

MOU.STPL8099

EXCHANGE AGREEMENT

This Exchange Agreement ("AGREEMENT"), made and entered into as of October 31, 2011 by and between the County of Los Angeles, a political subdivision of the State of California (hereinafter referred to as "COUNTY") and the Los Angeles County Metropolitan Transportation Authority, the regional transportation planning authority for the County of Los Angeles (herein after referred to as "LACMTA").

WITNESSETH

WHEREAS, COUNTY desires to perform the grade-separated interchange at the SR-126/Commerce Center Drive intersection, widening of SR-126, and realignment of Henry Mayo Drive (hereinafter referred to as "PROJECT"); and

WHEREAS, COUNTY is willing to perform or cause to be performed, all work necessary to construct PROJECT; and

WHEREAS, COUNTY is further willing to administer PROJECT with federal funds, in accordance with all requirements and restrictions related to those funds; and

WHEREAS, PROJECT total construction cost is currently estimated to be \$55,000,000, of which \$9,200,000 is funded with a Proposition C 25% grant through the LACMTA Call for Projects (Project ID 8099) and the remaining \$45,800,000 will be ultimately financed with Westside Bridge and Major Thoroughfare Construction Fee (B&T) District funds as fees are collected; and

WHEREAS, COUNTY desires to exchange \$41,000,000 of COUNTY funds for \$41,000,000 of Federal Surface Transportation Program-Local (STP-L) funds to be programmed by LACMTA for transportation purposes; and

WHEREAS, the LACMTA Board has authorized the transfer of STP-L funds with COUNTY in exchange for an equal amount of COUNTY funds; and

WHEREAS, In exchange for the STP-L funds, the COUNTY has agreed to pay to LACMTA an amount equal to the total amount of STP-L funds used by COUNTY as follows: \$13.0 million on July 1, 2014, and a final payment to make up the remaining balance owing up to \$28.0 million on July 1, 2016.

WHEREAS, COUNTY's final payment on July 1, 2016 to LACMTA will be equal to the total Federal funding utilized and reimbursed from \$41.0 million in STP-L funds towards the eligible construction costs of the PROJECT less \$13.0 million payment made by the COUNTY on July 1, 2014. ; and

WHEREAS, current PROJECT schedule estimates advertising for construction bids in November 2011. The construction is anticipated to take approximately two years to complete; and

WHEREAS, an exchange of funds as proposed herein is beneficial to and in the general interest of COUNTY and LACMTA, as well as other local agencies within the County of Los Angeles.

NOW THEREFORE, in consideration of the mutual benefits to be derived by COUNTY and LACMTA and of the promises contained herein contained, it is hereby agreed as follows:

(1) LACMTA AGREES:

To program STP-L funds to the COUNTY in the amount of \$41,000,000 in exchange for the COUNTY's payment to LACMTA of an amount equal to the amount of STP-L funds County actually receives under this Agreement ("COUNTY Funds"). LACMTA shall program the COUNTY Funds for transportation purposes. LACMTA shall complete such programming upon full execution of this AGREEMENT.

- a. To accept COUNTY's payment of COUNTY Funds, in the manner specified in Paragraph (2) below.
- b. To make the COUNTY Funds available to agencies for qualifying transportation projects and administrative expenses.

(2) COUNTY AGREES:

- a. To accept LACMTA's programming of STP-L funds, to take all steps necessary to draw down on the STP-L funds, and to expend the STP-L funds in accordance with the STP-L expenditure guidelines pursuant to Title 23, Section 133 of the SAFETEA-LU or subsequent reauthorizations, including STP-L fund lapsing policy. COUNTY understands the STP-L funds can only be used towards eligible construction costs of the PROJECT. COUNTY understands that STP-L funds are contingent upon availability from the Federal Government.
- b. To notify LACMTA of the obligation of STP-L funds by means of submitting a copy of the State of California Department of Transportation (Caltrans) approval (E76 form, or other official Caltrans notification of approval and obligation) upon receipt from Caltrans.
- c. To notify LACMTA of the actual amount of STP-L funds used by COUNTY. If COUNTY does not use the entire \$41 million STP-L fund allocation, COUNTY shall "timely deobligate" such unused portion so that LACMTA can reprogram such unused allocation to other project sponsors. For purposes of this Agreement, "timely deobligate" shall mean the FHWA date of deobligation, as documented and reported by Caltrans, is at least nine (9) months before the date such funds are scheduled to lapse or otherwise expire.

d. In consideration for the \$41 million in STP-L funds provided by LACMTA, to pay LACMTA an amount equal to the total amount of STP-L funds used by COUNTY as follows: on July 1, 2014, payment of the sum of \$13.0 million and on July 1, 2016, an amount to make up the remaining balance owing up to \$28.0 million. The final payment of up to \$28 million on July 1, 2016 to LACMTA will be equal to the total Federal funding utilized and reimbursed from the \$41.0 million in STP-L funds less \$13.0 million payment made by the COUNTY on July 1, 2014.

