA Site and that such contact is expressly permitted so long as LACMTA does not initiate the contact and indicates to such other developers that LACMTA has executed this ENA with Developer and that LACMTA is prohibited from: (i) discussing anything concerning these negotiations with such other developers, (ii) considering any offer or proposal; or (iii) negotiating with any other developer, until this ENA expires or is terminated, as provided in Section 2 of this ENA.

B. Essential Terms. The Parties acknowledge that the Proposal and this ENA do not establish all the essential terms of the Transactions and that although they have set forth herein a framework for negotiation of the essential terms of the Transactions: (i) they have not set forth herein nor agreed upon many of the essential terms of the LACMTA Transaction including, among other things, the price or terms of and timing of any joint development; (ii) they do not intend the Proposal or this ENA to be a statement of the essential terms of the LACMTA Transaction; and (iii) the essential terms of the LACMTA Transaction, if agreed to by the Parties, shall be set forth, if at all, in the documentation negotiated, approved and executed by authorized representatives of each of the Parties after all required CEQA reviews have been conducted and determinations made.

2. Term and Termination.

A. Term. This ENA shall commence upon the Effective Date and shall terminate _____ [months or years] thereafter ("**Term**").

B. Right to Terminate. If a Party determines that a successful consummation of the negotiations is not likely or that the Project is not feasible or capable of being financed in a commercially reasonable manner, it may terminate this ENA upon written notice to the other Party. Upon termination of this ENA, any rights or interest that Developer may have hereunder shall cease and LACMTA shall have the right thereafter to use, develop (alone or with any other entity) or dispose of the LACMTA Site as it shall determine appropriate in its sole discretion. In any event, any design plans submitted with the Proposal remain the personal property of LACMTA.

C. Execution. No agreement or documentation that may hereafter be negotiated between the Parties shall become final and binding unless and until (i) LACMTA has complied with all applicable requirements of CEQA pertaining to the LACMTA Transaction; (ii) such documentation is approved by the LACMTA Board; and (iii) such documentation is executed by the authorized representatives of each of the Parties.

D. Approval of the Potential LACMTA Actions. Prior to the satisfaction of the terms set forth in Section 2C, no (i) negotiation or preparation of any joint development or purchase documentation, including without limitation, any specific terms and provisions or any form of document, (ii) review or approval by LACMTA of various stages of proposed plans and specifications for the Project; or (iii) cooperation or participation by LACMTA in development applications or submittals for the Project, shall constitute LACMTA's approval of or commitment to take any of the Potential LACMTA Actions.

3. Payment and Deposit.

A. ENA Payment. In consideration for LACMTA's agreement to negotiate exclusively with Developer, Developer shall pay LACMTA ENA consideration in the amount of _____ Dollars (\$ _____) in the form of cash or certified check on or before the date of full execution of this ENA.

B. Deposit. Prior to and as a condition precedent to the execution of this ENA by LACMTA, Developer shall submit to LACMTA a good faith deposit ("**Deposit**") in the amount of _____ Dollars (\$ _____) in the form of cash, wire transfer, or certified check to cover LACMTA's actual costs related to consideration of the Project and negotiation of the JDA and other related agreements ("**LACMTA Transaction Expenses**"). The LACMTA Transaction Expenses shall include, without limitation, the actual cost of in-house staff time and third party consultation fees, charged to perform financial analysis, negotiations, appraisals, and appropriate services, and other LACMTA administrative costs expended in the evaluation of the Proposal, reviewing engineering and other reports related to the Project, reviewing operational plans for conformance with LACMTA's standard operating procedures for a bus division and reviewing Developer's plans and specifications for the Project. Notwithstanding anything to the contrary contained herein, if LACMTA is requested to perform any engineering studies, technical services or other similar services, or supervision of on-site testing or inspections, or if the Deposit is insufficient to cover LACMTA Transaction Expenses, LACMTA shall have the right to request additional funds as may be reasonably necessary to cover the costs of providing those services or LACMTA Transaction Expenses. If Developer does not consent and make such additional payments, LACMTA may decline to provide the services and may terminate this ENA. In no event shall Developer be obligated to pay any LACMTA Transaction Expenses in excess of the Deposit amount without the prior written consent of Developer. In the event that this ENA terminates or is terminated as provided in

