

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 May 1, 2020, by and between the City of Manhattan Beach ("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 \$834,156 of CITY's STP-L Funds for a like amount of LACMTA Local Transportation Funds ("LACMTA Funds").
- C. LACMTA is willing to exchange \$834,156 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 \$834,156 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 \$817,472 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, which includes

CITY's FY20 apportionment share of STP-L Funds, and estimated additional apportionment share of STP-L Funds for FY21, FY22, and FY23. If the STP-L Fund Balance becomes 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 the STP-L-Eligible Project and by the Lapsing Date, consistent with the Statement of Work, Schedule and Budget provided in Exhibit B. For the purposes of this AGREEMENT, "the Lapsing Date" shall mean the date that is three (3) 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 the transportation capital improvement described in Exhibit B 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, then from CITY's Measure R local return funds, and then from CITY's Measure M 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 eligibility 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 (relocated to Title 2 in the Code of Federal Regulations, Subtitle A, Chapter II, part 225). The eligibility 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 (as relocated) 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 MANHATTAN BEACH

Adilia Miller
Senior Engineer
3621 Bell Avenue
Manhattan Beach, CA 92648
email: amiller@citymb.info

LACMTA

Ashad Hamideh
Senior Director, Countywide Planning and Development
One Gateway Plaza
Mail Stop: 99-23-3
Los Angeles, CA 90012-2952
email: hamideha@metro.net

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 MANHATTAN BEACH

By: _____

Phillip A. Washington
Chief Executive Officer

By: _____

Bruce Moe
City Manager

APPROVED AS TO FORM:

MARY C. WICKHAM
County Counsel

APPROVED AS TO FORM:


QUINN M. BARROW
City Attorney

By: _____
Deputy

By: _____
City Attorney



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

SECTION I: <i>Supplier Information</i>		
Supplier Number:		
Company Name: City of Manhattan Beach		
Payment Address: 1400 Highland Ave		
City: Manhattan Beach	State: CA	Zip Code: 90266
Contact Name: Henry Mitzner		Contact Phone Number: 310-802-5563
Email Address: accounting@citymb.info		
SECTION II: <i>Banking Information</i>		
Tax ID: 95-6000742		
Bank Name (Required): Union Bank		
Account Name: City of Manhattan Beach		
Account Type (Required): <input checked="" type="checkbox"/> Checking <input type="checkbox"/> Savings		
Account Number (Required): 2740013885		
Routing Number (Required): 122000496		
SECTION III: <i>Authorization</i>		
Print Name of Authorized Person: Henry Mitzner		
Print Title : Controller		
Phone Number: 310-802-5563		
Signature of Authorized Person: 		
Date: 01/06/2020		
SECTION IV: <i>Approval - Metro Use Only</i>		
Approved by:		Date:
Entered by:		Date:

STATEMENT OF WORK

The STP-L Eligible Project consists of roadway rehabilitation improvements along Rosecrans Avenue between Village Drive and Aviation Boulevard, including a 2.0" cold-mill and asphalt hot rubber mix overlay and adjacent curb ramp upgrades to comply with ADA requirements.

SCHEDULE

Open Bids:	June 2020
Award Contract:	July 2020
Start Construction:	August 2020
Complete Construction:	November 2020

BUDGET

City of Manhattan Beach Funds:	\$98,779
LACMTA Funds:	<u>\$817,472</u>
Total:	\$916,251