



AGENDA REPORT

Meeting Date: November 18, 2014

Item Number: D-6

To: Honorable Mayor & City Council

From: Anne Garvey-Zaworski, Principal Civil Engineer
Mark Cuneo, City Engineer

Subject: AN EXCHANGE AGREEMENT AND ASSIGNMENT OF FEDERAL SURFACE TRANSPORTATION PROGRAM-LOCAL FUNDS; AUTHORIZE THE CITY MANAGER TO EXECUTE AN EXCHANGE AGREEMENT AND ASSIGNMENT OF FEDERAL SURFACE TRANSPORTATION PROGRAM-LOCAL FUNDS; AND

APPROPRIATION OF THESE \$507,064 LACMTA FUNDS FOR THE SANTA MONICA BOULEVARD RECONSTRUCTION PROJECT.

Attachments:

1. Exchange Agreement
2. Metro Letter dated 10-23-2014

RECOMMENDATION

Staff recommends that the City Council move to: 1) Approve the attached "Exchange Agreement and Assignment of Federal Surface Transportation Program-Local Funds" 2) Staff recommends that the City Council move to authorize the City Manager to execute this Agreement after City Council review, and 3) Appropriate the \$507,064 LACTMA Funds for the Santa Monica Boulevard Reconstruction Project:

INTRODUCTION

Every Federal Fiscal Year (Oct 1 - Sep 30) Metro apportions Surface Transportation Funds-Local (STP-L) funds to the eighty-nine (89) local agencies within Los Angeles County. The City of Beverly Hills currently receives approximately \$103,000 per year. Agencies have 3 years to obligate their funds or the funds become subject to lapse. These funds are administered by Metro and allocated to local jurisdictions on a per capita basis; and are specifically earmarked for transportation projects.

DISCUSSION

The Surface Transportation Program (STP) was first established by the 1991 Federal Intermodal Surface Transportation Efficiency Act (ISTEA) followed by TEA-21 (in 1997), continued with the passage of the Safe Accountable Flexible Transportation Equity Act (in 2005): A Legacy for Users (SAFETEA-LU) and in 2012 Moving Ahead for Progress in the 21st Century Act (MAP-21).

The Surface Transportation Program – Local (STP-L) funds are federal funds and projects programmed with STP-L funds have numerous strict federal requirements, regulations and restrictions such as:

- Project Location must be part of the State's functional classified system (i.e. major Arterials and Collectors)
- Extensive submittals and approvals at every phase of the Project (from Project Obligation to Planning to Concept to Design to Bid to Construction to Invoicing to Close-Out) required by California Department of Transportation (Caltrans), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA)

As of December 6, 2013 the City of Beverly Hills had a balance of \$517,413 in their STP-L account. Between January and June 2014, Engineering staff were in discussions with Metro regarding the STP-L balance of \$517,413 and a portion of it that was subject to lapse. As of June, Metro had funding available to use as an exchange for some of this lapsing STP-L funding. Metro were offering their limited funding to all cities on a "first come, first serve" basis. Consequently, staff advised Metro's Transportation Planning Manager Philip Kamhi that the City of Beverly Hills would like to enter into an agreement to exchange their lapsing federal funding for the "less stringent and more flexible" Los Angeles County Metropolitan Transportation Authority (LACMTA) funds which are subject to applicable state and local regulations, standards and policies in lieu of federal.

On November 3, we received the attached Agreement for execution which offers us the opportunity to exchange our entire \$517,413 balance of STP-L monies for \$507,064 in flexible LACMTA local transportation funds. The \$10,349 difference is the 2% processing and administrative fee that Metro charges for this exchange, which is substantially less than the value of City staff hours that would be required to process the extensive and time-consuming federal paperwork filing involved in "federally-funded" projects.

Expenditure of these LACMTA funds still retain the following "STP-L" regulations and restrictions:

- Project Location must be part of the State's functional classified system (i.e. major Arterials and Collectors)
- Project Type must be:
 - Repaving/Reconstruction/Rehabilitation
 - Transit Capital projects
 - Bicycle and pedestrian facilities
 - Safety improvements and hazard elimination
 - Transportation enhancement activities and control measures
 - Bridges on any federal aid route or local street

FISCAL IMPACT

Meeting Date: November 18, 2014

Exhibit A of the attached Agreement is an Automated Clearing House (ACH) form which will allow LACMTA to electronically disburse the exchanged \$507,064 Funds to the City, at no additional cost.

These exchanged \$507,064 LACMTA Funds **must be** encumbered by an awarded contract on/before five (5) years from the date this Agreement is fully executed. Any LACMTA Funds not encumbered by the Lapsing Date (November 18, 2019) shall lapse and be returned to LACMTA within thirty (30) days of the Lapsing Date for further programming to third parties as LACMTA determines at its sole discretion.