Section 2, the Deposit will become non-refundable to the extent necessary to pay LACMTA Transaction Expenses incurred or contractually committed to be paid as of the date of termination, and LACMTA shall return to Developer any portion of the Deposit that is not needed to pay such LACMTA Transaction Expenses. The Parties agree that LACMTA (a) has no obligation to pay interest on the Deposit to Developer, and (b) is not required to deposit the Deposit in an interest bearing account. Interest, if any, earned on the Deposit may remain in the Deposit account and may be added to the amount of the Deposit. LACMTA will not itemize expenses.

4. Agreements to be Negotiated.

A. JDA and Ground Lease. LACMTA and Developer shall work in good faith to jointly prepare a JDA and Ground Lease(s) during the term of this ENA. The JDA shall include, without limitation, provisions relating to (1) the design and development of the Project, (2) a schedule of performance, (3) the Parties' obligations during the term of the JDA and escrow instructions, including the conditions to close, for the consummation of the Ground Lease transactions, (4) how LACMTA operations will continue at Division 7 during construction and Developer's agreement to pay any increased operating costs related to the Project which may be identified by LACMTA during construction; (5) the Developer's agreement to pay all operating costs which may be identified by LACMTA due to changing its operations from a single level division to a three level bus operation division; and (6) LACMTA's review and approval, in its sole and absolute discretion, of all proposed operational plans to house Division 7 in a three level facility. The Ground Lease shall include provisions relating to the term, rent, construction procedures, encumbrances, subleases, and a transit proximity risk release and waiver.

B. Other Agreements. If the LACMTA Transaction requires other agreements, such as reciprocal easements, sales, exchanges, licenses, dedications, each of those agreements shall be negotiated in accordance with applicable LACMTA policies and procedures and LACMTA Board authority. Developer shall be responsible for coordinating and ensuring that all documents with third parties, including, without limitation those agreements needed for the County Transaction, are consistent with the agreements required for the LACMTA Transaction.

C. Execution by Developer. In the event the Parties have not agreed on the form of JDA and other agreements and Developer has not executed the JDA and such other agreements prior to the expiration of the Term or earlier termination of this ENA, upon expiration or termination of this ENA, Developer shall have no further rights or interest in the LACMTA Site.

5. LACMTA Obligations.

A. Funding Obligation. LACMTA has not agreed to fund, subsidize or otherwise financially contribute in any manner toward the development of the Project.

B. LACMTA Discretion. LACMTA is not approving, committing to, or agreeing to undertake: (i) the Project or any development; (ii) disposition, sale or lease of land to the Developer; or (iii) any other acts or activities requiring the subsequent independent exercise of discretion by LACMTA

6. Developer's Responsibilities.

Without limiting any other provision of this ENA, during the Term, Developer, at its sole cost and expense, shall prepare and submit the following information and documents and perform the following acts, all in furtherance of the negotiation process:

A. Project Information. LACMTA, County and all agencies having regulatory jurisdiction, will require planning and design approval for the Project. Developer shall meet with representatives of LACMTA to review and come to a clear understanding of the planning and design requirements of LACMTA and other agencies for the Project. Within 90 days after the Effective Date, Developer shall submit to LACMTA the following information and documents;

(i) Evidence reasonably satisfactory to the LACMTA that Developer has the resources and financial capability to develop the Project;

(ii) Evidence of control of any properties not owned by LACMTA but considered essential to the Project, including, without limitation, the County Site. Evidence shall be in the form of letters of intent from each of the owners stating commitment of land, economic terms and cost basis as well as a detailed action plan and schedule relating to the acquisition of the properties;

(iii) Revised or updated Project design concept plan to be implemented at or above the LEED-Silver construction standard or its equivalent, including a site plan and sections as necessary to describe the proposed scope;

(iv) Project development schedule by phase including milestones for site control, if needed, design, environment/land use entitlements, construction and completion;

