



Metro

Metropolitan Transportation Authority

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**PLANNING AND PROGRAMMING COMMITTEE
SEPTEMBER 14, 2005
ALSO ON EXECUTIVE MANAGEMENT
AND AUDIT COMMITTEE**

**SUBJECT: EXPOSITION LIGHT RAIL PROJECT
INTERIM FUNDING**

**ACTION: APPROVE MEMORANDUM OF UNDERSTANDING
FOR INTERIM FUNDING**

RECOMMENDATION

Approve a Memorandum of Understanding (MOU) between the Los Angeles County Metropolitan Transportation Authority (Metro) and the Exposition Metro Line Construction Authority (Expo) for interim funding for the Exposition Light Rail Project, as set forth in Attachment A.

ISSUE

At its August 2005 meeting, the Board of Directors instructed staff to develop an MOU with Expo that:

- A. Enables staff to work on the Exposition Light Rail Project, subject to certain limits and reporting requirements;
- B. Provides for reimbursement to Metro; and,
- C. Implements a plan that transfers budgeted funds to Expo as soon as possible.

POLICY IMPLICATIONS

The MOU will establish a temporary funding and staffing relationship between Metro and Expo, and will permit Expo to utilize Metro as a bill-paying agent for payment of Expo's approved invoices during initial operations. Approving the MOU will not have any impacts to key Metro policies or programs.

The MOU is essential for funding Expo, which has been tasked to design and construct the Exposition Light Rail Project, a regionally significant project and one that is a key transportation control measure for Los Angeles County. The Project also has been included in regional plans, such as the Southern California Association of Governments' 2004 Regional Transportation Plan and Metro's 2001 Long Range Transportation Plan for Los Angeles County.

ALTERNATIVES CONSIDERED

The Board could choose not to approve this MOU. This alternative is not recommended, as Expo requires funding and staffing for initial operations that are critical for designing and constructing the Exposition Light Rail Project. The Exposition Project is a “regionally significant project,” and must be implemented expeditiously as one of Metro’s priority projects.

FINANCIAL IMPACT

The Metro Fiscal Year 2006 (FY 06) Budget includes \$1,735,000 anticipated for Expo’s initial operations and \$42,015,000 for professional contract services, real estate acquisition, utility relocation, Metro staff costs and the mobilization of a design/build contractor. The total approved funding of \$43,750,000 for FY 06 is included within the Exposition Light Rail Project 800113. All funds expended by Metro on the Project prior to this MOU and all funds provided by Metro for the Project through this MOU, including the \$1,735,000 for initial operations, are part of the \$640 million Funding Plan that the Board approved on April 28, 2005.

DISCUSSION

Pursuant to Public Utilities Code section 132610, Expo has all of the powers necessary for planning, acquiring, leasing, developing, jointly developing, owning, controlling, using, jointly using, disposing of, designing, procuring, and building the Exposition Light Rail Project. To date, all project costs, such as staff, contracts, real estate acquisitions, etc., have been incurred under Metro’s authority. The MOU sets forth the conditions under which Expo can operate and pay bills when contracts and other obligations are incurred under Expo’s authority.

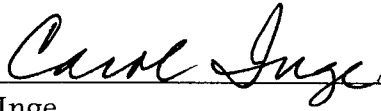
During the period of initial operations, the MOU will allow Expo to pay its bills utilizing Metro administrative services to make and account for such payments as project costs. The cumulative amount of such payments shall not exceed \$1,735,000. Once Expo emerges from initial operations, it may request a change in procedure to receive any remaining unspent portion of these funds. All other project expenditures by Metro, including staff costs, will continue to be charged to Metro’s FY 06 adopted budget for the Project. Metro staff costs for time spent on Expo activities will be charged at hourly rates, including fringe benefits and overhead, as allowed under Metro’s federally approved cost allocation plan.

The Board-approved Project Funding Plan anticipates funding from various sources that are only available to the Project on a reimbursement basis and cannot be drawn upon by Metro in advance of actual expenditures. These restricted sources include federal and state grants and the proceeds of tax-exempt bonds. Hence, actual drawdown procedures or a working capital facility for Expo will have to be developed when Expo has its own administrative staff in place. Alternatively, the bill-paying processes under the MOU may be continued throughout the life of the Project. These issues will be addressed as part of a final funding agreement.

