



Expo

Exposition Metro Line
Construction Authority

One Gateway Plaza
Los Angeles, CA 90012-2952

213.922.7221
BuildExpo.org

6.c

DATE: MAY 5, 2006

TO: BOARD OF DIRECTORS

FROM: RICHARD D. THORPE
CHIEF EXECUTIVE OFFICER

ACTION: APPROVE MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN METRO AND THE AUTHORITY

RECOMMENDATION

1. Approve the attached Memorandum of Understanding (MOU) between the Los Angeles County Metropolitan Transportation Authority (Metro) and the Exposition Metro Line Construction Authority (Authority); and
2. Authorize the Chief Executive Officer to execute the MOU or substantially the same, on behalf of the Authority.

SUMMARY

This MOU (Attachment A) addresses the ability of Metro to review any significant changes to the design or construction of the project, develops an agreement concerning the use of all real property, right-of-way and other assets and describes the funding sources of the Authority and financial relationship with Metro.

DISCUSSION

State legislation, SB 504, which created the Authority, directed Metro and the Authority to develop an agreement that addressed several major issues including Metro's role in reviewing significant changes to design and construction, real estate and the funding relationship between the two agencies. An interim funding MOU was approved by both the Metro and Expo Boards in September 2005, which established a temporary funding relationship between the two agencies

until this more comprehensive MOU could be negotiated. That interim funding MOU will be replaced with this MOU, once it is adopted by both Boards. Over the last several months, staff from the Authority and various departments at Metro have met and discussed these issues and have worked collaboratively to develop this MOU. This MOU details Metro's role in the review of the project, defines "significant changes," outlines the process for Metro to review any significant changes to the project, and provides a mechanism to resolve any disputes between the two agencies.

The MOU also discusses the funding agreement between the Authority and Metro. Many of the details are simply carried over from the interim funding MOU already in place. The MOU sets forth the conditions under which the Authority can use funds for the project, details reimbursement proceedings for payment by Metro and discusses the authorization process for utilizing the services of Metro employees. This MOU also commits Metro to provide the \$640 million approved for this project per the terms of the Full Funding Plan (Attachment B) approved by the Metro Board.

Originally it was assumed that all project funds would be transferred over to the Authority. However, as Metro is providing all "back office" functions for the Authority such as accounting and payroll and since some of the funds earmarked for this project are bond proceeds that can't be transferred to the Authority, Metro will continue to pay all approved invoices submitted by the Authority for the project. There have been no problems with this process under the interim funding MOU with Metro and the process will stay the same under the new MOU.

Lastly, the MOU addresses the relationship between Metro and Expo as it pertains to real property and the use of the Exposition right-of-way. This agreement allows Expo full access to and use of all real property and rights-of-way for the construction of the project (Attachment C).

FINANCIAL IMPACT

None

NEXT STEPS

It is expected that this MOU will go before the Metro Board for approval at the May 22nd Board meeting. Once it is approved, it will be signed by both parties.

ATTACHMENT(S)

- A. Memorandum of Understanding
- B. Full Funding Plan
- C. Phase 1 Parcels

ATTACHMENT A

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

This Memorandum of Understanding (MOU) dated as of this ____ day of _____, 2006, is by and between the Los Angeles County Metropolitan Transportation Authority ("Metro") and the Exposition Metro Line Construction Authority ("Expo"), and constitutes the agreements between the parties hereto required under Public Utilities Code ("P.U.C.") Sections 132625 and 132635.

RECITALS

WHEREAS, Metro is a public entity existing pursuant to P.U.C. Section 130050.2, et seq. for, among other purposes, the planning, design, construction and operation of a multi-modal transit system including rail and bus facilities in Los Angeles County; and

WHEREAS, Expo is a public entity existing pursuant to P.U.C. Sections 132600, et seq., for the exclusive purpose of awarding and overseeing all design and construction contracts for completion of the Exposition Metro Line Light Rail Project ("Project") and 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 project as defined under PUC Sections 132600(e) and 132610; and

WHEREAS, the Project has been divided into two phases with Phase I extending from downtown Los Angeles to Culver City, and Phase II continuing to Santa Monica; and

WHEREAS, Metro shall assume responsibility for operation of the Project, and as such has an interest in ensuring that the Project will be compatible, functionally connected and operative within Metro's existing metro rail system. Accordingly, the Project is being designed and constructed so as to comply with Metro's design criteria, all applicable laws and regulations, and operate safely within the existing metro rail system; 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 Phase I 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, Metro currently owns or has an interest in certain real property necessary for the completion of the Project and shall grant Expo access to said real property during the design and construction of the Project.