(v) A financing plan for the Project that shall include: source, availability and estimated amounts of a) equity capital, and b) construction and long-term financing;

(vi) A description of land use entitlements that may be needed to develop the Project and a proposed schedule for obtaining such entitlements including all actions required to process and obtain such entitlements;

(vii) A development pro forma for the Project in sufficient detail to allow LACMTA to evaluate the economic feasibility of the Project, including, without limitation, a statement of the overall estimated costs of construction, an estimate of income to be

derived from the Project, and Project operating costs and debt service ("**Development Pro Forma**"). The Development Pro Forma is required to enable LACMTA to evaluate the Project's return, Developer's return and the economic feasibility of the proposed development of the Project;

B. **Notice of Governmental Meetings.** Developer shall provide at least two weeks prior notice, to the extent reasonably possible to provide such notice, to LACMTA of any substantive meetings with governmental officials (including staff) relating to the LACMTA Site or the Project and allow LACMTA to attend such meetings at LACMTA's sole discretion. Developer shall keep LACMTA fully informed during the Term regarding all substantive matters affecting the LACMTA Site and its proposed development about which Developer has or acquires knowledge;

C. **Environmental Documents.** The Developer shall bear the responsibility and costs associated with the preparation and certification of any required environmental documents including an Environmental Impact Report in compliance with CEQA. LACMTA will be a responsible agency in connection with any required environmental reviews or determinations required by CEQA with respect to those portions of the Project over which LACMTA has jurisdiction. Developer shall arrange and pay for all required CEQA studies and reviews at its sole cost and expense; and

D. **Further Information.** LACMTA reserves the right at any time to request from Developer, and Developer shall provide in a timely manner, additional or updated information about Developer and/or the Project.

E. Developer shall be responsible for responding and handling questions from the public and the local residents regarding the Project.

7. Inspections.

During the Term, Developer may conduct such inspections, tests, surveys, and other analyses ("**Inspections**") as Developer deems reasonably necessary to determine the feasibility of designing, constructing, leasing, and financing the Project and shall complete such Inspections as promptly as reasonably possible within the Term as set forth herein. Any entry onto the LACMTA Site by Developer or its employees, agents, contractors, successors and assigns, shall be in accordance with the Right of Entry agreement ("**ROE**") to be prepared by LACMTA within 30 days after the Effective Date. Pursuant to the ROE, Developer shall coordinate and schedule the time(s) of its entry on to the LACMTA Site to meet LACMTA's requirements. Developer's and its contractors' access to the LACMTA Site shall not unreasonably interfere, conflict with or impair transit operations or other activities on the LACMTA Site.

8. Plans, Reports, Studies, and Entitlements.

A. LACMTA Information. LACMTA, in its sole discretion, may make available to Developer upon Developer's written request, existing information and plans held by LACMTA and needed for the development of the Project on the LACMTA Site, provided that Developer and any person with access to such information and plans must execute a non-disclosure agreement and follow LACMTA's confidentiality and use limitations set forth in such agreement. Developer agrees to conform to and abide by such confidentiality and use limitations as set forth in LACMTA's then current standard non-disclosure agreement.

B. Provision of Plans. All plans, reports, studies (including zoning and development entitlement applications, environmental documents, and reports filed in connection therewith), and investigation reports with respect to the LACMTA Site and the Project (collectively, "**Plans**") shall be prepared at Developer's sole cost and expense. Upon request by LACMTA or any regulatory agency, Developer shall provide to LACMTA or the requesting agency, subject to the confidentiality provisions in Section 16, without cost or expense to LACMTA or that the regulatory agency, copies of all Plans prepared by or on behalf of Developer. Developer shall include in its contractors' and consultants' contracts the right to assign the Plans to LACMTA.