David Lightner
Approved By



Attachment 1

EXCHANGE AGREEMENT AND ASSIGNMENT OF FEDERAL SURFACE
TRANSPORTATION PROGRAM — LOCAL FUNDS

This Exchange Agreement and Assignment of Federal Surface Transportation Program-Local Funds ("AGREEMENT"), is made and entered into as of October 23, 2014, by and between the City of Beverly Hills ("CITY") and the Los Angeles County Metropolitan Transportation Authority ("LACMTA").

RECITALS:

- A. CITY is eligible for and has available Federal Surface Transportation Program-Local funds ("STP-L Funds").
- B. CITY desires to exchange \$517,413 of CITY's STP-L Funds for a like amount of LACMTA Local Transportation Funds ("LACMTA Funds").
- C. LACMTA is willing to exchange \$517,413 in LACMTA Funds for a like amount of CITY's STP-L Funds subject to the terms and conditions contained herein.
- D. An exchange of CITY's STP-L Funds with LACMTA Funds is beneficial to and in the general interest of CITY and LACMTA.

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

AGREEMENT:

1. CITY hereby assigns to LACMTA \$517,413 of CITY's STP-L Funds. LACMTA shall be authorized to deduct such amount from CITY's STP-L Fund balance. This assignment shall be automatically effective upon full execution of this AGREEMENT without the necessity of the execution, delivery or recording of any further instrument whatsoever. Notwithstanding the foregoing, at LACMTA's request, CITY shall execute and deliver such documents and instruments as may be required to evidence such assignment of STP-L Funds.
2. LACMTA hereby accepts CITY's assignment of CITY's STP-L Funds for use on Federal-aid-eligible project(s), to be determined by LACMTA in its sole and absolute discretion.
3. Upon receipt of (i) a fully executed AGREEMENT, (ii) CITY's written certification of the amount of CITY's STP-L Fund Balance, as defined herein, which CITY's STP-L Fund Balance shows that CITY has sufficient STP-L Funds to meet its obligations hereunder, and (iii) LACMTA's deduction of CITY's STP-L Funds as provided in paragraph 1 above, LACMTA shall pay CITY \$507,064 of LACMTA Funds which includes the deduction for the processing fee described in paragraph 5 below. For purposes of this AGREEMENT, CITY's "STP-L Fund Balance" shall mean the amount of funds contained in CITY's STP-L Fund account as of the date that this

AGREEMENT is fully executed plus CITY's FY14 apportionment share of STP-L Funds. If the STP-L Fund Balance is insufficient to satisfy CITY's exchange obligations hereunder, CITY hereby authorizes LACMTA to deduct from CITY's future STP-L Funds until LACMTA has in the aggregate received the amount of CITY's STP-L Funds specified in paragraph 1 above.

4. CITY must complete an Automated Clearing House (ACH) form as provided in Exhibit A to allow LACMTA to make disbursements electronically. Disbursements via ACH will be made at no cost to CITY. If electronic disbursements are not the preferred method of disbursement, CITY may request an exception in writing.

5. CITY shall pay LACMTA a two-percent (2%) processing and administrative fee ("the Processing Fee") in connection with the exchange contemplated by this AGREEMENT. The Processing Fee shall be assessed against the total amount of LACMTA Funds payable to CITY. CITY hereby authorizes LACMTA to deduct the Processing Fee from the amount LACMTA is to pay CITY hereunder.

6. CITY shall expend the LACMTA Funds on STP-L-Eligible Projects by the Lapsing Date. For the purposes of this AGREEMENT, "the Lapsing Date" shall mean the date that is five (5) years from the date that this AGREEMENT is fully executed. Any LACMTA Funds not expended by the Lapsing Date shall lapse and be returned to LACMTA within thirty (30) days of the Lapsing Date for further programming to third parties as LACMTA determines in its sole discretion.

A. For the purposes of this AGREEMENT, the term "STP-L-Eligible Project" shall mean any transportation capital improvement that would normally qualify for the STP-L program, provided however, that any applicable federal regulations and standards related to procurement and other project delivery issues may be substituted with applicable state and local regulations, standards, and policies.

