

**Metro**Los Angeles County
Metropolitan Transportation AuthorityOne Gateway Plaza
Los Angeles, CA 90012-2952213.922.2000 Tel
metro.net**FINANCE, BUDGET AND AUDIT COMMITTEE
NOVEMBER 20, 2013****SUBJECT: EXPOSITION TRANSIT PROJECT PHASE 2 – CITY OF LOS ANGELES
3% CONTRIBUTION****ACTION: APPROVE DRAFT AGREEMENT****RECOMMENDATION**

Authorize the Chief Executive Officer to execute the Exposition Light Rail Transit Project Phase 2 Measure R 3% Local Match Financial Contribution Agreement (the "Agreement") to facilitate payment by the City of Los Angeles ("City") of its \$28,834,740 local share ("City Share") of the Exposition Transit Project Phase 2 (the "Project") costs.

ISSUE

Consistent with funding assumptions for the Exposition ("Expo") Phase 2 project, staff and the City have negotiated the terms of the subject agreement contained in Attachment A.

DISCUSSION

The Project has a Life-Of-Project (LOP) budget of \$1,511,158,000. The total Local Match Requirement for the Project is \$45,334,740. The City's Share is equal to \$28,834,740 based on the track mileage of the Project located within the City's boundaries. The remaining Local Share is allocated to the City of Santa Monica, who has met its obligation through a separate agreement with the Exposition Metro Line Construction Authority (the "Authority"). The subject agreement provides for an initial payment from the City of Los Angeles of \$20 million within 60 days of execution of the Agreement and a final payment of \$8.83 million upon opening of the Phase 2 segment for revenue service. The negotiation of the Agreement has been in consultation with the Authority staff. A draft form of the agreement is attached and may be modified as agreed to by County Counsel, but only if such changes are consistent with Board authorization.

Each of the Measure R Local Match Financial Contribution amounts is calculated using the same methodology. The total LOP cost is prorated based on the respective mileage

of track within each jurisdiction and the jurisdiction's responsibility is equal to 3% of this prorated amount.

Negotiations are well underway with the City of Los Angeles for its share of the Crenshaw/LAX Transit project, Regional Connector and Metro Purple Line Section 1.

DETERMINATION OF SAFETY IMPACT

Execution of the Agreement will have no impact on the safety of our patrons or employees.

FINANCIAL IMPACT

Financial planning for the funding of the Exposition Transit Project Phase 2 has assumed the availability of the local match in the amount provided in the Agreement. Execution of the Agreement would be consistent with this assumption and would be budget neutral. Once received, the funds will held in trust on behalf of the Expo Phase 2 Project and will be disbursed according to EXPO funding plan.

Impact to Budget

The Agreement results in no impact to the 2014 or future budgets.

ALTERNATIVES CONSIDERED

In negotiating the Agreement, various payment schedules were evaluate ranging from payment of the entire amount up front, to a series of progress payments, to payment of the full amount upon opening of revenue service. The local match requirements for the City for other Measure R projects were also considered as were the cash flow requirements for the Project. The subject Agreement meets both the requirements of the project and the cash flow available to the City.

NEXT STEPS

With Board approval of the recommendation, the Agreement will be executed and the initial payment will be received. Staff anticipates bringing additional Local Match Agreement(s) with the City of Los Angeles to the Board in the near future.

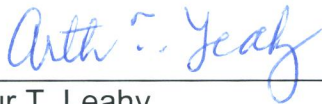
ATTACHMENTS

- A. Draft Exposition Light Rail Transit Corridor Phase 2 Agreement

Prepared by: Cal Hollis, Executive Officer, Countywide Planning (213) 922-7319
David Yale, Executive Officer, Countywide Planning (213) 922-2469



Martha Welborne, FAIA
Chief Planning Officer



Arthur T. Leahy
Chief Executive Officer

**EXPOSITION LIGHT RAIL TRANSIT PROJECT PHASE 2
MEASURE R LOCAL MATCH FINANCIAL
CONTRIBUTION AGREEMENT**

This EXPOSITION LIGHT RAIL TRANSIT PROJECT PHASE 2 MEASURE R LOCAL MATCH FINANCIAL CONTRIBUTION AGREEMENT ("Agreement") is made and entered into on this ___ day of _____, 20__ ("Execution Date"), by and among the CITY OF LOS ANGELES, a municipal corporation (the "City"), and the LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY ("LACMTA"), collectively referred to as "Parties" and individually as a "Party," with reference to the following:

RECITALS:

WHEREAS, the City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.

