

**Metropolitan Transportation Commission  
Programming and Allocations Committee**

October 11, 2023

Agenda Item 2c - 23-1215

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**MTC Resolution No. 4404, Revised. Regional Measure 3 Policies and Procedures**

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**Subject:**

Revision to Regional Measure 3 (RM3) Policies and Procedures to introduce procedures for the ferry component of the RM3 operating program and revise procedures for operating agreements.

**Background:**

*RM3 Operating Program Overview*

Bay Area voters approved Regional Measure 3 (RM3) on June 5, 2018, and on December 19, 2018, the Bay Area Toll Authority (BATA) adopted a toll schedule phasing in the resulting toll increase. The first and second dollars of the toll increase were implemented on January 1, 2019 and January 1, 2022, respectively. The lawsuits challenging RM3 were appealed to the California State Supreme Court, which finally resolved the litigation of RM3 in January 2023. The Bay Area Toll Authority released the toll funds held in escrow pending the litigation and terminated the escrow agreement in March 2023.

Toll revenues will finance the implementation of the RM3 Expenditure Plan, which identifies capital projects and operating programs to improve transportation options regionwide. RM3 will support capital projects ranging from new BART cars to interchange improvements at key regional bottlenecks. 16% of RM3 revenues each year are assigned to the operating program, in order to support annual operating assistance for Transbay Terminal operations, expanded ferry service, and regional express bus.

*Proposed Revisions to RM3 Policies and Procedures*

MTC Resolution No. 4404 was last revised in May 2023 to introduce guidance for the Transbay Terminal and express bus components of the RM3 Operating Program, deferring final guidance for the ferry component to a later date pending additional coordination with the San Francisco Bay Area Water Emergency Transportation Authority (WETA). This month's proposed revisions introduce guidance for the ferry component, carrying over key provisions from the Regional Measure 2 (RM2) Policies and Procedures such as processes for applying for an allocation and disbursing funds; eligibility requirements; and guidance for consistency with regional, state, and federal plans and policies.

The proposed revisions also address elements that are unique to the ferry component of the operating program, including WETA's operating reserve. The RM3 statute established that

unused funds for ferry operations shall be transferred to a reserve account for future use by WETA for capital or operating purposes.

Additionally, the proposed revisions also modify the guidance related to the operating agreements between MTC and all operating program project sponsors required under the RM3 statute. Previously, the policies and procedures established that this requirement would be satisfied via the MTC Master Funding Agreement and Supplemental Agreements. Following the first cycle of RM3 Operating Program administration, staff recommend revising this guidance to implement a similar process to that of RM2, as the Master Funding Agreement and Supplemental Agreements introduced a disproportionate level of administrative burden for MTC and project sponsors.

#### *WETA Operating Reserve*

The RM3 statute appears to outline a plan for WETA to receive \$70 million in operating assistance over the first four years of toll collection, spanning fiscal years (FY) 2018-19 through 2021-22, and then 58% of Operating Program revenues from year five (FY2022-23) onward. However, with the phasing in of the \$3 RM3 toll over multiple years, sufficient funds would not have been available to meet a \$70 million commitment in addition to funding other RM3 Operating projects, had there not been an interruption to the RM3 program due to litigation. To help resolve the conflict in the RM3 statute language surrounding the amount of revenue that should go to WETA, WETA has agreed to receive 58% of Operating Program revenues for FY2018-19 through FY2021-22, with the understanding that remaining Operating Program funds are made available to support express bus operators in response to the fiscal cliff. As such, \$60 million in RM3 Operating Program revenue from FY2018-19 through FY2022-23 will be transferred to WETA's operating reserve.

#### **Issues:**

RM3 generated roughly \$23.8 million in operating assistance for Express Bus from FY2018-19 through FY2021-22, plus an additional \$11.5 million provided to express bus operators in FY2022-23. Funds generated between FY2018-19 and FY2021-22 will be programmed and allocated at a later date following continued engagement with potential sponsors and will focus on addressing the transit operating funding fiscal cliff. Additionally, staff will bring resolutions

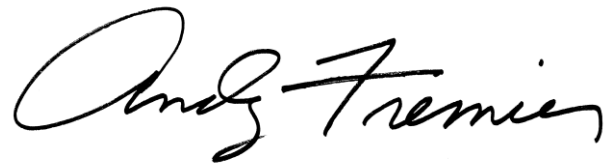
to approve programming and allocation of FY2023-24 RM3 Operating Program funds in the coming months.

**Recommendations:**

Refer MTC Resolution No. 4404, Revised to the Commission for approval.

**Attachments:**

Attachment A: MTC Resolution No. 4404, Revised

A handwritten signature in black ink that reads "Andrew B. Fremier". The signature is written in a cursive style with a large initial "A".

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Andrew B. Fremier

Date: December 18, 2019  
Referred by: PAC  
Revised: 05/24/23-C  
10/25/23-C

ABSTRACT

Resolution No. 4404, Revised

This resolution adopts the policies and procedures for the expenditure plan of Regional Measure 3 (RM3), included in Attachment A, *Regional Measure 3 Policies and Procedures* (with attachments).

This resolution was amended on May 24, 2023 to introduce policies and procedures for the RM3 operating program and make adjustments to the policies and procedures for the RM3 capital program.

This resolution was amended on October 25, 2023 to modify the policies and procedures for the RM3 operating program, providing guidance for the ferry program and revising procedures for operating agreements.

Additional discussion of this Resolution is available in the Programming and Allocations Committee summary sheets dated December 11, 2019, May 10, 2023, and October 11, 2023.