C. Entitlements. LACMTA understands Developer may desire to procure the necessary entitlements for the Project; provided, however, Developer shall not seek or obtain any entitlements that encumber LACMTA's fee interest in the LACMTA Site without LACMTA's prior written consent. Developer shall include LACMTA in all meetings, correspondence and other communications regarding LACMTA's Site with the applicable public agencies and provide LACMTA with copies of all proposed and final filings, submittals and correspondence relating to any zoning or entitlement applications for LACMTA review and approval. Developer shall provide the proposed filings and applications at least fifteen (15) business days before Developer intends to submit such filing or application. Should Developer abandon a zoning or development entitlement application, LACMTA shall have the right to either (i) take over such application and Developer shall cooperate with LACMTA to complete any zoning or entitlement process started by the Developer or (ii) require that Developer remove any zoning or entitlement changes obtained by Developer. The obligations contained in this Section 8C shall survive termination of this ENA.

9. Indemnity and Insurance.

A. Indemnity. Developer shall indemnify, defend (with counsel approved by LACMTA) and hold harmless LACMTA and its subsidiaries and their respective representatives, employees, officials, directors, attorneys, consultants, successors and assigns (collectively, "**Indemnitees**") from any liability, claims, losses, costs, expenses or damages (including, without limitation, reasonable attorneys' fees and costs) (collectively, "**Claims**") in any way arising out of acts or omissions to act related to: (i) damage to property or bodily injury or death of any person; (ii) any entry upon the LACMTA Site by Developer, its agents, employees and contractors; (iii) any Inspection made by Developer, its agents, employees and contractors; or (iv) the planning and

preparation of, or challenge to any report or Plans (including the cost of such reports or Plans), except to the extent such Claims arise solely from the gross negligence or willful misconduct of LACMTA, its agents, employees or contractors. The indemnities provided by Developer in favor of LACMTA and the Indemnitees in this ENA shall not require payment as a condition precedent and shall survive the termination, expiration or revocation of this ENA

B. Insurance. Prior to Developer or its employees', contractors' or consultants' entry on the LACMTA Site, Developer shall provide LACMTA with evidence of insurance in the form and subject to the requirements set forth in the ROE.

10. Failure to Reach Agreement.

A. Failure to Reach Agreement. This ENA is an agreement to enter into exclusive negotiations. Each Party expressly reserves the right to decline to enter into any other agreement if the Parties fail to agree to terms satisfactory to both Parties after a good faith effort by the Parties to reach an agreement on the LACMTA Transaction. Except as expressly provided in this ENA, neither Party shall have any obligation, duty or liability hereunder in the event the Parties fail to timely agree upon and enter into any other agreement.

B. Failure of Conditions. The Parties recognize that one or more of the conditions to Developer's proposal set forth herein may fail to be met as a result of subsequent studies, reviews and proceedings including the exercise of discretion by LACMTA or any public agency having regulatory jurisdiction in approving or disapproving the Project or the LACMTA Transaction.

11. Broker's Fees.

The Parties represent and warrant to each other that no broker or finder has been engaged by it or is in any way connected with the Transactions contemplated by this ENA on its behalf. LACMTA shall indemnify, defend and hold harmless Developer from any claim for broker or finder fees based on actions of LACMTA, or that are claimed through the actions of LACMTA, and Developer shall indemnify, defend and hold harmless LACMTA and the Indemnitees from any claim for broker or finder fees based on the actions of Developer, or that are claimed through actions of Developer.

12. Non-Liability of LACMTA Officials and Employees.

Without limiting the provisions set forth herein, no member, official, representative, director, attorney, consultant or employee of LACMTA shall be personally liable to Developer or any successor in interest, in the event of any default or breach by LACMTA of any obligations under the terms of this ENA, or for any amount which may become due to Developer or to its successor under the terms of this ENA.

13. Assignment.

A. No Assignment. No assignment of this ENA is permitted. "**Assignment**" means: (i) any direct or indirect gift, sale, conveyance, assignment, sublease, hypothecation, encumbrance, or other transfer of all or any part of Developer's interest in or rights under this ENA or any part of its interest in or rights to the Project; or (ii) any grant of control over the Project, this ENA or any interest, right, or privilege herein, including the right to manage or otherwise operate the Project.