B. The term "expend" as used in Section 6 shall mean "encumbered by an awarded contract".

C. If the LACMTA Funds have lapsed and CITY has not returned all or a portion of the lapsed LACMTA Funds to LACMTA, then CITY shall be considered to be in default and agrees that such outstanding payments shall be paid from CITY funds in the following priority: first, from any of CITY's unobligated STP-L balance funds, then from CITY's Proposition A local return funds, then from CITY's Proposition C local return funds, and then from CITY's Measure R local return funds. If CITY is in default hereunder, in addition to all rights and remedies available to LACMTA at law or in equity and without further notice or ability to cure by CITY, CITY hereby authorizes LACMTA to withhold the applicable STP-L funds or local return funds in the amount needed to satisfy the outstanding amount of lapsed LACMTA Funds due and owing to LACMTA prior to LACMTA transferring the balance of such local return funds to the CITY in accordance with the applicable state laws or ordinances.

7. CITY must use the LACMTA Funds in the most cost-effective manner. If CITY

intends to use a consultant or contractor to implement all or part of the STP-L-Eligible Project, LACMTA requires that such activities be procured in accordance with CITY's contracting procedures and be consistent with State law as appropriate. CITY will also use the LACMTA Funds in the most cost-effective manner when the LACMTA Funds are used to pay "in-house" staff time. CITY staff or consultants with project oversight roles may not award work to companies in which they have a financial or personal interest. This effective use of funds provision will be verified by LACMTA through on-going project monitoring and through any LACMTA interim and final audits.

8. LACMTA, and/or its designee, shall have the right to conduct audits of CITY's use of the LACMTA Funds, as deemed appropriate, such as financial and compliance audits; interim audits; pre-award audits, performance audits, and final audits. CITY agrees to establish and maintain proper accounting procedures and cash management records and documents in accordance with Generally Accepted Accounting Principles (GAAP). CITY's records shall include, without limitation, any supporting evidence deemed necessary by LACMTA to substantiate CITY's use of LACMTA Funds. These records must be retained by CITY for five years following CITY's last use of the LACMTA Funds. CITY shall reimburse LACMTA for any expenditure not in compliance with the Scope of Work and/or not in compliance with other terms and conditions of this AGREEMENT. The allowability of costs for CITY's own expenditures submitted to LACMTA for the STP-L-Eligible Project shall be in compliance with Office of Management and Budget (OMB) Circular A-87. The allowability of costs for CITY's contractors, consultants, and suppliers expenditures submitted to LACMTA through CITY's Monthly Progress Reports and Quarterly Expenditures shall be in compliance with OMB Circular A-87 or Federal Acquisition Regulation (FAR) Subpart 31 (whichever is applicable). Findings of the LACMTA audit are final. When LACMTA audit findings require CITY to return monies to LACMTA, CITY agrees to return the monies within thirty (30) days after the final audit is sent to CITY.

9. The terms of this AGREEMENT shall commence on the date that this AGREEMENT is fully executed and shall terminate once CITY has expended all the LACMTA Funds and all LACMTA audit and reporting requirements have been satisfied.

10. CITY 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 damages of any nature whatsoever arising out of (i) a breach of CITY's obligations under this AGREEMENT; or (ii) any act or omission of CITY or its officers, agents, employees, contractors, or subcontractors in the use of the LACMTA Funds.

11. LACMTA shall fully indemnify, defend and hold CITY 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 damages to or loss of risk of property, any 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 use of CITY's STP-L Funds.

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

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

CITY OF BEVERLY HILLS:

Mark Cuneo P.E.
City Engineer
City of Beverly Hills
Capital Assets Department
Civil Engineering Division
345 Foothill Road
Beverly Hills, CA 90210

LACMTA:

Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza
Los Angeles, California 90012
Attn: David Yale

14. This AGREEMENT shall be interpreted and governed by the laws of the State of California.

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

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their respective officers as of the date stated below.

**LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION
AUTHORITY**

CITY OF BEVERLY HILLS

By: _____

By: _____

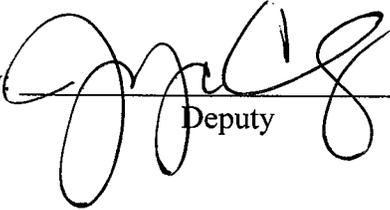
Arthur T. Leahy
Chief Executive Officer

Jeffrey Kolin
City Manager

APPROVED AS TO FORM:

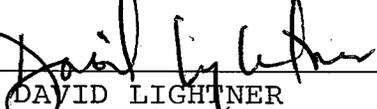
APPROVED AS TO FORM:

MARK J. SALADINO
County Counsel

By:  _____
Deputy

By:  _____
LAURENCE S. WIENER
City Attorney

APPROVAL RECOMMENDED:

