

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 startup 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 Fund. 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 (10) ten 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 the 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, LA, CA 90012
Attn: Roger Snoble, CEO

To Metro: One Gateway Plaza, LA, 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 MPU 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