(3) IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:

a.. DEFAULT: A Default under this Agreement is defined as any one or more of the following: (i) COUNTY fails to pay the scheduled payments described in section 2(d) above, ; (ii) COUNTY fails to cause Caltrans to “timely deobligate” any unused portion of the STP-L funds; or (iii) COUNTY fails to otherwise perform its obligations set forth in this Agreement.

b. REMEDIES: In the event of a default by COUNTY, LACMTA shall provide written notice of such Default to COUNTY with a 30-day period to cure the Default. In the event COUNTY fails to cure the Default, or commit to cure the Default and commence the same within such 30-day period the satisfaction of LACMTA, LACMTA shall follow the remedy procedure set forth in Section 3(i) below, and if, after following such procedure, LACMTA still has not received the full annual payment due in a fiscal year, LACMTA and Authority shall have any and all rights and remedies against COUNTY which may now or hereafter be available to it in law or in equity as set forth in Section 3(ii) below.

(i). In the event of a default by COUNTY, then COUNTY authorizes that such outstanding payments due to LACMTA (either the amount due from County’s failure to meet the payment schedule set forth in Section 2(d) or the amount COUNTY has failed to “timely deobligate” calculated at the time of default) shall be paid from and hereby authorizes LACMTA to withhold the following COUNTY funds in the following priority: First, from the COUNTY’s Proposition A local return funds, then from Proposition C local return funds, then from Measure R local return funds, and then from any unobligated STP-L balance funds. After LACMTA has withheld and offset the applicable amount of funds to satisfy COUNTY’s outstanding obligation, LACMTA shall transfer the balance of such local return funds and/or unobligated STP-L balance funds to the COUNTY in accordance with the applicable state laws or ordinances.

(ii) The remedies described herein are non-exclusive. LACMTA and COUNTY shall have the right to enforce any and all rights and remedies herein or which may be now or hereafter available at law or in equity.

c. In the event that there is any legal court (e.g., Superior Court of the State of California, County of Los Angeles, or the U.S. District Court for the Central District of California) proceeding between the parties to enforce or interpret this AGREEMENT, to protect or establish

any rights or remedies hereunder, the prevailing party shall be entitled to its costs and expenses, including reasonable attorney's fees.

d. COUNTY shall fully indemnify, defend and hold LACMTA and its officers, agents and employees harmless from and against any liability and expenses, including, without limitation, defend costs, any costs or liability on account of bodily injury, death or personal injury of any person or for damage to or loss of risk of property and environmental obligations, any legal fees and any claims for damages of any nature whatsoever arising out of (i) a breach of COUNTY's obligations under this Agreement or (ii) any act or omission of COUNTY or its officers, agents, employees, contractors or subcontractors in the performance of the Project or the work described herein;

e. LACMTA shall fully indemnify, defend and hold COUNTY and its officers, agents and employees harmless from and against any liability and expenses, including, without limitation, defend costs, any costs or liability on account of bodily injury, death or personal injury of any person or for damage to or loss of risk of property and environmental obligations, any legal fees and any claims for damages of any nature whatsoever arising out of (i) a breach of LACMTA's obligations under this Agreement or (ii) any act or omission of LACMTA or its officers, agents, employees, contractors or subcontractors in the performance of the Project or the work described herein;

f. This AGREEMENT may be amended or modified only by mutual written consent of LACMTA and COUNTY.

g. Any correspondence, communication, or contact concerning this AGREEMENT shall be directed to the following:

COUNTY:

Ms. Gail Farber
Director of Public Works
County of Los Angeles
P.O. Box 1460
Alhambra, CA 91802-1460

LACMTA:

Mr. Arthur T. Leahy
Chief Executive Officer
Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, CA 90012-2952
ATTN: FRANK FLORES

Executive Officer

h. This AGREEMENT constitutes the entire understanding between the parties with respect to the subject matter herein.

i. This AGREEMENT shall be governed by California law.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their respective officers, duly authorized, by the Los Angeles County Metropolitan Authority on October 31, 2011, 2011, and by the County of Los Angeles on 10/19/11, 2011.

LACMTA:

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

By: _____


for Arthur T. Leahy
Chief Executive Officer

APPROVED AS TO FORM:

Andrea Sheridan Ordin
County Counsel

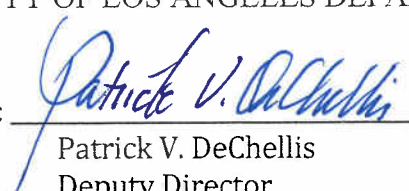
By: _____


Deputy

COUNTY:

COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC WORKS

By: _____


Patrick V. DeChellis
Deputy Director