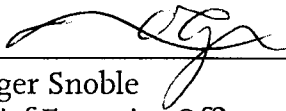
NEXT STEPS

Once adopted, the Chief Executive Officer will execute the MOU and then staff will prepare a final funding agreement together with a Master Cooperative Agreement and other documents between Metro and Expo.

Attachment A: Memorandum of Understanding Between the Los Angeles County
Metropolitan Transportation Authority and the Exposition Metro
Construction Authority



Carol Inge
Interim Chief Planning Officer



Roger Snoble
Chief Executive Officer

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
AND THE
EXPOSITION METRO CONSTRUCTION AUTHORITY**

This Memorandum of Understanding (MOU) dated as of this ___ day of _____, 2005, is by and between the Los Angeles County Metropolitan Transportation Authority (Metro), a public entity existing pursuant to Public Utilities code (PUC) Section 130050.2, et seq. and the Exposition Metro Construction Authority (Expo), a public entity existing pursuant to PUC Sections 132600, et seq., and is intended to serve as an interim agreement for the funding of Expo operations and the use of Metro personnel by Expo.

RECITALS

WHEREAS, the California State Legislature passed and the Governor of the State of California signed into law Stats. 2003, Ch. 827, referred to herein as SB 504, which added PUC Section 132600, et seq., and created Expo for the purpose of awarding and overseeing all design and construction contracts for completion of the Exposition Metro Line Light Rail Project (Project) as defined under PUC Section 132600(e); and

WHEREAS, the primary funding for the Project will be provided to Expo through Metro, and Metro has already adopted a funding plan of \$640 million for the first phase of the Project; and

WHEREAS, from time to time as the Project progresses Expo may utilize the services of personnel employed by Metro if authorized by Metro; and

WHEREAS, Expo requires interim funds to operate prior to completion of a full formal Memorandum of Understanding with Metro which will describe Expo's obligations and duties upon receipt from Metro of local, state and federal funds necessary to construct the Project; and

WHEREAS, Metro is willing to provide Expo with start-up funds to permit Expo to begin operations prior to the execution of the various documents required by SB 504 in accordance with the terms and conditions as set forth herein.

AGREEMENT

NOW, THEREFORE, Metro and Expo hereby agree as follows:

SECTION 1. Advancement of Funds to Authority

a. Access to Funds. Subject to paragraph b., Metro will provide Expo with access to funds in an amount of one million seven hundred and thirty-five thousand dollars (\$1,735,000) (Funds), within ten (10) days of the execution of this MOU by the authorized representatives of the parties, on the condition that Expo will only expend the Funds in the furtherance of the Project. The sum made accessible shall be identified by Metro by fund type and any amounts thereof that are expended by Expo will be deducted from those amounts identified in the funding plan for the Project already approved by Metro. Metro's administrative costs for managing the accounting and payment of Expo funds shall, at the option of Metro, either be billed to Expo, which shall promptly pay all amounts billed, or be charged against funds held by Metro for the Project.

b. Banking. The parties agree to administer the Funds in accordance with the following payment process. During the period of initial operations, Expo may enter into contracts and other obligations in its own name. Upon review and approval by Expo, Metro will pay such approved amounts as directed by Expo on a timely basis within the terms of Expo's contractual commitments. At such time as Expo emerges from the period of initial operations, it may submit a written request to Metro to amend these procedures to reflect its full operational status, including a request for the transfer of any remaining Funds authorized by this MOU. The request shall describe the banking institution, the account number, the authorized signatory and any other necessary information to identify Expo's account(s).

c. Metro Employees. Metro employees may provide services to Expo in furtherance of the Project if such services are requested by Expo, are authorized by Metro's Chief Executive Officer, and can be provided without interfering with the performance by the Metro employee of his or her duties with Metro. Metro employee time shall be charged at an hourly rate, including fringe benefits and overhead, consistent with Metro's federally approved cost allocation plan. When a Metro employee performs services for Expo, the cost to Metro for the time expended by the Metro employee may, at the option of Metro, either be billed to Expo which shall promptly pay all amounts billed, or be charged against funds held by Metro for the Project.

SECTION 2. Use of Funds

Expo shall utilize the funds solely for the furtherance of the Project. The Funds provided hereunder shall be subject to audit by Metro, or any of its funding partners, in accordance with Metro policies and procedures.