B. Transfer of Interests in Developer. Shareholders, partners, members, or other equity holders of Developer may transfer, sell, exchange, assign or divest themselves of any interest they may have, so long as any sale, transfer exchange, assignment or divestment is not effected in such a way as to give majority control of Developer to any person(s), corporation, partnership or legal entity other than the majority controlling interest in Developer at the time of the LACMTA Board's authorization to enter into this ENA.

14. Entire Agreement, Attorneys' Fees.

This ENA is the entire agreement of the Parties with respect to the matters set forth herein, and may not be amended except in writing signed by all of the Parties. If any Party brings an action or files a proceeding against the other Party as a consequence of any asserted breach by the other Party, the prevailing Party in such action or proceeding shall be entitled to have its reasonable attorneys' fees and costs paid by the losing Party.

15. Covenant Against Discrimination.

Developer shall not discriminate against, nor segregate, in employment or the development, construction, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of all or portions of the Site, nor deny the benefits of or exclude from participation in, the Project and all activities of Developer in connection with the Site, any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, sex, sexual preference/orientation, marital status, age, disability, medical condition, Acquired Immune Deficiency Syndrome (AIDS), acquired or perceived, or retaliation for having filed a discrimination complaint.

16. Confidentiality.

A. Proprietary Documents. The Parties anticipate that during the Term each shall from time to time disclose and provide to the other certain proprietary reports, correspondence and other information related to the Project, including without limitation, the development pro forma worksheet. Unless otherwise required by law, no Party shall disclose (except to its own and to the other Party's employees, officers, directors, agents, advisors, existing and prospective lenders, partners, accountants, investors, counsel and consultants) information regarding or related to the Project which

is not already public and which has been delivered to such Party pursuant to the terms hereof.

B. Public Disclosure. Notwithstanding the foregoing Section 16A, Developer acknowledges and agrees that LACMTA, as a government agency, (i) is subject to broad disclosure obligations under applicable law, including the Public Records Act, and (ii) holds board of directors meetings which are open to the public and at which information concerning the Project may be disclosed including reports to the LACMTA Board describing the Proposal and the Project, and including any documents to be approved by the LACMTA Board. Nothing in this ENA shall prohibit any disclosure required by law.

C. Protection of Confidential Documents. Any written document marked "CONFIDENTIAL AND RESTRICTED DISCLOSURE UNDER SECTION 16 OF THE EXCLUSIVE NEGOTIATION AGREEMENT" in capital letters ("**Confidential Mark**") shall be deemed to provide all recipients thereof with actual knowledge that Developer deems such document to be confidential and proprietary pursuant to this Section 16. If LACMTA receives a request under the Public Records Act concerning the disclosure of any document with a Confidential Mark, LACMTA shall provide notice to Developer of such request. If required by law, LACMTA shall disclose such document with a Confidential Mark pursuant to applicable law, unless ordered otherwise by a court. If Developer does not want such document with a Confidential Mark to be disclosed, Developer, at its sole cost and expense, may prosecute or defend any action concerning such document and shall indemnify, defend and hold LACMTA harmless from all costs and expenses, including attorneys' fees, in connection with such action. In the event of any breach of this Section 16, the injured Party will be entitled, in addition to any other remedies that it may have at law or in equity, to injunctive relief or an order of specific performance, except that in no event shall LACMTA be liable for any monetary damages under this Section 16.

17. Compliance with Laws.

During the term of this ENA, Developer, at its expense, shall comply with all applicable federal, state and local laws, ordinances, regulations, rules and orders with respect to the subject matter of this ENA.

18. Successors and Assigns.

This ENA shall be binding on and inure to the benefit of the Parties and their respective permitted successors and assigns.

19. Notices.

All notices required or permitted hereunder shall be delivered in person, by overnight courier, by electronic facsimile transmission, or by registered or certified mail,

postage prepaid, return receipt requested to such Party at its address shown below, or to any other place designated in writing by such Party.