Date: December 18, 2019  
Referred By: PAC

RE: Policies and Procedures for Implementation of the Expenditure Plan of Regional Measure 3 (RM3)

METROPOLITAN TRANSPORTATION COMMISSION  
RESOLUTION NO. 4404

WHEREAS, pursuant to Government Code Section 66500 *et seq.*, the Metropolitan Transportation Commission (“MTC”) is the regional transportation planning agency for the San Francisco Bay Area; and

WHEREAS, Streets and Highways Code Sections 30950 *et seq.* created the Bay Area Toll Authority (“BATA”), which is a public instrumentality governed by the same board as that governing MTC; and

WHEREAS, on June 5, 2018, a special election was held in the City and County of San Francisco, and the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma (individually, each a “County” and, collectively, the “Counties”) to approve a toll increase of three dollars (\$3.00) phased in over time, including a one dollar (\$1.00) toll increase on January 1, 2019, a one dollar (\$1.00) toll increase on January 1, 2022, and a one dollar (\$1.00) toll increase on January 1, 2025, for vehicles traveling on the state-owned bridges located in the San Francisco Bay Area (“Regional Measure 3”); and

WHEREAS, on September 26, 2018, the Bay Area Toll Authority (“Authority”) adopted Resolution No. 126 accepting certified statements from the Registrar of Voters of the City and County of San Francisco and each of the Counties and observing that a majority of all voters voting on Regional Measure 3 (“RM3”) at such special election voted affirmatively for RM3; and

WHEREAS, on December 19, 2018, the Authority adopted Resolution No. 128 adopting a toll schedule phasing in the toll increase approved pursuant to RM3, effective on January 1, 2019; and

WHEREAS, RM3 establishes the RM3 Expenditure Plan and identifies specific capital projects and programs and operating programs eligible to receive RM3 funding as identified in Sections 30914.7(a) and (c) of the California Streets and Highways Code; and

WHEREAS, BATA shall fund the projects of the RM3 Expenditure Plan by bonding or transfers to MTC; and

WHEREAS, MTC has developed policies and procedures for the implementation of the RM3 Expenditure Plan as set forth in Attachment A to this Resolution, attached hereto and incorporated herein as though set out in full; now, therefore be it

RESOLVED, that MTC hereby adopts the attached policies and procedures for the implementation of the RM3 Expenditure Plan as set forth in Attachment A; and, be it further

RESOLVED, that the Executive Director is hereby delegated the authority to make non-substantive changes to Attachment A as deemed appropriate to implement the RM3 Expenditure Plan.

METROPOLITAN TRANSPORTATION COMMISSION

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Scott Haggerty, Chair

The above resolution was entered into by the Metropolitan Transportation Commission at the regular meeting of the Commission held in San Francisco, California, on December 18, 2019.

Date: December 18, 2019  
Referred by: PAC  
Revised: 05/24/23-C 10/25/23-C

# **Regional Measure 3 Policies and Procedures**

**December 2019  
Amended October 2023**

**MTC Resolution No. 4404  
Attachment A**

**Metropolitan Transportation Commission**

**Programming and Allocations Section**  
<http://www.mtc.ca.gov>

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## SECTION 1 – GENERAL PROVISIONS

### **BACKGROUND**

On June 5, 2018, voters passed Regional Measure 3 (RM3), raising the toll for all vehicles on the seven State-owned toll bridges in the San Francisco Bay Area by a total \$3.00, phased in through one-dollar increments. This toll increase is to fund various transportation projects within the region that have been determined to reduce congestion or to make improvements to travel in the toll bridge corridors, as identified in SB 595 (Chapter 650, Statutes of 2017). Specifically, RM3 establishes the Regional Measure 3 Expenditure Plan and identifies specific capital and operating projects and programs eligible to receive RM3 funding as identified in Sections 30914.7 (a) and (c) of the California Streets and Highways Code.

The following serve as the general provisions in the management of RM3 funding.

Note: Some of the projects identified in the Regional Measure 3 Expenditure Plan may include complementary bridge toll funds (specifically, RM1 and AB1171) to complete their project funding plan. The administration of the bridge toll funds in these cases will also be governed by these policies and procedures, unless otherwise stated in the allocating resolution. For Regional Measure 2 funds, the Regional Measure 2 Policies and Procedures (MTC Resolution No. 3636, Revised) remain in effect. In general, for RM3 projects with complementary bridge toll funds, the governing policies and procedures will be stated as part of the allocation.

### **FUND MANAGEMENT**

The collection of toll revenue is estimated to equal \$127 million annually per dollar of toll increase. Costs to administer the program are an annual drawdown on the revenue. Up to 16 percent of RM3 revenues each year will be made available for operating projects. Available revenue for capital allocations will vary annually and will be subject to the availability of funds. Finally, first year costs include the required reimbursements to counties for the costs of administering the RM3 ballot measure as part of the June 5, 2018 election.

#### **Program Financing Costs**

It is the intent of the Commission to implement those projects and programs outlined in Streets and Highways Code Section 30914.7 (a) and (c), to the funding amounts designated. The cost of bonding and financing associated with RM3, including interest payments shall be considered a program cost and shall be identified in the annual RM3 Budget as the first priority repayment. The financing costs are not expected to reduce the overall funding level available to projects and programs.

#### **Matching Funds**

A local match is not required for RM3 funds. Complementary funds (non-RM3 funds) for the project phase where RM3 funds are being requested and identified in the financial plan should be available at the time of allocation. Regional Measure 3 funds can be used as the match for state or federal fund sources requiring a local or non-federal match.

### **PUBLIC INVOLVEMENT PROCESS**

The capital improvement projects and operating assistance for transit services identified for funding in RM3 are established by state legislation (Senate Bill 595, Chapter 650, Statutes of 2017, or as subsequently amended) approved by the voters on June 5, 2018. In accordance with the legislation as approved by the voters, the Bay Area Toll Authority (BATA) is the financial manager for RM3 funds, whose responsibilities include the preparation of financial plans, the issuance of debt financing, and the disbursement of funds to project sponsors. The Metropolitan Transportation Commission (MTC) is the program and project coordinator, whose responsibilities include reviewing project applications, programming and allocating funds to specific projects, and monitoring project delivery. In some cases, MTC or BATA also serves as the project sponsor or co-sponsor.

Generally, in conducting its review and approval responsibilities stipulated under RM3, MTC will adhere to its public participation policies as outlined in MTC Resolution No. 4147, Revised, MTC's Public Participation Plan, or successor resolution.