SECTION 3. Obligations of Expo

Through this MOU, Expo is receiving Funds that may come from one or more Metro sources of funding. In consideration thereof, Expo agrees to fulfill all Metro obligations in accordance with the appropriate financing agreement and to take no action(s) that might interfere with the nature and source of the Funds or any tax-related benefits that are directly tied to the Funds.

SECTION 4. Indemnification

Expo shall, at its sole cost and expense, fully defend indemnify and hold harmless Metro, its subsidiaries, directors, officers, employees and agents, (jointly referred to as the Indemnitees), from and against any and all claims, actions, demands, costs, judgments, liens, penalties, liabilities, damages, losses and expenses, including but not limited to any fees of accountants, attorneys or other professionals, arising out of, in connection with, resulting from or related to, any act, omission, fault or negligence of Expo, or its agents, officers or employees, in connection with or relating to or claimed to be in connection with or relating to: 1) the use of the Funds provided hereunder for the Project; 2) Breach of Expo's obligations hereunder; and/or 3) any act in performing work generally in furtherance of the Project.

The indemnification specified in this MOU shall survive termination of this MOU, and any other agreements entered into by the parties in furtherance of the duties and obligations that are deemed necessary to effectuate and meet the requirements of SB 504.

Nothing contained in the MOU is intended to or shall have the effect of creating any rights in any third party against the Indemnitees. The inclusion of this MOU or any part hereof in any other document either by any third party or without the written approval of Metro shall not be deemed to be incorporating any obligation, duty or liability on the part of the Indemnitees.

Expo acknowledges that the rights and remedies specified herein are in addition to and do not limit any rights or remedies of the Indemnitees afforded by law or any other applicable agreements.

SECTION 5. Remedy

Expo's breach of this MOU shall subject Expo to immediate repayment of all Funds determined by Metro or its funding partners, to have been improperly spent. Expo will be required to make full restitution of all improperly expended funds within (90) ninety days of receipt of written notice from Metro, or its funding partners, stating the basis for the determination.

SECTION 6. Miscellaneous

a. Successors and Assigns. The covenants and agreements of this MOU shall inure to the benefit of, and shall be binding upon, each of the parties and their respective successors and assigns.

b. Governing Law. This MOU shall be governed by, interpreted under, construed and enforced in accordance with the laws of the State of California.

c. Notice. Any notice, demand or documents which any party is required or may desire to give or deliver to the other shall be in writing and may be personally delivered or given by United States mail certified, return receipt requested, postage prepaid, and addressed as follows:

To Metro: One Gateway Plaza, Los Angeles, CA 90012
Attn: Roger Snoble, CEO

To Metro: One Gateway Plaza, Los Angeles, CA 90012
Attn: General Counsel's Office, 24th floor

To Expo: _____
Attn: Richard Thorpe, Interim CEO

The aforementioned addresses for notice are subject to each party's right to designate a different address by notice similarly given.

d. Amendments. No variation, modification, change or amendment of this MOU shall be binding upon either party unless such variation, modification, change or amendment is in writing and duly authorized and executed by both parties. This MOU shall not be amended or modified by oral agreement or understanding between the parties or by any acts or conduct of the parties.

e. Counterparts. This MOU may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

f. Assignment. Neither party shall assign this MOU or any of such party's interest, rights or obligations under this MOU without the prior written consent of the other party.

g. Entire Agreement. This MOU constitutes the entire agreement between the parties with respect to the subject matter of this MOU and supersedes all prior contemporaneous agreements and understandings.

h. Compliance with Laws. Expo shall comply with all applicable federal state and local laws, regulations, rules and orders in its work on the Project, and shall

obtain all required permits or licenses required by any governmental authority for work on the Project, at its sole cost and expense,

IN WITNESS WHEREOF, the parties have caused this MOU to be duly executed and delivered as of the above date and the person executing this MOU by their signatures hereby attest that they have the requisite authority to enter into this MOU.

Entered into this ____ day of _____, 2005

LOS ANGELES COUNTY METROPOLITAN
TRANSPORTATION AUTHORITY

Approved as to form:

RAYMOND G. FORTNER, JR.
County Counsel

BY: _____
Roger Snoble
Chief Executive Officer

BY: _____
Deputy

EXPOSITION METRO
CONSTRUCTION AUTHORITY

BY: _____
Richard Thorpe
Interim Chief Executive Officer