LACMTA: Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Mail Stop 99-18-3
Los Angeles, CA 90012-2952
Attention: Roger Moliere
Facsimile: (213) 922-2228

With a copy to: Office of the County Counsel
One Gateway Plaza
Mail Stop 99-24-2
Los Angeles, CA 90012-2932
Attention: Joyce Chang, Esq.
Facsimile: (213) 922-2530

And to: Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Mail Stop 99-18-3
Los Angeles, CA 90012-2952
Attention: Nelia Custodio
Facsimile: (213) 922-2228

Developer: Cohen Brothers Realty Corporation of California
8687 Melrose Avenue
West Hollywood, CA 90069
Attention: Charles S. Cohen
Facsimile: _____

With copy to: _____

Any such notice shall be deemed received (i) upon delivery, if delivered personally, (ii) the next business day after delivery if delivered by courier, (iii) three (3) days after deposit into the United States Mail in Los Angeles County, California, if delivered by registered or certified mail, or (iv) when received, if transmitted by electronic facsimile transmission (with electronic confirmation of receipt) before 5:00 p.m. (Pacific time) on any business day or otherwise on the next business day following the day of electronic facsimile transmission.

20. Interpretation.

A. Construction. This ENA shall be construed in accordance with its fair meaning, and not strictly for or against either Party.

B. Conflict. In the event of a conflict between this ENA and the exhibits attached hereto, the terms of this ENA shall govern.

C. Gender. When the context of this ENA requires, (i) the neuter gender includes the masculine and feminine and any entity, and (ii) the singular includes the plural.

D. Section Headings. The headings of the Articles and Sections of this ENA are inserted solely for convenience of reference and are not intended to govern, limit or aid in the construction of any term or provision hereof.

E. Interpretation. The word "including" shall be construed as though the words "but not limited to" were, in each case, appended thereafter, and shall not be deemed to create a limitation to the list that follows "including".

F. Incorporation of Recitals. The Recitals set forth on pages 1 and 2 of this ENA are incorporated herein by reference.

//Signature page follows//

IN WITNESS WHEREOF, LACMTA and Developer have signed this ENA as of the dates set forth below.

LACMTA:
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

By: _____ Date: _____
ROGER MOLIERE
Chief,
Real Property Management and Development

Approved as to form:
JOHN F. KRATTLI
County Counsel

By: _____ Date: _____
Deputy

Developer:
COHEN BROTHERS REALTY CORPORATION OF CALIFORNIA

By: _____ Date: _____
Name:
Title:

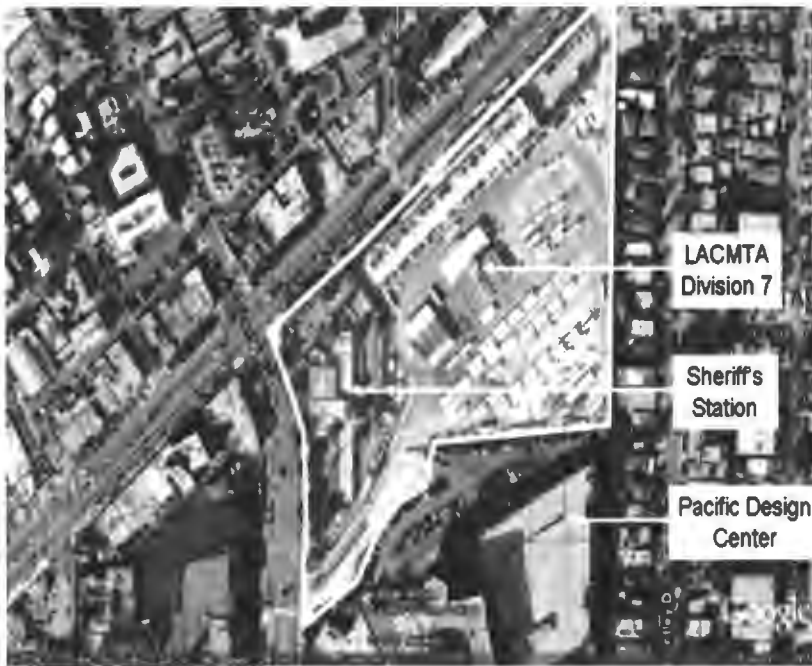
Approved as to form:

