

## REPORT TO CITY COUNCIL

**DATE: AUGUST 11, 2021**

**TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

**FROM: NATHAN HAMBURGER, CITY MANAGER**

**BY: KELLY FISHER, ACTING PUBLIC WORKS DIRECTOR**

**SUBJECT: REQUEST TO APPROVE AN AGREEMENT WITH THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY (LACMTA) TO EXCHANGE FEDERAL SURFACE TRANSPORTATION PROGRAM- LOCAL (STP-L) AND HIGHWAY INFRASTRUCTURE PROGRAM FUNDS WITH FLEXIBLE LACMTA STP-L TRANSPORTATION FUNDS**

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In 1991, the Federal Intermodal Surface Transportation Efficiency Act (ISTEA) established the Surface Transportation Program (STP) to provide funding for a variety of highway and transit capital projects. Since the expiration of the ISTEA, various federal legislative acts have continued to provide federal funds to the cities and counties that are referred to as Surface Transportation Program – Local (STP-L) funds.

Each fiscal year, the Los Angeles County Metropolitan Transportation Authority (LACMTA) allocates STP-L funds to the 89 local agencies within Los Angeles County based on population. The City of Agoura Hills currently receives approximately \$60,000 annually.

Enacted on December 27, 2020, Title IV of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021, appropriated an additional 10 billion dollars nationally to provide funding to help address coronavirus disease 2019 (COVID-19) impacts related to Highway Infrastructure Programs (HIP). On April 22, 2021, the LACMTA approved the City's HIP allocation in the amount of \$96,362.

The most common types of projects programmed with STP-L and HIP funds are:

- Repaving/Reconstruction/Rehabilitation of streets
- Transit Capital projects
- Bicycle and pedestrian facilities
- Safety improvements and hazard elimination
- Transportation enhancement activities and control measures
- Bridge improvements on federal aid routes and/or local streets

In June, LACMTA offered agencies the opportunity to exchange their STP-L and HIP funds for LACMTA Local Transportation Funds. The exchange agreement includes the City's current STP-L balance of \$59,716, plus an additional four (4) years of future allocated funds in the amount of \$243,020; and \$96,362 of HIP funds for a total balance of \$399,098. It should be noted, LACMTA will collect a two percent administration fee of \$7,982. This fee effectively offsets the time staff would have spent processing the federal paperwork. With the City Council's approval of the Exchange Agreement, the City's net amount would total \$391,116.

The primary benefit of the exchange is the City would receive the funds after execution of the agreement and would not be subject to the current state and federal reimbursement requirements. In addition, the funds would not lapse for three (3) years, enabling greater spending flexibility.

The proposed agreement has been reviewed by the City Attorney and approved as to form.

## **RECOMMENDATION**

Staff respectfully recommends the City Council authorize the Mayor to sign the Exchange Agreement with the Los Angeles County Metropolitan Transportation Authority on behalf of the City Council.

Attachment: Exchange Agreement

**EXCHANGE AGREEMENT AND ASSIGNMENT OF FEDERAL SURFACE  
TRANSPORTATION PROGRAM- LOCAL AND HIGHWAY INFRASTRUCTURE  
PROGRAMS FUNDS**

This Exchange Agreement and Assignment of Federal Surface Transportation Program- Local and Highway Infrastructure Programs Funds ("AGREEMENT"), is made and entered into as of June 1, 2021, by and between the City of Agoura Hills ("CITY") and the Los Angeles County Metropolitan Transportation Authority ("LACMTA").

**RECITALS:**

CITY is eligible for and has available Federal Surface Transportation Program- Local ("STP-L Funds") and Highway Infrastructure Programs funds ("HIP Funds").