AGREEMENT

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

SECTION 1 METRO'S DIRECT ROLE IN THE REVIEW OF THE PROJECT

a. As set forth in P.U.C. Section 132625(b), Metro and Expo agree that Metro has a direct role in the review of the Project to ensure that the Project will be compatible, functionally connected and operative within the Metro's existing metro rail system.

b. To facilitate this role, Expo shall timely afford Metro the opportunity throughout the Project to review and comment on design, construction and testing of the Project so as to ensure Metro that the Project complies with Metro's design criteria, all applicable laws and regulations, and that the Project will be able to be safely operated by Metro within the existing metro rail system.

If Metro has reason to believe that any aspect of the design, construction or testing of the Project as planned by Expo or its contractor will fail to provide, or will prevent, necessary compatibility, functional connectivity or operations of the Project within Metro's existing metro rail system, Metro shall communicate that concern to Expo's Director of Engineering and Construction.

c. If Metro's concern is not timely resolved at that level, the matter shall be referred in writing to Metro's Chief Executive Officer, or his designee, and Expo's Chief Executive Officer, or his designee, for final resolution. Except for work that must be performed immediately to avoid an imminent threat to public health or safety, any work that is the subject matter of Metro's concern regarding necessary compatibility, functional connectivity or operations of the Project within Metro's existing metro rail system, shall not continue until a final resolution is reached between Metro's Chief Executive Officer, or his designee, and Expo's Chief Executive Officer, or his designee. Metro and Expo acknowledge that delay in resolution of such matters may impact the Project schedule, and therefore each party agrees that time is of the essence for purposes of reaching such final resolution.

SECTION 2 SIGNIFICANT CHANGES

a. Pursuant to P.U.C. Section 132635, Metro shall have the right to review any significant changes in the scope of the design or construction, or both the design and construction, of the Project.

b. The term "significant changes" means any change of a mode or technology, or any other substantive change that affects the connectivity and

operation of the Project as part of the overall transit system operated by Metro, or any combination of those things.

c. A significant change shall not be allowed without the prior written concurrence of Metro. Such written concurrence shall acknowledge that the change is a “significant change” and shall be signed by Metro’s Chief Executive Officer, or his designee.

d. Design and construction of a light rail project that is consistent with the current scope of the Project (as defined in the Project Final EIS/EIR and/or in Metro funding agreements with its grantors) shall not be deemed to be a significant change in the scope of the Project and shall not require concurrence by the Metro.

e. Any dispute between the parties concerning whether a change is a “significant change” will be resolved by the Metro Chief Executive Officer, or his designee, and the Expo Chief Executive Officer, or his designee. .

SECTION 3. FUNDING AGREEMENT

a. Metro and Expo hereby agree that Expo will be responsible for the design and construction of Phase 1 of the Project for a total project amount not to exceed \$640 million. Metro has approved a full funding plan for Phase 1 of the Project in the sum of \$640 million and commits to allocate funds to the Authority per the terms in the approved funding plan or as otherwise mutually agreed upon.

b. 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 and state or federal guidelines. Expenditures must be incurred within the period the Funds were authorized or appropriated by the funding agencies.

c. The Funds referred to herein come from multiple sources of funding to Metro. Such sources are identified in Attachment B. As such, Metro may be subject to various obligations concerning the use and handling of such Funds imposed by those funding sources. Therefore, in consideration of the reimbursement provided for herein, Expo agrees to fulfill all obligations imposed upon Metro in accordance with the financing agreements between Metro and its funding sources for the Project 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. Expo further agrees that it will comply with all federal, state, and local or Metro rules, regulations, funding agreements, policies and directives affecting the funding, including but not limited to, GAAP, FAR, OMB A-133, A-87, and records retention policy. Authority agrees to provide Metro with progress reports, expenditure documentation, and any other documentation as reasonably

requested by Metro and necessary for Metro to fulfill its responsibilities as the grantee or administrator of the Project funds.