Specific statutory provisions require further that as part of its assessment of the status of programs and projects under RM3, MTC may make a finding that a program or project cannot be completed or cannot continue due to financing or delivery obstacles making the continuation of the program or project unrealistic, or that a project may be funded using non-RM3 funds. MTC may then determine that the funding will be reassigned. Under these circumstances, the Commission shall hold a public hearing on the project after consultation with the program or project sponsor. The process outlined in MTC's Public Participation Plan for notification of actions at BATA, Commission, and committee meetings will be adhered to. After the hearing, the Commission may vote to modify the program or the project's scope, decrease its level of funding, or reassign all of the funds to another or an additional regional program or project in the same corridor.

### **COMPLIANCE WITH OTHER REQUIREMENTS**

It is the responsibility of project sponsors to ensure their agency's compliance with all applicable local, regional, state, and federal requirements.

### **INDEMNIFICATION OF MTC**

The sponsor shall indemnify and hold harmless MTC, BATA, and their Commissioners, officers, agents, and employees from any and all claims, demands, suits, loss, damages, injury, and/or liability, direct or indirect, incurred by reason of any act or omission of sponsor, its officers, agents, employees, and subcontractors, under or in connection with the RM3 program. Sponsor agrees at its own cost, expense, and risk, to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against MTC, BATA, and their Commissioners, officers, agents, and employees, or any of them, arising out of such act or omission, and to pay and satisfy any resulting judgments.

## **SECTION 2 – CAPITAL PROGRAM GUIDANCE**

### **BACKGROUND**

Projects eligible to receive funding from the Capital Program of the Regional Measure 3 (RM3) Expenditure Plan are those projects identified to receive funding under Section 30914.7(a) of the California Streets and Highways Code (S&HC). The capital program is managed in a manner where allocations are approved based upon project sponsor need and readiness and the availability of funding in the bridge toll program. MTC's goal is to carry out the intent of the legislation and ensure that programs and projects are delivered.

### **CAPITAL PROJECT DEFINITION**

#### **Initial Project Report (IPR)**

Project sponsors with projects identified to receive funding under Section 30914.7(a) of the S&HC were required to submit an Initial Project Report (IPR) to MTC within six months of the election date, or by December 5, 2018. An updated report must be submitted as needed or as requested by MTC; at a minimum, sponsors must submit an updated IPR along with any funding allocation request. The Commission will consider approval of the report, or updated report, in conjunction with the allocation of funds.

This report shall include all information required to describe the project in detail, including the status of any environmental documents relevant to the project, additional funds required to fully fund the project, the amount, if any, of funds expended to date, and a summary of any impediments to the completion of the project. This report, or an updated report, shall include a detailed financial plan and shall notify the Commission if the project sponsor will request toll revenue within the subsequent 12 months. Specific information on the Initial Project Report format is included in Appendix A.

#### **Useable Segment/ Deliverable Product**

RM3 funds for capital projects will be allocated with the specific intent of achieving a product. Deliverable products shall be considered as:

- A completed planning or transit study/ environmental decision/ project approval documentation when allocating to the environmental phase;
- The final design package including contract documents when allocating to the final design phase;
- Title to property/ easements/ rights of entry / possession or utility relocation when allocating to the right of way phase;
- A completely constructed improvement (or vehicle/equipment acquisition/rehabilitation) available for public usage when allocating to the construction phase.

The expenditure of RM3 funds for any phase of the project should lead to making available to the public a useable or operable segment in accordance with the legislative intent. Any additional funds required to fully fund the project must be identified in the uncommitted funding plan of the Initial Project Report (IPR). If the RM3 revenues are funding only a phase or segment of a larger project, it must be demonstrated that the RM3 deliverable phase or segment is fully funded with committed funds.

**Project Phases**

Project costs and revenue must be separated into the following project phases:

1. Planning Activities, Environmental Studies & Preliminary Eng (ENV / PE / PA&ED)
2. Final Design - Plans, Specifications and Estimates (PS&E)
3. Right-of-Way Activities /Acquisition / Utility Relocation (R/W)
4. Construction / Rolling Stock Acquisition / Operating Service (CON)

(Planning studies should be categorized under the environmental phase. Vehicle acquisition or equipment purchase should be categorized under the construction phase.)

The project sponsor must display the project in these four components in the Initial Project Report and expenditure (cash flow) plans. If the project sponsors intend to use alternate delivery methods, including but not limited to design/build and design/build/operate/maintain, the preparation of the Request for Proposal is considered Final Design phase. The alternate delivery package is considered the Construction phase.

**ALLOCATION AND FUNDING AGREEMENT PROCESS**

The allocation process for RM3 capital projects shall also serve as the process for executing funding agreements, in most cases in lieu of a separate funding agreement for each capital project. These agreements will generally be fully executed through a process of project sponsor governing board certification, followed by Commission allocation action. However, under S&HC Section 30914.7(d)(2), MTC has the option of entering into an agreement between itself and a capital project sponsor addressing specific requirements to be met.

An IPR for capital projects, as outlined in S&HC Section 30914.7(d)(1) and detailed in Appendix A, shall be prepared and adopted by the appropriate governing board prior to MTC approval of the IPR and allocation of funds. The sponsor is expected to certify, through an action of its governing board, that certain conditions (general and project specific) are acknowledged and will be adhered to and compliance with the RM3 Policies and Procedures. Along with the certification of conditions from the project sponsor governing board and the IPR, the sponsor will need to provide evidence that the other fund sources contributing toward that project phase are committed. It is recommended that the sponsors submit the allocation request to MTC staff for review sixty days prior to the action by their governing board.

Upon completion of the lead sponsor governing board certification, the Commission will consider the allocation of RM3 funds. An allocation request is considered complete and ready for Commission consideration when all of the component elements to the request are submitted and approved by MTC staff. The Commission's resolution approving the allocation of RM3 funds, based on staff's review of the IPR and corresponding allocation request package, will serve as an agreement between MTC and the implementing agency and may include project specific conditions. Where the Commission approves an amount less than the sponsor requested, the Commission allocation amount prevails. Reimbursement of funds is subject to meeting the conditions as stipulated in the MTC allocating resolution.