By:  _____
DAVID LIGHTNER
Deputy City Manager/
Director of Capital Assets

Dated: 11.13.14 _____



Metro

LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY
AUTOMATED CLEARING HOUSE (ACH) PAYMENT
AUTHORIZATION

SECTION I: <i>Supplier Information</i>		
Supplier Number:		
Company Name:		
Payment Address:		
City:	State:	Zip Code:
Contact Name:	Contact Phone Number:	
Email Address:		
SECTION II: <i>Banking Information</i>		
Tax ID:		
Bank Name (Required):		
Account Name:		
Account Type (Required): <input type="checkbox"/> Checking <input type="checkbox"/> Savings		
Account Number (Required):		
Routing Number (Required):		
SECTION III: <i>Authorization</i>		
Print Name of Authorized Person:		
Print Title :		
Phone Number:		
Signature of Authorized Person:		
Date:		
SECTION IV: <i>Approval - Metro Use Only</i>		
Approved by:	Date:	
Entered by:	Date:	



Metro

**LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY
AUTOMATED CLEARING HOUSE (ACH) PAYMENT
AUTHORIZATION**

Field	Description
Supplier Number	If you know the supplier number, please enter. Not required if not available.
Company Name	Enter name of company doing business with L.A. Metro.
Payment Address	Enter address where payment may be mailed in accordance with Metro records.
Contact Name	Enter name of person from your company that Metro may contact for more information if required.
Contact Phone Number	Enter number where contact person may be reached.
Email Address	Enter the email address where payment detail information can be sent (i.e., information to include payment amount, payment date, description of invoices paid, etc.)
Tax ID Number	Enter company's tax identification number.
Bank Name	Enter the bank name where payments are to be sent (i.e. Bank of America, Washington Mutual, etc.)
Routing Number	Enter the first 9 numbers of the account to which you would like funds sent. This information is located on your check for the account. Do not use information from a deposit slip.
Account Name	Enter the official name of the account.
Account Number	Enter the account number to which funds are to be sent.
Account Type	Check the appropriate account type.
Authorized Person & Title	Enter name and title of person of your company authorized to approve ACH transactions.
Signature	Must be a wet signature.
Phone Number	Enter phone number where authorized person may be contacted.

Please see check sample to find Routing No and Bank Account No

John Smith 1234 Walk of the Stars, Hollywood, CA. 90012	101
Pay to the Order of _____ \$	
_____ Dollars	
Bank of America	
*122000661**0101** 0195300710*	

Routing Number

Account Number



Metro

LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY
AUTOMATED CLEARING HOUSE (ACH) PAYMENT
AUTHORIZATION

Please mail your completed form along with a copy of a
voided check to:

Metro Accounts Payable
P.O. Box 512296
Los Angeles, CA 90051

Questions? Please feel free to contact:

Remy Maranan at (213)922-6812

Attachment 2



Metro

October 23, 2014

Jeffrey Kolin
City Manager
455 N. Rexford Drive
Beverly Hills, CA 90210

**OPPORTUNITY TO EXCHANGE FEDERAL SURFACE TRANSPORTATION PROGRAM-
LOCAL FUNDS (STP-L)
FOR FLEXIBLE LACMTA STP-L LOCAL TRANSPORTATION FUNDS**

Dear Mr. Kolin:

The Los Angeles County Metropolitan Transportation Authority (LACMTA) is offering an opportunity to you to exchange Federal Surface Transportation Program – Local (STP-L) funds for flexible LACMTA local transportation funds (“LACMTA Funds”). Enclosed are the tables showing the amount of Federal STP-L funds your agency is eligible to exchange for LACMTA Funds. The exchange amount balance is based on your apportionment, minus obligations and transfers through October 1, 2014 and includes a 2% administrative fee.

To participate in this exchange program, your agency must do the following:

1. Certify that the balance shown on the Enclosure A table remains accurate;
2. Notify LACMTA of your intent to exchange funds by November 30, 2014; and
3. Complete and execute Enclosure B Exchange Agreement. We will need to receive the fully executed Exchange Agreement by December 31, 2014.

Due to the limited availability of the LACMTA Funds, we will exchange your agency's FFY 13/14 STP-L unspent balance (less a 2% administrative fee) for LACMTA Funds on a “first-come, first-serve” basis based upon relative population of your City from the smallest to the largest. If we are not notified of your agency's intent to exchange STP-L funds by the November 30, 2014 deadline we will move down the list and offer the exchange opportunity to other Cities on the list.

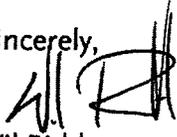
Rec'd
11.4.14

October 23, 2014

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If you have any questions about this opportunity please contact Philip J. Kamhi at (213) 922-2465.

Sincerely,

A handwritten signature in black ink, appearing to read 'Wil Ridder', with a stylized flourish at the end.

Wil Ridder

Deputy Executive Officer
Regional Programming

Enclosures

