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Amended and Restated Congestion Reduction Demonstration Agreement

by and between the
U.S. Department of Transportation
and its Los Angeles-area Congestion Reduction Partners

Executive Summary

This Amended and Restated Congestion Reduction Demonstration Agreement sets forth an agreement in principle between the U.S. Department of Transportation (the "Department") and the Department's Los Angeles-area Congestion Reduction Partners, comprised of the California Department of Transportation and the Los Angeles County Metropolitan Transportation Authority (collectively, the "Partner Agencies"). Under this agreement, the Partner Agencies agree to convert the high-occupancy vehicle ("HOV") lanes on I-10 and I-110 to dynamically-priced high-occupancy toll ("HOT") lanes. In addition, the Partner Agencies agree to convert the HOV lanes on I-210 to dynamically-priced HOT lanes, subject to the availability of financing for the costs thereof. In connection with their agreement to convert the HOV lanes to HOT lanes on I-10 and I-110, the Department will allocate to the Partner Agencies not less than $210.6 million in Federal transit assistance.

Memorandum of Understanding

THIS AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING (this "MOU"), dated as of July 24, 2008, is made by and among the Secretary of Transportation (the "Secretary"), the Federal Transit Administration ("FTA") (the FTA and the Secretary, collectively, the "Department"), and the undersigned State, county and/or municipal governmental entities, as the case may be (collectively, the "Partner Agencies"). This MOU supersedes, amends and restates in its entirety that certain Memorandum of Understanding, dated as of April 25, 2008, by and between the Department and the Partner Agencies.

1. **Agreement in Principle.** This MOU sets forth an agreement in principle among the undersigned concerning the terms and conditions of Federal assistance to be provided by the Department for the transportation projects described herein. This MOU represents solely the intent of the parties (including, without limitation, the intent of the Department to allocate funds as set forth in Section 4(a) of this MOU), and no party shall be legally bound hereby. Any agreement between the Department and the Partner Agencies concerning funding of the transportation projects described herein shall be set forth in a grant agreement (or a series of grant agreements) (the "Grant Agreements") to be negotiated and executed by the parties to this MOU. The Department reserves the right in its sole discretion not to fund any of the projects (or any part thereof) described in this MOU or otherwise set forth in the application (the "Application") filed by the Partner Agencies to the Congestion Reduction Demonstration Program (the "CRD Program").

2. **Background.** Transportation system congestion is one of the greatest threats to our Nation's economic prosperity and way of life. Whether it takes the form of trucks stalled in traffic, cargo stuck at overwhelmed seaports, or airplanes stuck on the tarmac, congestion costs the Nation an estimated $200 billion each year. The problem of traffic congestion in our major metropolitan areas in particular is severe and worsening. In 2005, traffic jams in the Nation's cities cost Americans 4.2 billion hours and 2.9 billion gallons of fuel. Congestion is also affecting the quality of life in America by robbing us of time that could be spent with families and friends and in participation in civic life.

The signatories to this MOU do not believe that gridlock is our inevitable fate. In November 2007, the Department solicited by notice published in the Federal Register (at 72 FR 63951 (2007)) (the "Federal Register Notice") certain metropolitan-area proposals to implement congestion pricing together with complementary transportation solutions, including transit service and innovative technology. In accordance with the process described in the Federal Register Notice, the Department has selected the Partner Agencies as recipients of Federal assistance in order to support the congestion reduction strategy for the Los Angeles metropolitan area described in the Application.

3. **Designation of Partner Agencies.** In accordance with the Federal Register Notice and for purposes of this MOU, the Department designates each of the following entities a "Partner Agency" (which shall be a "qualified jurisdiction" for purposes of the procedures described in the Federal Register Notice):

(a) California Department of Transportation, as lead agency; and
(b) Los Angeles County Metropolitan Transportation Authority.

4. **Grant Agreements.** The Department and the Partner Agencies agree to negotiate a grant agreement (or a series of grant agreements) that would reflect the following terms and conditions:

(a) **Projects and Sources of Funding.**

(i) The Department shall make available from funds appropriated in Fiscal Year 2007 under the Department's 5309 Bus and Bus Facilities Program (the "Bus Program") an amount not less than $210.6 million to support any project on the Adopted 2006 Regional Transportation Improvement Program ("RTIP") (including, without limitation, any project set forth on Appendix A) eligible to receive Federal assistance under the Bus Program (collectively, the "Transit Projects"); provided that (i) a Partner Agency duly applies for such funds and expends such funds on the Transit Projects and (ii) the Partner Agencies shall convert, and together shall reserve and make available an amount sufficient to pay for the conversion of, the High-Occupancy Vehicle ("HOV") lanes set forth on Appendix B to High-Occupancy/Toll lanes (the "Appendix B HOT Lanes").