**Allocation Principles**

The Commission will carefully consider each allocation and apply the following principles in its allocation decisions:

1. **Replacing Previously Committed Funds.** RM3 funds will not be utilized as a replacement fund source on capital projects for any funds that have been programmed or allocated previously to the project, for the phase requested by the project sponsor, if such replacement results in a shortfall for the overall project or places prior programming commitments in jeopardy.
2. **Required Evidence of a Fully Funded Project Phase.** The Commission will allocate funds for capital projects only if it finds that the project phase is fully funded, either entirely with RM3 funds or with a combination of RM3 funds and other allocated funds. To receive an allocation of RM3 funds for a jointly funded phase, the other contributing funds must be approved, authorized, assigned and allocated to that phase of work by the authorizing authority. At the request of the project sponsor, the Commission may, on an exception basis, consider allocations of RM3 funding conditioned on the allocation of other funds for that phase. In granting conditional allocations, the Commission will consider the nature and timing of other funding commitments to the requested and future phases of work.
3. **Phase at a Time Allocations.** Allocations will only be made to projects one phase at a time: environmental/project approval, final design, right of way, and construction. Exceptions will be considered on a case-by-case basis; however, the Commission will strive to minimize funding risks in making allocation exceptions.
4. **Environmental Clearance.** RM3 funds will not be utilized for any capital expenditure, either for right of way or construction, until the project has been environmentally cleared and approved by the project sponsor. Pursuant to California Environmental Quality Act Public Resources Code §21000, et seq., all applicants are required to submit proof of having a valid environmental document that has been certified by the County Clerk for each project. Please refer to Public Resources Code and Title 14 of the California Code of Regulations for more information. If a project is federally funded or is anticipated to be federally funded, project sponsors must submit proof of having approved National Environmental Policy Act documents.
5. **Conditions of Right of Way Allocations.** RM3 funds will be allocated for right of way capital and support only after the project has identified and committed construction capital funds. The Commission will consider exceptions whereupon investment in right of way can be recovered if the project does not go forward or where securing right of way early is financially or strategically advantageous and allowable. If the Commission approves an allocation of RM3 funds for advance acquisition of right of way meeting the conditions as outlined above, the project sponsor shall provide that the land is held in escrow until project approval occurs for the transportation improvement. Advance acquisitions made prior to completion of environmental and location processes are not to influence environmental assessment of the project. Note that there are federal and state laws, regulations and policies governing acquisition and relocation activities. It is not intended that the use of RM3 funds shall waive any of the laws, regulations, or policies that may apply.

6. **Deliverable Product.** RM3 funds will be allocated with the specific intent of achieving a deliverable product. The ability of the product to be completed will be taken into consideration when the Commission allocates funds to the project. Any impediments to achieving the specific product shall be brought to the attention of staff and the Commission in the Initial Project Report, allocation requests, and through progress reports submitted by the project sponsor. If in the opinion of the Commission, impediments are such that the required product is unachievable, the Commission may withhold allocations, rescind allocations or withhold reimbursements on previously allocated funds. The Commission reserves the right to issue a 30-day stop notice in the event it has to reevaluate the project per S&HC Section 30914.7(e).
7. **Risk Management.** Project sponsors must show adequate establishment of a risk management process for both project budget and schedule in allocation requests. Allocation requests must discuss how project contingencies were set and demonstrate risk assessment through tools such as risk registers and mathematical risk models, as appropriate for project size. (Absent other project sponsor protocol, MTC recommends maintaining a risk register for projects with total budgets over \$25 million, and maintaining a mathematical risk model such as bottom-up (Monte Carlo simulation) or top-down (FTA Beta Range) methods for projects with total budgets over \$100 million.)
8. **Complementary Funds Consideration.** Projects with funding from other sources may be given priority if there are pending timely use of funds requirements on the other fund sources.
9. **Complementary Funds Spend Down Rate.** Other fund sources committed to a project phase that are complementary to RM3 funds will be expected to be spent down at an approximate proportional rate to RM3 funds. Exceptions and proposals to consider alternative cash flows from other fund sources must be approved in advance, in writing by MTC staff.
10. **Transit Operating Considerations.** For transit systems, an allocation of funds for capital expenditures, either right of way or construction, may be predicated on an ability to demonstrate that the transit service has a reasonable plan for operations funding.
11. **Ability to Use Funds in a Timely Manner.** Projects that expect to begin expenditure of RM3 funds within 6 months of the planned allocation approval date will be prioritized for allocation. Exceptions where commitment or allocation of funds are needed earlier to keep a project moving forward will be considered on a case-by-case basis.

### **Allocation Request Process**

Project sponsors or implementing agencies must initiate an allocation request by submitting a draft Initial Project Report and Sponsor/ Implementing Agency Resolution 60 days prior to the required Committee action. Thirty days prior to the Committee action, the project sponsor or implementing agency must submit the completed allocation application package to MTC. The allocation request consists of the following, detailed in Appendix A, and is available on the Internet (as applicable) at: <http://www.mtc.ca.gov>:

Intent to Request an Allocation (60 days prior to Committee action):



1. Updated Initial Project Report
2. Complete Allocation Request Form
3. Draft Sponsor/ Implementing Agency Resolution

Allocation Application Package (30 days prior to Committee action):

1. Sponsor/ Implementing Agency Resolution of Project Compliance
2. Opinion of Legal Counsel / MTC-BATA Indemnification\*
3. Board or Official Governing Body Approved Updated Initial Project Report (IPR) and Allocation Request
4. Environmental Documentation (as applicable)
5. Evidence of Allocation and Commitment of Complementary Funds

\* Project sponsors have the option of consolidating the 'Opinion of Legal Counsel / MTC-BATA Indemnification' within the 'Implementing Agency Governing Board Resolution of Project Compliance'.

### **LETTERS OF NO PREJUDICE**

The Commission will consider approving a Letter of No Prejudice (LONP) to preserve RM3 eligibility for project expenses prior to the allocation of RM3 funds. The intent of an LONP is to allow a project sponsor to advance a project that is ready to proceed to a deliverable phase, but for the availability of RM3 funds. Project sponsors that receive an LONP will be responsible for delivering the usable project segment or complete phase with alternate funds before RM3 funds are available, at risk to the project sponsor. An RM3 LONP does not represent a general funding commitment by MTC; in the event that RM3 funds do not become available, there is no expectation that MTC or BATA will provide alternate funds. Following issuance of an LONP, if and when RM3 funds are available, the Commission would consider an allocation of funds for the work scope covered under the LONP. After allocation approval, eligible expenses incurred under the RM3 LONP, back to the date of the LONP approval, would then be eligible for reimbursement with RM3 funds.