d. Metro and Expo agree to administer the Funds in accordance with the following reimbursement process. Upon receipt from Expo of a certified request for reimbursement, Metro will promptly, within 5 business days, remit the entire amount to Expo or the payment recipient as designated by Expo. The request for reimbursement shall be accompanied by a certification executed by a duly authorized officer of Expo acknowledging that Expo has complied with the requirements set forth in subparagraphs 3.b and 3.c, above.

e. 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, or his designee, 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 employee's hourly rate, including fringe benefits and overhead, consistent with Metro's federally approved cost allocation plan.

SECTION 4. PROPERTY AGREEMENT

a. Metro and Expo shall each hold and maintain for the benefit of each other and for the benefit of the Project, all real and personal property and any other assets accumulated in the planning, design, and construction of the Project, including, but not limited to, third-party agreements, contracts, and design and construction documents, as necessary for completion of the Project.

b. Metro shall provide Expo with access to and full use of all real property and rights-of-way as set forth in Attachment B and necessary for the construction of the Project.

c. Upon completion of Phase 1 of the Project, Expo and its contractors shall vacate all real property and rights-of-way provided by Metro for construction of the Project except for any such property required for construction of Phase 2 of the Project. Expo shall transfer to Metro title to any and all real or personal property acquired with Project Funds. Furthermore, Expo shall turn over to Metro all Project planning, design, and construction documents, including but not limited to warranties, as-built drawings and manuals.

SECTION 5. 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: _____

To Expo: 707 Wilshire Blvd., Los Angeles, CA 90017
Attn: _____

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.

h. **Further Actions.** The parties shall develop and execute any other documents of any kind or type whatsoever, including procedures and policies, necessary to carry out the intent of the provisions of this MOU.

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 _____, 2006

LOS ANGELES COUNTY METROPOLITAN
TRANSPORTATION AUTHORITY

By: _____

Approved as to form:

RAYMOND G. FORTNER, JR.
County Counsel

By: _____

By: _____
DEPUTY

EXPOSITION METRO LINE
CONSTRUCTION AUTHORITY

By: _____

Approved as to Form:

NOSSAMAN, GUTHNER,
KNOX & ELLIOTT, LLP

By: _____

By: _____

ATTACHMENT B

EXPOSITION LIGHT RAIL FULL FUNDING PLAN

| Fund Source | Amount |
|--|----------------------|
| Federal Congestion Mitigation and Air Quality Improvement (CMAQ) | \$15.6 million |
| Local Proposition C 25% Transit-Related Highway (Prop C 25%) | \$24.9 million |
| Local Contributions | \$35 million |
| Traffic Congestion Relief Program (TCRP) | \$249.8 million |
| 2006 STIP Los Angeles County Share (STIP)* | \$314.7 million |
| Total | \$640 million |

*Pending CTC approval 4/27/06

Based on Board Box item distributed to Metro Board in April, 2006

MID-CITY EXPOSITION LIGHT RAIL PROJECT
PHASE 1 PARCELS

| ADDRESS | OWNERSHIP STATUS | COMMENTS |
|---|--|---|
| <p>Railroad ROW extending from West Line of Harbor Fwy Overpass to centerline of Watseka Avenue</p> | <p>Quitclaim deed recorded January 15, 1991 as Instrument No. 91-063429. Excepting therefrom portion lying east of M.P. 487.89, also excepting therefrom portion lying west of M.P. 494.81</p> <p>Grant Deed from Southern Pacific Transportation Company recorded January 25, 1991, excepting therefrom Parcels 1 through 18 inclusive, and excepting therefrom Parcels 50 through 67 inclusive as described in Exhibit A of Grant Deed. Also excepting therefrom Exhibit "B" of the Grant Deed. East End of Railroad ROW shall be located at M.P. 487.89, E.S. = 705+38, West edge of Harbor Fwy. Overpass. West End of Railroad ROW shall be located at M.P. 494.81, E.S. = 340+00, centerline of Watseka Avenue.</p> | <p>Grant Deed subject to title exceptions included in Tigor Title Policy dated January 15, 1991 and Stewart Title Policy dated March 16, 1999 and all easements and licenses of record.</p> |