By: _____ Date: _____
Counsel for Developer

Exhibit A

LACMTA SITE

METRO DIVISION 7 BUS FACILITY



North
↑



Existing Facility

- Existing site is 8.4 acres
- Facility built in 1976
- 250 Bus Parking Spaces
- 275 Vehicle Parking Spaces
- 18 Maintenance Bays
- Tire Repair
- Fueling Facility
- Fare Retrieval
- Bus Wash Facility
- Storage Areas
- CNG Farm
- Shared Easement Road with Pacific Design Center



COUNTY SITE

Exhibit B

LIST OF MAJOR DEVELOPMENTS, CBRCC

COMMERCIAL

- 623 Fifth Avenue, New York, New York, 36 floors
- 135 East 57th Avenue, New York, New York, 32 floors
- International Plaza, Lexington Avenue ,59th Street, New York, NY, 31 floors
- 805 3rd Avenue, New York, NY, 31 floors
- Grand Central Plaza, New York, NY, 39 floors
- Three Park Avenue, New York, NY, 41 floors
- 475 Park Avenue South, New York, NY, 35 floors
- 3 East 54th Street, New York, NY, 20 floors
- 780 Third Avenue, New York, NY, 50 floors
- Livingstone Plaza, New York, NY, 12 floors
- 112 West 34th Street, New York, NY, 26 floors
- 1400 Broadway, New York, NY, 36 floors
- 333 Westchester Avenue, New York, NY, 4 buildings on a 38-acre campus
- The Offices at 5120 Woodway, Houston, Texas, 3 buildings on 7.1 acre-campus
- Green Building, 700 N. San Vicente Boulevard, West Hollywood, CA
- Red Building, 750 N. San Vicente Boulevard, West Hollywood, CA

DESIGN CENTERS

- Pacific Design Center (PDC), West Hollywood, CA
- Decoration & Design Building, New York, NY
- Decoration & Design Annex, New York, NY
- Decorative Center Houston, Houston, Texas
- Design Center of the Americas, Dania Beach, Florida