WHEREAS, LACMTA is a public entity, existing pursuant to California Public Utilities Code Section 130050.2, et seq. and will be the agency to fund, operate, and maintain the completed Los Angeles Exposition light rail project ("Project") from downtown Los Angeles to the City of Santa Monica. Phase 1 of the Project is an 8.6 mile light rail transit system from downtown Los Angeles to Culver City and has been completed and is operating. Phase 2 of the Project is a 6.6 mile light rail transit system from Culver City to the terminus in Santa Monica which includes seven (7) stations (four (4) of which are located in the City of Los Angeles), park and ride lots at three (3) stations and an operations and maintenance facility.

WHEREAS, the EXPOSITION METRO LINE CONSTRUCTION AUTHORITY (the "Authority"), duly formed and existing under the statutes of the State of California, is the public agency created for the purpose of designing and constructing the Project, and receives funding from LACMTA for the design and construction of the Project.

WHEREAS, LACMTA provides funding to the Authority for the design and construction of the Project, including but not limited to funds provided by the City to LACMTA for this purpose.

WHEREAS, the baseline scope of Phase 2 of the Project has a life of project budget of \$1,511,158,000 ("Budget"). The LACMTA "Long Range Transportation Plan" ("LRTP") assumes that 3% of Project design and construction costs, which totals \$45,334,740, will be paid by local jurisdictions on a prorated basis as their local match funding participation toward the Project. The parties understand the local match participation is a voluntary payment toward the Project, however, without such local

match, the Budget amount would be reduced accordingly and the Project would need to be value engineered in the City's jurisdiction to account for the shortfall in funds.

WHEREAS, the Parties agree that the City's prorated share of the 3% local match funding participation is \$28,834,740 for Phase 2 of the Project.

WHEREAS, the City Council approved on May 22, 2013 programming up to \$28.84 million as the City's local match funding participation toward Phase 2 of the Project and authorized the General Manager of the Los Angeles Department of Transportation and the City Administrative Officer to execute funding agreements with LACMTA.

WHEREAS the City supports the Project due to the transportation and economic benefits it will bring to the City and the region.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. FUNDING COMMITMENT.

A. The City shall pay to the LACMTA an amount not to exceed \$28,834,740 for the sole purpose of partially funding the design and construction of Phase 2 of the Project as set forth herein. In exchange, LACMTA shall use the City Payment solely for the purposes of meeting the design, construction and other life of project costs for the scope of Phase 2 of the Project, plus any other mutually agreed upon changes documented in writing. LACMTA agrees to place Phase 2 of the Project into revenue service upon completion of testing and determination that Phase 2 of the Project is fit for revenue service.

B. The City shall make a payment to LACMTA of \$20,000,000 within 60 days of the final execution of this Agreement by all Parties. The City shall make a final payment of \$8,834,740 on the later of January 2, 2016, or within 60 days following commencement of revenue service of Phase 2 of the Project. The City may make payments from any eligible revenue source it chooses, so long as the design and the construction of the Project are eligible uses for the source(s) of funds and such sources impose on LACMTA or the Authority no reporting, procedural, procurement or other administrative or responsibilities. The City understands the Project has not been federally environmentally cleared.

C. In no event shall the City's contributions exceed \$28,834,740 nor will the City be responsible for any cost overruns or budget increases for Phase 2 of the Project, unless such overruns or increases are attributable to a City required Betterment. Betterments shall be paid separate and apart from this Agreement and shall be defined in and paid pursuant to that certain Master Cooperative Agreement between the City of Los Angeles and the Authority dated June 23, 2006.