### **LONP Eligibility**

MTC will consider issuing an LONP for a proposed scope of work that adheres to the allocation principles listed in this document (including, but not limited to, a fully-funded project phase, environmental clearance requirements, and deliverable product).

Projects requesting an LONP must be a capital project eligible under the legislated expenditure plan, meeting any of the following criteria:

1. The project has a clearly defined scope in the legislation, not requiring further programming action by project sponsor(s)
2. The project has a single project sponsor in the legislation
3. The listed project sponsor(s) have taken board action to define or program an RM3 project that doesn't have a clearly defined scope or program in the legislation. For MTC-sponsored or co-sponsored projects, no LONPs will be issued unless the project or program is fully defined or programmed.

MTC staff will provide additional guidance to potential LONP recipients regarding a specific project's eligibility.

## **LONP Request Process**

Project sponsors or implementing agencies must initiate an LONP request in a similar manner to the Allocation Request Process outlined in this document, by submitting an Updated Initial Project Report, Letter of No Prejudice Request, and Sponsor/ Implementing Agency Resolution 60 days prior to the required Committee action. Thirty days prior to the Commission action, the project sponsor or implementing agency must submit the completed LONP application package to MTC. The LONP request package consists of the following, detailed in Appendix A, and is available on the Internet (as applicable) at <http://www.mtc.ca.gov>:

Intent to Request an LONP (60 days prior to Committee action):

1. Updated Initial Project Report
2. Completed LONP Request Form
3. Draft Sponsor/ Implementing Agency Resolution

LONP Application Package (30 days prior to Committee action):

1. Sponsor/ Implementing Agency Resolution of Project Compliance
2. Opinion of Legal Counsel / MTC-BATA Indemnification\*
3. Board or Official Governing Body Approved Updated Initial Project Report (IPR) and LONP Request
4. Environmental Documentation (as applicable)
5. Evidence of Allocation and Commitment of Funds

\* Project sponsors have the option of consolidating the ‘Opinion of Legal Counsel / MTC-BATA Indemnification’ within the ‘Implementing Agency Governing Board Resolution of Project Compliance’.

## **Allocation of RM3 Funds Following LONP**

If and when RM3 funds are available for allocation, the Commission will consider an allocation of funds for the work scope covered under an approved LONP through the allocation process detailed elsewhere in this document.

## **Reimbursement of RM3 Funds for Work Covered Under LONP**

Following allocation of RM3 funds for work scope covered under an LONP, sponsors will seek reimbursement following the same process detailed elsewhere in this document. If expenditures made by the project sponsor are determined to be ineligible according to these policies, MTC has no obligation to reimburse for those expenditures.

## **EXPENDITURES AND REIMBURSEMENTS**

### **Authority to Expend**

The project sponsor must obtain the Commission’s approval of the allocation and description of eligible costs prior to incurring costs. Project sponsors shall not receive reimbursement for costs incurred prior to MTC approval of the allocation of funding. Project sponsors shall proceed solely at their own risk in advertising, opening bids, or awarding a contract prior to an allocation of RM3 funds. The advertising, bid opening, or awarding of a contract by the sponsor shall in no way prejudice the Commission into making an allocation it deems unsuitable. Final allocation decisions will be subject to the availability of funds.

If a project or project component is ready for implementation earlier than RM3 funding is available for reimbursement, the sponsor may request an allocation of funds covering eligible expenditures but only with the full understanding that reimbursement will be deferred until RM3 funds are available in accordance with an approved allocation. Approval of such request is at the Commission's discretion. This is distinct from consideration of a Letter of No Prejudice, and is intended for a situation in which RM3 funds are available for allocation, but not immediately available for reimbursement.

### **Eligible Expenses**

To ensure that RM3 funds are put to the most efficient use, limitations on allowable expenses have been placed on environmental, design, right of way, construction, staff support, oversight, consultant services and other aspects of project delivery. Furthermore, agency overhead costs, including administrative support, office equipment, and office leases, shall not exceed the cap as described under "Implementing Agency Costs" below.

For all project phases, RM3 funds are limited to the statutorily authorized amount:

#### **1. Environmental Studies and Preliminary Engineering**

Expenses incurred by sponsor staff and consultant staff for environmental study costs, including determination of the appropriate environmental document, preparation of all preliminary engineering for each alternative, including geometric layouts, determination of right-of-way needs, environmental technical studies (such as air, noise, energy, cultural resources and hazardous waste), and all other studies or activities necessary to prepare and to finalize the appropriate environmental document for approval are eligible for reimbursement. Environmental costs eligible for reimbursement shall be limited to the project as described in S&HC Section 30914.7(a). Any environmental costs associated with an element of the environmentally scoped project that is beyond the project scope and intent as outlined in S&HC 30914.7(a) and approved by the Commission in the Allocation Request is not eligible for reimbursement under RM3.

#### **2. Design Costs**

RM3 funds are eligible for expenses incurred by sponsor staff and consultant staff for design activities related to the project scope identified in S&HC 30914.7(a) and as approved by the Commission in the allocation request. These activities include but are not necessarily limited to, preparation of alternative design studies; materials and foundation reports; drainage, hydrology and hydraulic reports; management oversight; surveying and mapping; preparation of the Plans, Specifications and Estimate (PS&E); preparation of bid documents and files for project; preparation of permit applications and maintenance agreements; coordination of agency reviews and any other activities necessary to prepare final PS&E for bid advertisement and award.

#### **3. Right-of-Way Acquisition and Utility Relocation**

RM3 funds are eligible for expenses incurred by sponsor staff and consultant staff for all activities related to right-of-way, advanced right-of-way, and hardship acquisitions, including determination of right-of-way needs; title searches; parcel appraisals; hazardous materials disposition; preparation of right-of-way acquisition documents; negotiation with property owners; activities involved with acquiring rights-of-way including condemnation

proceedings, right-of-way capital costs, and cost-to-procure impacts related to the acquisition; utility relocation costs.