- A. CITY desires to exchange \$302,736 of CITY's STP-L Funds ("STP-L Funds Balance") and its total allocation of \$96,362 of CITY's HIP Funds ("HIP Funds Balance") that LACMTA approved on April 22, 2021 for a like total amount of \$399,098 of LACMTA Local Transportation Funds ("LACMTA Funds").
- B. LACMTA is willing to exchange \$399,098 in LACMTA Funds for a like total amount of CITY's STP-L Funds and CITY's HIP Funds subject to the terms and conditions contained herein.
- C. An exchange of CITY's STP-L Funds and CITY's HIP 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 \$302,736 of CITY's STP-L Funds and \$96,362 of CITY's HIP Funds. LACMTA shall be authorized to deduct such amounts from CITY's STP-L Funds Balance and CITY's HIP Funds Balance, respectively. 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 and HIP Funds.

2. LACMTA hereby accepts CITY's assignment of CITY's STP-L Funds and CITY's HIP 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 amounts of CITY's STP-L Funds Balance and CITY's HIP Funds Balance, as defined herein, which CITY's STP-L Funds Balance and CITY's HIP Funds Balance show that CITY has sufficient STP-L Funds and HIP Funds to meet its obligations hereunder, and (iii) LACMTA's deduction of CITY's STP-L Funds and CITY's HIP Funds as provided in paragraph 1 above, LACMTA shall pay CITY \$391,116 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 Funds Balance" and CITY's "HIP Funds Balance" shall mean the amounts of funds contained in CITY's STP-L Funds and CITY's HIP Funds accounts as of the date that this AGREEMENT is fully executed, which include CITY's apportionment share of FY21 STP-L Funds, estimated additional apportionment share of STP-L Funds for FY22 through FY25, and share of HIP Funds from the federal Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) that was enacted on December 27, 2020. If the STP-L Funds Balance and HIP Funds Balance become insufficient to satisfy CITY's exchange obligations hereunder, CITY hereby authorizes LACMTA to deduct from CITY's future balance of STP-L funds until LACMTA has in the aggregate received the amount of CITY's STP-L Funds and CITY's HIP Funds specified in paragraph 1 above.

4. CITY must complete and submit an Automated Clearing House (ACH) form (Exhibit A) through LACMTA's website 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 an STP-L and HIP 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 "Eligible Project" shall mean the transportation activities described in Exhibit B that: i) would normally qualify under Section 133(b) of Title 23, U.S.C: or ii) are for costs related to preventive maintenance, routine maintenance, debt service payments, availability payments, operations, personnel (including salaries of employees and those employees who have been placed on administrative leave, or contractors), and coverage for other revenue losses due to the coronavirus pandemic. Any other applicable federal regulations and standards related to procurement and 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 or paid for an eligible transportation activity".
- 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 HIP Funds Balance, then from CITY's STP-L Funds Balance, 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 HIP, STP-L 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 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 and HIP 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 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 and CITY's HIP 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 AGOURA HILLS**

Kelly Fisher  
Acting Director of Public Works  
30001 Ladyface Ct.  
Agoura Hills, CA 91301

**LACMTA**

Ashad Hamideh  
Senior Director, Countywide Planning and Development  
One Gateway Plaza (Mail Stop: 99-23-3)  
Los Angeles, California 90012-2952

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 AGOURA HILLS**

By: \_\_\_\_\_

Stephanie N. Wiggins  
Chief Executive Officer

By: \_\_\_\_\_

Denis Weber  
Mayor

**APPROVED AS TO FORM:**

Rodrigo A. Castro-Silva  
County Counsel

**APPROVED AS TO FORM:**

Candice K. Lee  
City Attorney

By: \_\_\_\_\_  
Deputy

By: \_\_\_\_\_  
City Attorney

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## STATEMENT OF WORK

### Project Description

The Pavement Rehabilitation Project includes, but is not limited to, crack sealing, localized aggregate base and pavement repair, resurfacing with Asphalt-Rubber Hot Mix (ARHM) for roadways and conventional Asphalt Concrete (AC) for cul-de-sacs at various locations within the City of Agoura Hills.

### Schedule

Advertise:	May 2022
Award Contract:	June 2022
Start Construction:	July 2022
Complete Construction:	August 2022

### Budget

Road Rehab Fund:	\$450,000
Measure R (Local):	\$100,000
LACMTA Funds:	<u>\$391,116</u>
Total Project Cost:	\$941,116