(ii) The Partner Agencies shall convert the HOV lanes on I-210 to HOT lanes, as further described on Appendix C (the "Appendix C HOT Lanes" and, collectively with the Appendix B HOT Lanes, the "HOT Lanes"), subject to the availability of financing for the costs thereof, the enactment of legal authority therefor, the California Environmental Quality Act, as amended, and the National Environmental Policy Act of 1967, as amended. ***As of the date of this MOU, the Department estimates that the borrowing capacity of a HOT lane "network" created by the conversion of I-10, I-110 and I-210, as described in the Application, is at least $780 million.***[1] For avoidance of doubt, the conversion of the HOV lanes to HOT lanes on I-210 shall not be a condition to the funding of the amount set forth in Section 4(a)(i).

(iii) The Partner Agencies agree that, except for the HOT Lanes on I-110, none of the HOT Lanes shall be accessible by vehicles carrying two persons for a fee that is less than the fee payable for access by vehicles carrying one person (or for no fee).

(iv) The fee payable for access to the HOT Lanes shall vary dynamically according to demand for entry onto the HOT Lanes.

(b) **Completion of Projects.** The Appendix B HOT Lanes (and, subject to section 4(a)(ii), the Appendix C HOT Lanes) shall be in revenue operation by not later than December 31, 2010, unless otherwise agreed by the Department and the Partner Agencies. In the event of a delay in implementation of any HOT Lane due to circumstances beyond the control of the Partner Agencies, the Department may negotiate an extended completion date or exercise any of its remedies under the Grant Agreements.

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[1] See *Memorandum from Scully Capital Services, Inc. to Mark Sullivan, Director, TIFIA Joint Program Office*, dated as of April 4, 2008, based on guidance from the Los Angeles County Metropolitan Transportation Authority.

(c) **Other Terms and Conditions.** Each of the Grant Agreements shall additionally provide that:

(i) No funds obligated by the Grant Agreements shall be drawn down by the recipient unless and until:

a. all legal authority necessary to implement the Conversion (as defined section 5), including, without limitation, legal authority to implement congestion pricing, has been duly adopted, which authority shall:

i. provide that, in the event the Secretary, the U.S. Under Secretary of Transportation or the Administrator of the Federal Highway Administration determines, at any time after the date of the Conversion, that any I-110 HOT lane facility (each, an "I-110 HOT Lane Facility")[2]does not maintain an average operating speed of 45 miles per hour or greater in either the morning (AM) or evening (PM) peak hour for 75 percent or more of 180 consecutive weekdays (the "Level of Service"), then within five months after the date of such determination, the HOV designation on such I-110 HOT Lane Facility shall be increased to HOV3 solely with respect to the Peak and Shoulders Period (as defined in section 5 below) in the direction that does not maintain the Level of Service;

ii. provide that, beginning after the first month during which a I-110 HOT Lane Facility does not maintain the Level of Service and for so long as it shall not maintain the Level of Service, the Partner Agencies shall refund in the form of cash or a toll credit to each single occupant user of such facility the toll paid by such user for a trip thereon if such user was subject during the trip to an average operating speed of less than 45 miles per hour during the Peak and Shoulders Period; and

iii. be duly adopted by the State of California in statute not later than October 15, 2008.

b. the chief executive officer or the director, as the case may be, of each of the Partner Agencies executes and delivers to the Secretary a certificate, in form and substance acceptable to the Department, to the effect that the Partner Agencies have made available an amount sufficient to pay for the Conversion, which certificate shall be delivered to the Secretary not later than September 30, 2008.

(ii) No funds obligated by the Grant Agreements shall be drawn down by the recipient unless each Partner Agency agrees to exempt privately operated over-the-road buses from tolls to the same extent it exempts (or propose to exempt)

[2] For purposes of this section 4(c)(i).a.i, there are two I-110 HOT Lane Facilities, one carrying traffic northbound and the other carrying traffic southbound. Each I-110 HOT Lane Facility consists of two lanes and runs for approximately 16 lane miles between 182nd Street and Adams Boulevard.

public transportation from tolls charged on the HOT lanes on I-10 and I-110 (and on I-210, in the event HOT lanes are instituted thereon).