Services provided for right-of-way activities involved with the property but not necessary for the RM3 project as defined in the scope of work approved by the Commission in the IPR shall be at the expense of the sponsor and borne by non-RM3 fund sources.

If any excess right-of-way is sold, or otherwise disposed of, the value of such property shall be returned to MTC, including any profit realized from the sale of the property based on the prorated percentage of funds MTC contributed to the purchase of the property.

#### **4. Construction Costs**

RM3 funds are available to cover all construction expenditures for the project including construction capital, management and inspection, surveys, public outreach, and others as appropriate that are part of the scope of work approved by the Commission in the Allocation Request. RM3 funds are eligible for reimbursement of sponsor's management oversight expenses associated with the construction of the project. This would include activities such as construction management, inspection, expenses associated with reviewing proposed change orders, and activities involved with managing the fund sources contributing to the project.

Any questions regarding eligible costs will be resolved in writing by MTC staff. Capital improvements, vehicle procurements, and equipment purchases for the implementation of the approved RM3 projects are eligible for construction funds. Vehicles procured with RM3 funds must be operated in revenue service for their useful life, as defined by MTC's Transit Capital Priorities process and criteria program.

#### **5. Project Sponsor/ Implementing Agency Costs**

The amount for which the project sponsor/implementing agency can be reimbursed will be limited, as described below. In all cases, project sponsor/ implementing agency costs will be reimbursed within the cap of project funds stipulated in RM3.

- a) **DIRECT STAFF COSTS.** Implementing agency staff costs are eligible, provided costs are directly related to the project tasks. Allowable implementing agency staff costs shall include the actual salary and fringe benefits directly related to the project only.
- b) **INDIRECT OVERHEAD COSTS.** An overhead rate for indirect costs can be assessed on direct staff costs (salary and fringe benefit costs) only. The overhead rate shall be calculated by multiplying total labor cost (salaries and fringe benefits as described in above), by the sponsors' or implementing agencies' overhead rate as approved in its OMB Circular A-87 standard or an equivalent rate accepted by MTC. For projects with multiple project sponsors, the project sponsors must mutually agree to the method and overhead rate being applied to that particular RM3 project. The overhead rate effective July 1 of each year shall be applied for the entire fiscal year. Sponsors and implementing agencies may update the rate as of July 1 of each fiscal year. The amount reimbursable for the overhead rate shall not exceed 50% of the direct staff cost and shall not be leveraged on consultant contract or equipment costs. Project sponsors and implementing agencies must self-certify and submit an

independent opinion with respect to its agency compliance with OMB Circular A-87 standards and laws.

- c) **OTHER DIRECT PROJECT COSTS.** Other direct costs as approved by MTC.
- d) **CONSULTANT COSTS.** Consultant services directly responsible for delivering the project are eligible. Consultant services shall be listed separately and supported in the invoice submittal to MTC.

## **6. Miscellaneous Costs**

The costs of fees from other agencies, including permit fees, or reimbursement for review or oversight costs needed for the project are eligible costs. However, the cost of permits or fees from the sponsor will not be eligible. Utility relocation costs are eligible for reimbursement according to previous agreements establishing rights for those utilities. The costs for specialized equipment for testing, analysis or production of documents for project-related work are also eligible.

### **Invoicing and Reimbursements**

All eligible costs shall be invoiced on a reimbursable basis. Sponsors are encouraged to invoice quarterly and not more frequently than monthly. Any exceptions for supplemental payments must be approved in advance by MTC. For each fiscal year in which expenditures are incurred, sponsors should invoice at least once in that fiscal year. Invoices shall include only eligible costs and must show that the RM3 and matching fund sources are reimbursed and drawn down at approximately the same rate as the RM3 funds. Costs shall be accounted for in the invoice, sufficient to detail services performed with respect to the project scope as approved by MTC and payments made. An invoice format is provided to sponsors by MTC and shall include appropriate supporting reports from the sponsoring agency's general ledger. Approval of invoices shall be contingent on the timely submittal of Progress Reports. In the event such Progress Reports are not complete and current, approval of invoices shall be withheld until an acceptable Progress Report is submitted. Final reimbursement of funds will be subject to review of the delivered useable/ operable phase or segment and project close out procedures except if all the funds are used before project closeout.

RM3 expenditures and associated invoices should generally follow the cash flow plan adopted in the allocating resolution. MTC cannot guarantee the availability of funds for reimbursement requests that outpace the adopted cash flow plan.

Projects in or entering complex and capital intensive phases may be provided invoice forms requiring additional information and/or required to submit electronic invoices in addition to hard copies.

### **Availability for Audits**

Sponsors of capital projects shall be available for audits as requested by MTC.

### **TIMELY USE OF FUNDS PROVISIONS AND DEADLINES**

The majority of fund sources used for transportation improvements are bound by timely use of funds deadlines. Failure to meet specific funding milestones can result in the funds being deleted

from the project. In the event of funding loss due to the sponsor's inability to meet timely use of funds provisions, the sponsor must demonstrate that the project or project phase is still deliverable.

Generally, project sponsors should encumber funds within one year of receiving an allocation. With respect to project phase milestones, 1) sponsors should not take more than 3 years to complete the environmental document and clearance process for environmental phase allocations and 2) Right of Way agreements should be finalized within two years of the allocation of funds for right of way acquisition. Deviations from these timely use of funds guidelines should be highlighted in the progress reporting process and sponsors are required to provide an explanation for this lapse.

The expiration date of an RM3 allocation will be set according to the cash flow plan outlined in the allocation request. Final invoices for a project allocation should be submitted within sixty days of the end of the final fiscal year shown in the cash flow plan. Amendments, adjustments and extensions should be requested in writing and must be approved, in writing, by MTC staff.

Project sponsors must demonstrate and certify that they can meet all of the timely use of funds deadlines as part of the financial plan included in the Initial Project Report for the various fund sources on the project. It is encouraged that project sponsors follow the provisions of the Regional Project Delivery Policy (MTC Resolution No. 3606, Revised.).