LIST OF REPRESENTATIVE PROJECTS, GRUEN ASSOCIATES

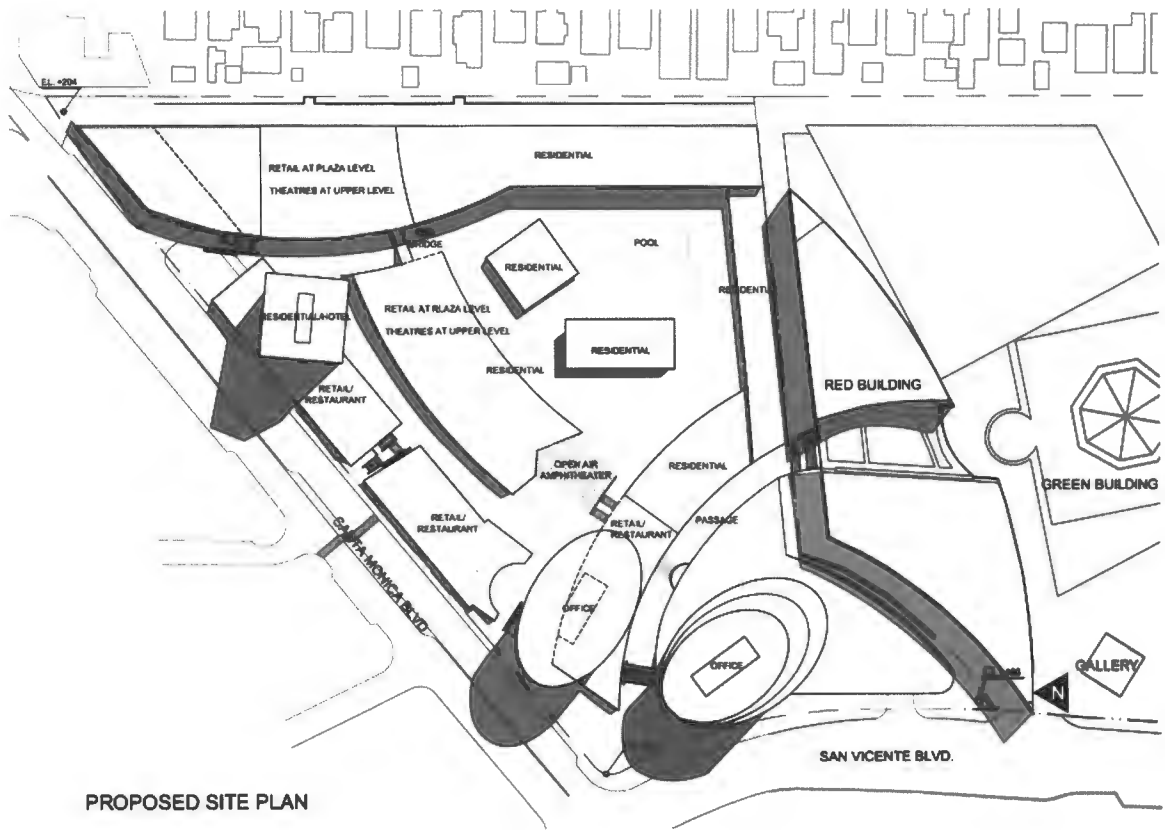
Gruen Associates, a Los Angeles firm established in 1946, provides architectural, interior design, planning, urban design, environmental assessment, landscape architecture, and transportation services world-wide. The firm has received recognition for its design of mixed-use developments, performing arts and cultural centers, transit stations, civic centers, office buildings, condominiums and apartments, specialty retail stores, shopping centers, and parking structures. Gruen Associates strives to blend function and efficiency with distinctive architectural forms, spaces and amenities. The firm's strength in planning and urban design derives from the many outstanding regional, specific areas and downtown plans, re-planning of large cities and neighborhoods, transportation corridor planning, as well as master planning of recreational and mixed-use developments, college campuses, and marinas. Gruen Associates' time-tested, consensus-building and public participation processes are integral to the planning projects. Selected projects include:

- Pacific Design Center Phase 1, 2, & 3, West Hollywood, CA
- Kumho Asiana Plaza, Ho Chi Minh City, Vietnam
- Olympic Police Station, Los Angeles, CA
- Center for Early Education. West Hollywood, CA
- Morongo Band of Mission Indians Administrative Complex, Banning, GA
- LA Convention Center Expansion & Venice Parking Structure, Los Angeles, CA
- Bapindo Towers, Jakarta, Indonesia
- California Plaza, Los Angeles, CA
- Jewish Federation Goldsmith Center, Los Angeles, CA
- Astoria – Central Park, Irvine, CA
- Sunset + Vine, Los Angeles, CA
- Wilshire House, Los Angeles, CA
- South Coast Plaza, Costa Mesa, CA
- City Center on 6th, Los Angeles, CA
- Santa Monica 5 Parking Structures, Beverly Hills, CA
- Renée and Henry Segerstrom Concert Hall, Costa Mesa, CA
- Hollywood Bowl Renovation Phase 2, Los Angeles, CA
- East Los Angeles Civic Center Replacement Facility Project, East Los Angeles, CA
- Shatford Library at Pasadena City College, Pasadena, CA
- Grossmont Trolley Station TOD, La Mesa, CA
- San Fernando Valley East-West Transit Corridor MIS/EIR, Conceptual Engineering and Urban Design Plans (Orange Line), Los Angeles, CA
- Metro Orange Line Canoga Extension, Los Angeles, CA
- Metro Gold Line, Los Angeles to Pasadena, CA
- Mid-City/Exposition Corridor Light Rail Transit Project Phase 1, Los Angeles, CA
- Santa Monica Transit Parkway, Los Angeles, CA

VIEW FROM SANTA MONICA BOULEVARD
PRELIMINARY CONCEPTUAL DEVELOPMENT VIEW



PRELIMINARY PROPOSED OVERALL SITE PLAN



PROPOSED SITE PLAN