(iii) The Department reserves the right to de-obligate funds obligated under any of the Grant Agreements (or to require the return of such funds) in the event a Partner Agency breaches or otherwise fails to perform under any of the Grant Agreements;

(iv) Each Partner Agency makes customary representations to the Department that the Conversion and the Transit Projects comply (or will comply) with all applicable Federal, State and local laws;

(v) Each Partner Agency agrees to provide to the Department (and its designees) access to all data collected by the Partner Agencies with respect to the Conversion and the Transit Projects for purposes of the Department's oversight responsibilities; and

(vi) To the extent requested by the Department, each Partner Agency agrees to designate an independent third party to perform all program evaluations required by law or as reasonably directed by the Department in order to assist in the evaluation of the Conversion and the Transit Projects.

(d) Actions Prior to Execution of Grant Agreements. Prior to the execution of the Grant Agreements, the Department shall have received the following, in addition to usual and customary deliverables:

(i) New or amended applications to the Bus Program or any other program of the Department, as and to the extent required by the Department; and

(ii) An opinion of counsel from each Partner Agency, satisfactory in form and substance to the Department, concerning the compliance of the Conversion and the Transit Projects with California state law.

5. Certain Definitions. For purposes of this MOU:

"Conversion" shall mean the conversion of the HOV lanes identified on Appendix B to HOT lanes that are variably priced by demand for entry onto such HOT lanes; provided, however, that for purposes of sections 4(c)(iv) through (vi) and section 4(d)(ii), "Conversion" shall mean the conversion of the HOV lanes identified on Appendix B and Appendix C to HOT lanes that are variably priced by demand for entry onto such HOT lanes.

"Peak and Shoulders Period" shall mean, with respect to any I-110 HOT Lane Facility, the periods of time on each weekday (other than holidays) (i) starting at 6:00am and ending at 10:00am (the "Morning Peak and Shoulders Period") and (ii) starting at 3:00pm and ending at 7:00pm (the "Evening Peak and Shoulders Period").

6. Use of Revenues. Subject to applicable Federal statutes concerning the use of toll proceeds, the laws of the State of California concerning the use of toll proceeds shall control with respect to the revenue from the HOT Lanes.

[Signatures appear on the following page.]

United States Department of Transportation

Date 7/25/08

Authorized Person
U.S. Department of Transportation

James S. Simpson

Date 7/29/08

James S. Simpson
Administrator
Federal Transit Administration

Partner Agencies

Date 7/24/08

Will Kempton
Director
California Department of Transportation

Date 07/24/08

The Honorable Antonio R. Villaraigosa
Chair
Board of Directors
Los Angeles County Metropolitan Transportation Authority

Date 7-24-08

Roger Snoble
Chief Executive Officer
Los Angeles County Metropolitan Transportation Authority

Appendix A

Bus and rail car purchases
Additional high capacity buses
Vanpool program
Rail cars for San Bernandino and Riverside lines
Bus division upgrade
Upgrade of Union Division
Transit station improvements
Platforms and parking at the Metrolink Pomona Station
Freeway stop for Silver Streak and commuter lines
Improved local bus access (new bus stops)
Ticket vending machines, signage, & security improvements
Busway and track improvements
Double track, white to San Dimas Ave. on San Bernardino line
Transportation systems mgmt. improvements – harbor transitway extension through downtown Los Angeles (BRT - bus only lanes)
San Gabriel valley corridor park and ride improvements
Improve West Covina park & ride
Expand bus bays and/or park & ride facilities at the El Monte transit center

Appendix B

Phase 1 HOV Lane to HOT Lane Conversions (dollars in millions)	Gross Cost[3]
I-10 from Alameda Street/Union Station to I-605 (28 lane miles) at "HOT-3"[4]	$59.9
I-110 from 182nd Street/Artesia Transit Center to Adams Blvd (33 miles) initially at "HOT-2"[5]	$71.0
Total	$130.9

[3] Source: *Congestion Reduction Demonstration Initiatives Application for Los Angeles County Region*, dated as of December 31, 2007, p. 22.
[4] "HOT-3" means a High-Occupancy/Toll lane accessible for no fee by a High-Occupancy Vehicle carrying three or more occupants.
[5] "HOT-2" means a High-Occupancy/Toll lane accessible for no fee by a High-Occupancy Vehicle carrying two or more occupants.

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Appendix C

Phase 1 HOV Lane to HOT Lane Conversions (dollars in millions)	Gross Cost[6]
I-210 from I-210/SR 134/I-710 to I-605 (24 lane miles)	$51.4

[6] Source: *Congestion Reduction Demonstration Initiatives Application for Los Angeles County Region*, dated as of December 31, 2007, p. 22.