

## CAPITAL RESERVE AGREEMENT

This Capital Reserve Agreement (this “Agreement”) is entered into as of June 30, 2021, by and between the Los Angeles County Metropolitan Transportation Authority (“LACMTA”) and the City of Pomona (the “City”).

### RECITALS:

A. The City receives Proposition C local return funds (the “Local Return Funds”) from LACMTA.

B. Pursuant to the Proposition C Local Return Guidelines (the “Guidelines”), which are incorporated herein by reference, the City has four years, beginning the last day of the Fiscal Year in which funds were originally allocated, to expend the Local Return Funds. By method of calculation, each jurisdiction has three years plus the Fiscal Year of allocation to expend the Local Return funds. This period is identified in the Guidelines as Timely Use of Funds.

C. As of Fiscal Year 2020-21, the City desires to commit and accumulate its Local Return Funds beyond the Timely Use of Funds period in order to provide the funds for the Major Street Rehabilitation Project as more particularly described in City’s project description attached hereto as Exhibit A (the “Project”).

D. The LACMTA Board at its June 26, 2021, board meeting approved the City’s establishment of a capital reserve fund for the Project.

NOW, THEREFORE, the parties hereby desire to agree to the following terms and conditions:

### AGREEMENT

1. The City acknowledges that establishing a capital reserve fund for the Project constitutes a long term financial and planning commitment.
2. The City shall establish a separate interest bearing account or sub-account to be designated as the Capital Reserve Account for the Project. The City desires to set aside \$6,000,000 Proposition C of its Local Return Funds into the Capital Reserve Account. Commencing with Fiscal Year 2015-16 and for each Fiscal Year thereafter, the City shall deposit into the Capital Reserve Account the amount specified in its Project Annual Update submitted to LACMTA for that fiscal year, provided, however, if the City fails to submit its Project Annual Update, the City shall deposit into the Capital Reserve Account its Local Return Funds in an amount equal to the amount deposited into the Capital Reserve Account for the immediately preceding fiscal year. In no event will the total aggregate amount deposited by City into the Capital Reserve Account exceed \$6,000,000 Proposition C.
3. All interest accruing on the Capital Reserve Account shall remain in such account.

4. The City shall complete the Project by June 30, 2026. If the Project is not completed by this date, any unexpended funds shall lapse and be returned to LACMTA for further programming.
5. The City shall comply with all terms and conditions for the Capital Reserve Account as provided in the Proposition C Local Return Guidelines, including, without limitation, the following:
  - A. Each fiscal year updating the project's annual expenditures by submitting an Actuals form in the Local Return Management System (LRMS)
  - B. Every three years commencing with the Commencement Date of this Agreement, LACMTA will evaluate the Capital Reserve Account, the status of the Project and the projected amount of available funds. Based on this evaluation, LACMTA may require the City to take certain actions including, without limitation, terminating the Capital Reserve Account.
  - C. If the City uses the Local Return Funds in the Capital Reserve Account for a project different from the Project described above, the City shall return an amount equal to the improperly used funds to the Proposition C Central Account held by LACMTA. If the City fails to return the amount within 30 days from the date LACMTA notifies City that it must return the funds, the City hereby authorizes LACMTA to offset future Local Return allocations to the City in an amount equal to the improperly used funds.
  - D. If the City fails to complete the Project as specified by the date in paragraph 4 above, the Local Return Funds in the Capital Reserve Account may be subject to lapse unless otherwise agreed to in writing by the parties.
  - E. If the Project is a rail project, LACMTA may decide that the rail corridor is no longer a high priority. LACMTA can then terminate this Agreement and the City shall:
    - (i) close the Capital Reserve Account and return the outstanding balance of the Capital Reserve Account, including accrued interest (the "Returned Funds"), to the City's local return account; and
    - (ii) reprogram the Returned Funds to be used within three years from the termination date of this Agreement. Any funds remaining after such three-year period shall lapse.
  - F. If the City, independent of LACMTA action, desires to reprogram all or part of the funds in the Capital Reserve Account, the City must prior to such reprogramming, receive LACMTA's written approval. The City shall provide LACMTA with notice of its desire to reprogram the funds in the Capital Reserve Account and indicate the proposed use of the funds to be reprogrammed and the effect of such reprogramming on the Project. LACMTA approval may be based on, among other things, whether after exhausting all Local Return funds, additional funds are necessary to meet the City's critical immediate or pending transit needs. If LACMTA approves

reprogramming the funds, this Agreement shall be amended or terminated as appropriate. If LACMTA does not approve reprogramming the funds, the City must continue the Capital Reserve Account as provided herein or draw the funds down for LACMTA approved capital related project.

6. This Agreement shall commence on June 30, 2021. This Agreement shall continue until such time as terminated by either party with a 30 day written notice under the conditions set forth in the Proposition A and Proposition C Local Return Guidelines.

IN WITNESS WHEREOF, the City and LACMTA have caused this MOU to be executed by their duly authorized representatives on the date noted below:

CITY:  
City of Pomona

Los Angeles County Metropolitan  
Transportation Authority

\_\_\_\_\_  
Mayor/City Manager

By: \_\_\_\_\_  
STEPHANIE N. WIGGINS  
Chief Executive officer

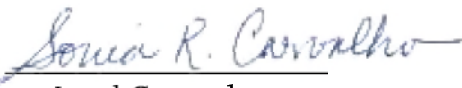
Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:

RODRIGO A. CASTRO-SILVA  
County Counsel

By:   
Legal Counsel

By: \_\_\_\_\_  
Deputy

Date: October 4, 2021

Date: \_\_\_\_\_

