

AMENDMENT No. 1 TO FUNDING AGREEMENT
BETWEEN CITY OF COMMERCE AND
THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

This Amendment No. 1 to Funding Agreement (this "Amendment"), is dated as of November 5, 2018, by and between City of Commerce ("GRANTEE"), and the Los Angeles County Metropolitan Transportation Authority ("LACMTA").

RECITALS:

A. GRANTEE and LACMTA entered into that certain Funding Agreement No. 920000000F5108, dated September 22, 2011, (the "Existing FA"), which Existing FA provides for the Garfield Avenue/Washington Boulevard Multimodal Intersection Improvement (the "Project"); and

B. Whereas, LACMTA Board on July 26, 2018, desires to extend the lapsing date of the Project to June 30, 2019; and

C. GRANTEE and LACMTA desire to amend the Existing FA as provided herein.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Part II, Paragraph 8 of the Existing FA is hereby amended by deleting it in its entirety and replacing it with the following:

“8. TIMELY USE OF FUNDS/REPROGRAMMING OF FUNDS:

8.1 GRANTEE must demonstrate timely use of the Funds by:

- (i) executing this Agreement within ninety (90) days of receiving formal transmittal of the Agreement from LACMTA, or by December 31st of the first Fiscal Year in which the Funds are programmed, whichever date is later; and
- (ii) meeting the Project milestone due dates as agreed upon by the LACMTA and GRANTEE in the FA; milestones include, but are not limited to the following:
 - a. for project development, GRANTEE must complete phase by the end of the second fiscal year following the year the Funds were first programmed; and
 - b. for right-of-way, GRANTEE must follow its right-of-way acquisition policies and must show a realistic schedule for completion of acquisition required for the project agreed upon by LACMTA and GRANTEE prior to Agreement execution; and
 - c. for construction or capital purchase projects, contracts shall be awarded within nine (9) months from the date of completion of design. Project design (preliminary engineering) must begin within six (6) months from the identified milestone start date; and
- (iii) submitting the Quarterly Progress/Expenditure Report; and
- (iv) funds programmed for FY2015-16 and FY 2016-17 are subject to lapse by June 30, 2019.

8.2 Quarterly Progress/Expenditure Reports will be used to evaluate compliance with the Project milestone due dates as identified in the FA. If the Project does not meet the milestone due dates as agreed upon in the FA, LACMTA will issue a notice of non-compliance to the GRANTEE, and the GRANTEE will be required to develop a written recovery plan illustrating in detail the GRANTEE's actions to resolve the delay and to meet the Project completion date agreed upon in the FA (the "Recovery Plan"). If the Recovery Plan is deemed viable by LACMTA staff, and meets the Project completion date agreed upon in the FA, LACMTA may grant an administrative schedule update as long as the Funds are expended in compliance with (iv) above. If GRANTEE fails to submit a Recovery Plan within 30 days of the notice of non-compliance from LACMTA, or the Recovery Plan illustrates that the Project will

not meet the lapse date in the FA, LACMTA may recommend potential deobligation of the Funds as part of its annual Call for Projects Recertification/Deobligation process. GRANTEE will ONLY be allowed to request a one-time lapsing date extension of 20-months from the final lapse date, which request is subject to LACMTA's Technical Advisory Committee (TAC) consideration as part of the annual Call for Projects Recertification/Deobligation process.

8.3 Recertification of Funds will be based on Project progress and is subject to meeting the Project milestones as agreed upon in the FA.

8.4 If GRANTEE does not complete one element of the Project, as described in the FTIP Project Sheet, due to all or a portion of the Funds lapsing, the entire Project may be subject to deobligation at LACMTA's sole discretion. In the event that all the Funds are deobligated, this Agreement shall automatically terminate.

8.5 If the GRANTEE fails to meet any of the conditions in paragraph 8.1 above, the Project shall be considered lapsed and will be submitted to the LACMTA Board for deobligation. Expenses that are not invoiced within 60 days after the lapsing date are not eligible for reimbursement."

2. Part I, paragraph 10, is hereby added to the Existing FA as follows:
"10. LACMTA understands GRANTEE is unable to complete the Project as originally scheduled and needs additional time to complete the Project beyond the current lapse date. LACMTA is willing to allow GRANTEE until June 30, 2019 to demonstrate that it has taken affirmative steps toward completing the Project within a reasonable timeframe. Therefore, GRANTEE shall complete the following activities ("New Milestone") by the lapse date: advertise for construction. If GRANTEE fails to complete the New Milestone by the applicable lapse date, LACMTA may determine that there is not sufficient progress being made and then LACMTA may determine GRANTEE is in default hereunder and LACMTA shall have all rights to terminate this Agreement for default as described in Part II, Section 9.

3. Except as expressly amended hereby, the Existing FA remains in full force and effect as originally executed. All rights and obligations of the parties under the Existing FA that are not expressly amended by this Amendment shall remain unchanged.

IN WITNESS WHEREOF, the parties have caused this Amendment No. 1 to be duly executed and delivered as of the above date.

LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY

By: _____
Phillip A. Washington
Chief Executive Officer

Date: _____

APPROVED AS TO FORM:

MARY C. WICKHAM
County Counsel

By:  _____
Deputy

Date: 12/26/18

CITY OF COMMERCE

By: _____
Hugo A. Argumedo
Mayor

Date: _____

By: _____
Lena Shumway
City Clerk

Date: _____

APPROVED AS TO FORM:

By: _____
Noel Tapia
City Attorney

Date: _____