D. In the event the final cost to construct Phase 2 of the Project is less than the Budget, the City's share shall be proportionately reduced ("Refund") and the City shall receive within 60 days of Phase 2 Project Closeout, as defined below, a cash Refund of its contributions or a credit against other City obligations to LACMTA. The reduction in the City share shall be equal to the difference between the Budget and the final cost ("savings") multiplied by the percentage derived by dividing the City's Share of \$28,834,740 by the Budget. The City shall determine whether the Refund shall be a cash Refund or credit. For purposes of this Agreement, "Phase 2 Project Closeout" shall mean the date on which all financial claims related to the Project have been settled and releases received from all claimants.

E. City undertakes and agrees to defend (with counsel approved by the LACMTA), indemnify, and hold harmless the LACMTA and its board, officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, liabilities, demands, costs and expenses, including, but not limited to, attorney's fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the acts, errors or omissions by City or its employees and agents in connection with the performance of activities the City is required to perform under this Agreement, including, without limitation, the payment of the Payment Amount. City is permissively self-insured for Workers' Compensation under California law. The City self-administers, defends, settles and pays third party claims for injury, death or property damage. Protection under this program is warranted to meet or exceed five million dollars per occurrence.

F. LACMTA undertakes and agrees to defend (with counsel approved by the City), indemnify, and hold harmless the City and its elected officials, officers, agents, employees, assigns, and successors in interest from and against all suits and causes of action, claims, losses, liabilities, demands, costs and expenses, including, but not limited to, attorney's fees and cost of litigation, damage or liability of any nature whatsoever, for death or injury to any person, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the acts, errors or omissions by LACMTA or its employees and agents in connection with the performance of activities the LACMTA is required to perform under this Agreement including placing Phase 2 of the Project into revenue service upon completion of testing and determination that Phase 2 of the Project is fit for revenue service. As nothing in this Agreement requires LACMTA to construct or operate Phase 2 of the Project, nothing in this indemnity will require LACMTA to indemnify the City for operations or construction of Phase 2 of the Project. LACMTA understands that the Authority's Design/Build contract No. XP8902-002 includes a provision requiring the Design/Build contractor to insure and indemnify the City as set forth therein.

G. LACMTA has developed Design Criteria and Standards which LACMTA relies upon to create a uniform basis of design for all LACMTA transit projects. In the event the Authority requests a deviation to the LACMTA's Design Criteria and Standards as a method to reduce or avoid Project costs and which would result in a material change in Phase 2 of the Project stations in the City of Los Angeles, LACMTA shall, before granting such a variation, work with the Authority to identify reductions in the cost of all Expo Phase 2 stations such as to minimize the impact on any one station. For purposes of this section "material change" shall mean a reduction in costs of a station resulting from a proposed variance to the LACMTA Design Criteria and Standards estimated to exceed \$250,000.

2. NOTICES.

All notices, demands, requests, or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States mail, first class postage prepaid, addressed as hereinafter provided.

All notices, demands, requests, or approvals to City shall be addressed to City at:

Los Angeles Department of Transportation (LADOT)
100 South Main Street, 10th Floor
Los Angeles, CA 90012
Attn: Jaime de la Vega, General Manager
c/o Robert Andalon, Executive Officer, Administration

All notices, demands, requests, or approvals to LACMTA shall be addressed to LACMTA at:

Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, CA 90012
Attn: _____

With a copy to:

Joyce Chang
Principal Deputy County Counsel
c/o LACMTA
One Gateway Plaza, 99-24-2
Los Angeles, CA 90012

In the event that any information in this section changes, both Parties agree to advise the other Party in writing of changes as soon as practical.

3. DEFAULT AND REMEDIES

A. In the event City fails to perform its obligation under this Agreement (a "Default"), LACMTA shall provide written notice of such Default to City with a 30-day period to cure the Default. In the event City fails to cure the Default (i.e. make the required payment), LACMTA shall have any and all rights and remedies against City which may now or hereafter be available to it in law or in equity, including, without limitation, the Authority reducing project scope or take such other steps as described in the LACMTA Cost Control Policy adopted by the LACMTA Board to reflect the shortfall of funds.

B. In addition to any rights and remedies available to LACMTA, any amount due to LACMTA which is not paid when due shall bear interest, from the date due, at the 10 year Bond Buyer Revenue Bond Index as of the first day the payment is late . Such interest will be due LACMTA as it accrues on a monthly basis. Payment of such interest shall not excuse or cure any default by City under this Agreement.