### **Project Cancellation**

If the RM3 project or project phase is not completed, the project sponsor shall repay MTC any RM3 funds expended above the proportionate share of eligible costs for the project or project phase. With regard to vehicle procurements, removal from revenue service or sale of the vehicle prior to the end of the vehicle's useful life will result in repayment to MTC and the RM3 program for the depreciated value of the vehicle at the time of removal or sale.

Following the Commission consultation with the sponsor, public hearing and determination to redirect funds from the project, payment to MTC shall be made with interest and shall be made in accordance with a negotiated repayment schedule, not to exceed 24 months. MTC shall withhold funds due the sponsor for any missed payments under the negotiated agreement.

## **OTHER PROJECT COST CONDITIONS**

### **Maintenance and Operating Costs**

Pertaining to capital projects outlined in S&HC Section 30914.7(a), it is the obligation of the project sponsor to arrange for all costs to operate and maintain the improvement constructed under RM3. No costs will be considered as eligible for reimbursement out of RM3 capital funds to operate or maintain the facility or any portion of the facility. Requests for any initial startup costs as part of the construction contract must be approved in writing by MTC staff.

### **Escalated Costs**

RM3 funding for any individual project or program shall be limited to the amount designated in the RM3 legislation without escalation notwithstanding the provisions of Section 30914.7(e). If

funding beyond RM3 amounts are required to complete the project phase the sponsor is responsible for securing the additional funding prior to allocation of RM3 funds.

#### Cost Increases

In cases where available RM3 funds are insufficient to complete a project phase, it is the sole responsibility of the sponsor to secure the additional necessary funding. In the event that the sponsor cannot secure additional funding, and/or the project cannot be segmented, phased, or rescope to meet the available funds and still conform to the intent of the legislation and voter mandate, the Commission shall consult with the program or project sponsor, and conduct a public hearing as outlined in S&HC Section 30914.7(e). After the hearing, the Commission may vote to modify the project's or program's scope, decrease its level of funding, or reassign all of the funds to another regional project or program within the same corridor. If the existing project is removed from the RM3 program, MTC and the sponsor agree to share expenditures of eligible costs to date in accordance with the allocation conditions accompanying the project allocation.

Contract change orders or cost increases that may arise once the contract has been awarded that are in excess of \$250,000 or 20% of the project cost, whichever is less, shall be noticed to MTC as soon as those increases have been identified or no later than the next scheduled Progress Report. The project sponsor will provide assurance that the project phase the Commission allocated to is still deliverable. A revised financial plan for the project shall be included as part of the submitted Progress Report.

The sponsor is not authorized to claim any RM3 funds in excess of the allocation amount approved by the Commission.

**In no case shall the financial responsibility of BATA and/or MTC regarding RM3 funds exceed the amount designated in SHC 30914.7(a) and (c), or as amended by the Commission through the process outlined in SHC 30914.7(e).**

#### Cost Savings and Cost Increases at Bid Opening

At the time of bid opening, the responsible low bid may exceed the funding commitment of RM3 funds as well as other fund sources. If in the event of construction budget exceedances, the sponsor may seek an allocation of any remaining RM3 funds not yet allocated to the project only if other funds are committed in sufficient amounts to deliver the construction phase. If all available fund sources are not sufficient to award the project, the sponsor shall consult with MTC on suitable measures to enable the project to proceed, including but not limited to downscoping the project and rebidding, providing additional clarity to enable a more cost-effective bid, or seeking additional revenues. In no case shall the sponsor exceed the levels of RM3 funding allowable under S&HC Section 30914.7(a). In utilizing all available funding from all sources for contract award, the sponsor shall consult with MTC staff on the likelihood of cost increases during construction and what contingencies are available to address these costs, including the presentation of a risk management plan for constraining construction expenditures to available revenues. In the event of projected cost savings at bid opening, the proportional share of RM3 funds will be rescinded and shall be available to the sponsor for any cost increases associated with the project after construction award until the time of final close-out of the bid phase, including the settlement of all claims. Any requests for exceptions will be considered on a case-by-case basis.

## **MONITORING AND REPORTING REQUIREMENTS**

### **Annual Updates**

On an annual basis, sponsors and implementing agencies may be asked to notify the Commission of anticipated allocation requests for the subsequent fiscal year (12 months). The Commission's capacity to allocate RM3 funds depends in part on the information provided by the sponsors and the failure to comply may result in the sponsor's allocation request being deferred until such time when RM3 funds become available.

### **Semi-annual Progress Reports**

As directed by MTC, sponsors and/or implementing agencies will provide MTC with a Semi-Annual Progress Report. Semi-annual periods begin on July 1 and January 1 of any given fiscal year. These reports are meant to update MTC on the project's scope, cost, and schedule. These reports shall include the following:

- Status: the phase currently underway and the progress since the last report; major meetings and decisions on the project; any significant accomplishments; any setbacks to the project. The sponsor should note whether they anticipate any problems, and what area these problems exist in.
- Expenditures to date: these will be specified as expenditures since the prior reporting, and will include all funding sources including RM3. These will be in sufficient detail to determine that they are eligible expenses.
- Schedule changes: any changes in the project schedule as outlined and approved in the IPR and the consequences of those changes, particularly related to project costs. If the schedule has been modified, a revised schedule must be attached.
- Cost changes: all changes should be noted in the Progress Report; changes greater than 20% or \$250,000 dollars, whichever is less, must be accompanied by a detailed explanation of what options the sponsor has considered to manage the change. If costs have changed by more than \$250,000 or 20%, whichever is greater, a revised funding plan and cash flow schedule must be attached.
- Risk management: updates on risk management process, including new and retired risks and updated risk modeling outputs, as applicable.
- Potential Claims: If RM3 funds are utilized for the construction phase of the project, then the sponsor must certify if there are any Notices of Potential Claim. If they exist, a summary of such notices as well as the likely cost or schedule impact shall be included.
- Upcoming allocation requests: Sponsors are requested to provide information on upcoming allocation requests; MTC's capacity to allocate RM3 funds depends in part on the information provided by the sponsors and the failure to comply may result in the sponsor's allocation request being deferred until such time when RM3 funds become available.
- Status of Project Specific Conditions: If project specific conditions were approved as part of the allocation, the sponsor must address the status of meeting the condition.
- Failure to provide the report and required information shall be ground for MTC to withhold reimbursements until a report is submitted and accepted by MTC.