C. In the event the Phase 2 Project Closeout fails to occur within 48 months of the first date of revenue operations and LACMTA owes the City a Refund under Section 1.D., the Refund amount owed by LACMTA to the City shall bear interest starting on the date of revenue service, at the 10 year Bond Buyer Revenue Bond Index as of the date of revenue service. Such interest will be due from LACMTA to the City as it accrues on a monthly basis. Payment of such interest shall not excuse or cure any default by LACMTA under this Agreement.

D. In the event the LACMTA fails to refund any Amount due under Section 1.D, the Amount due shall bear interest starting 120 days after the decision to reduce scope, at the 10 year Bond Buyer Revenue Bond Index as of the first day the payment is late. Such interest will be due from LACMTA to the City as it accrues on a monthly basis. Payment of such interest shall not excuse or cure any default by LACMTA under this Agreement.

E. In the event of disputes, claims or controversies arising out of or relating to this Agreement (collectively "Disputes"), the parties shall make good faith efforts to resolve the Dispute through negotiation. Any Dispute that cannot be settled through direct negotiation may be resolved through non-binding arbitration.

If the Parties cannot agree upon a disputed item within 30 days from the time the Dispute arose, either party may refer the Dispute to non-binding arbitration conducted by Judicial Arbitration and Mediation Services (JAMS). If the parties cannot mutually agree to an arbitrator, then JAMS shall provide a list of five qualified impartial

arbitrators. Each side shall alternatively strike one name from the list until one remains with City being the first party to strike a name from the list. The remaining person shall become the arbitrator. The arbitrator shall be vested with authority to request either party to supplement their documentation as needed for the arbitrator to reach his/her decision. City and LACMTA shall equally share the cost of the arbitrator and cooperate in such arbitration process.

4. TERM

This Agreement shall become effective upon the date first referenced above and shall remain in full force and effect until the later of Phase 2 Project Closeout . For purposes of this Agreement, completion of Phase 2 shall be defined as the start of revenue operations of Phase 2.

5. INDEPENDENT PARTIES.

The parties to this Agreement will be acting in an independent capacity and not as agents, employees, partners, or joint venturers of one another. Neither the City, LACMTA, nor any of their respective officers or employees or representatives, shall have any control over the conduct of the other party, or the other party's employees, representatives or consultants.

6. INTEGRATED CONTRACT.

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto relating to the local contribution obligations by the City for Phase 2 of the Project. All preliminary negotiations and agreements of whatsoever kind or nature concerning this matter are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written agreement signed by all three parties. Each and every attachment, if any, to this Agreement is incorporated by reference and made part of this Agreement.

7. MISCELLANEOUS

A. If any legal action is necessary to enforce any provision hereof or for damages by reason of an alleged breach of any provisions of this Agreement, the prevailing party shall be entitled to receive from the losing party all costs, damages and expenses and such an amount as the court may adjudge to be reasonable attorney's fees.

B. This Agreement may be executed in several counterparts, each of which is an original, and all of which together constitute one and the same document.

C. A waiver by a party of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the

same or any other term, covenant, or condition contained herein whether of the same or a different character.

D. This Agreement shall be governed by California law and applicable federal law. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

E. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute but one and the same instrument, provided, however, that such counterparts shall have been delivered to both Parties to this Agreement.

F. Any provision of this Agreement, which by its nature must be exercised after termination of this Agreement, or obligation that accrued hereunder prior to termination, including without limitation Sections 1.E and 1.F., will survive termination and remain effective for a reasonable time.

G. Each of the Parties represents and warrants that the person who signs this Agreement on its behalf has authority to bind that Party.

[signatures on next page]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

CITY OF LOS ANGELES, a municipal corporation

By: _____
Jaime de la Vega
General Manager, LADOT

By: _____
Miguel Santana
City Administrative Officer

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

LOS ANGELES COUNTY METROPOLITAN
TRANSPORTATION AUTHORITY

By: _____
Arthur T. Leahy
Chief Executive Officer

APPROVED AS TO FORM:

JOHN F. KRATTLI
County Counsel

By: _____
Deputy