### **Increased Oversight**

MTC may increase oversight of a given project due to many factors, including but not limited to project size or complexity, issues with scope, schedule, or budget, higher than expected bids, difficulties in the environmental or right-of-way phases, level of project sponsor experience with



project type or magnitude, project stakeholders with competing interests, changes in project leadership or key staff, or issues with sponsor capacity in delivering the project. Increased oversight process will be implemented in collaboration with the project sponsor may include, but is not limited to, more frequent reporting periods, direct MTC (or MTC authorized agent) involvement in project meetings, field visits, audits, establishment of or participation in a project oversight group, or reports/investigations into the project by MTC. Projects appearing on the At-Risk Report (see below) will be subject to increased oversight.

### **Project Close Out**

The Implementing Agency shall be responsible for notifying MTC of the completion of project, prior to submitting the final invoice for the project. After notification, MTC staff will provide the sponsor with the appropriate forms to close out the project, specific to the project type. The final close-out procedure for a project may include sponsor provided documentation verifying the completion of the project, summarizing project costs and expenditures with a reconciliation of balances remaining on the project, transmittal of final deliverables, and on-site field visits. For projects that expend all of the RM3 funds before completing the overall project as stipulated in statute, MTC has the discretion to continue requesting progress reports on the project. This will be considered on a case-by-case basis. In case of RM3 projects that include complementary bridge toll funds (RM1/RM2/AB1171) that have not been expended as yet, sponsors will be expected to continue to provide progress reports on the status of these projects.

### **At Risk Report/Cooperation with Consultants**

Upon receipt of the sponsor-submitted semi-annual progress reports, MTC may prepare an At-Risk Report (Report) for submittal to the Commission that outlines critical scope, cost, or schedule changes to the project. The sponsor shall cooperate with MTC or any authorized agent of MTC in the preparation of the Report. The Report may be presented to the Commission to determine the ability of the project or project phase to be delivered, per Section 30914.7(e) of the S&HC. Regarding scope changes, any changes resulting in changes in costs or schedule should be delineated.

## **CONSISTENCY WITH OTHER PLANS AND POLICIES**

Projects receiving RM3 funds must be consistent with many other regional, state, and federal plans and policies, as listed below. This section may be updated to reflect policy changes by those respective bodies. However, sponsors are responsible for ensuring project compliance with all regional, state, and federal plans and policies.

### **RTP/SCS Consistency**

Capital projects seeking allocations must be consistent with the adopted Regional Transportation Plan (RTP)/Sustainable Communities Strategy (SCS), which state law requires be consistent with federal planning and programming requirements. As of the release of RM3 funds and start of RM3 allocations, the current RTP/SCS is Plan Bay Area 2050.

### **Consistency with County Plans**

For capital projects, it is required that all committed project phases be included in an adopted countywide transportation plan(s) consistent with MTC's guidelines—either a Congestion Management Plan (CMP) and/or a Countywide Transportation Plan (CTP). The phase of the project requiring funding shall be in an approved CMP, or in an adopted Capital Improvement

Program (CIP) for counties that have opted out of the CMP requirement, prior to seeking allocation of RM3 funds. For multi-county projects, the project must be in the countywide plans and CMP/CIP of the counties affected by the project.

### **TIP and Air Quality Conformity**

Federal laws governing requirements for regions to achieve or maintain federally mandated air quality standards require that all regionally significant transportation improvements be part of a required regional conformity finding. This regional conformity finding is performed by MTC, the Metropolitan Planning Organization (MPO) for the Bay Area, in concert with the Bay Area Air Quality Management District, and must state that if all the transportation improvements proceed, air quality standards can be reached.

A project is regionally significant if it increases transit or highway capacity or offers an alternative to established regional highway travel. Projects must be included in the conformity analysis, regardless of their fund source. To that extent, all regionally significant RM3 projects must be included in the conformity analysis for the Regional Transportation Plan (Plan) and Transportation Improvement Program (Program). Project sponsors are responsible for updating the TIP listing for their projects following an RM3 allocation or rescission or other significant change to the project. Project specific air quality conformity analysis and findings are the sole responsibility of the project sponsor.

### **Title VI Compliance**

RM3 projects must be consistent with federal Title VI requirements. Title VI prohibits discrimination on the basis of race, color, disability, and national origin in programs and activities receiving federal financial assistance. Public outreach to and involvement of individuals in low income and minority communities covered under Title VI of the Civil Rights Act and the Executive Order pertaining to Environmental Justice is critical to both local and regional decisions. Sponsors of programmatic categories must consider equitable solicitation and selection of project candidates in accordance with federal Title VI and Environmental Justice requirements.

### **Accommodations for Bicyclists, Pedestrians and Persons with Disabilities**

Federal, state and regional policies and directives emphasize the accommodation of bicyclists, pedestrians, and persons with disabilities when designing transportation facilities. As with many existing projects in the Bay Area, an RM3 project is likely to have a number of fund sources that make it whole. A project must incorporate the appropriate policy associated with the fund sources that make up the project. Federal, State, and regional policies and directives regarding non-motorized travel include the following:

#### **Federal Policy Mandates**

The Federal Highways Administration Program Guidance on bicycle and pedestrian issues makes a number of clear statements of intent, and provides best practices concepts as outlined in the US DOT “Policy Statement on Bicycle and Pedestrian Accommodation Regulations and Recommendations.”

[https://www.fhwa.dot.gov/environment/bicycle\\_pedestrian/guidance/policy\\_accom.cfm](https://www.fhwa.dot.gov/environment/bicycle_pedestrian/guidance/policy_accom.cfm)

**State Policy Mandates**

The California Complete Streets Act (AB 1358) of 2008 encourages cities to make the most efficient use of urban land and transportation infrastructure, and improve public health by encouraging physical activity to reduce vehicle miles traveled (VMT). Government Code Section 65302(b)(2)(A) and (B) states that any substantial revision of the circulation element of the General Plan to consider all users.

California Government Code Section 65089(b)(1)(B)(5) requires that the design, construction and implementation of roadway projects proposed for funding in the RTIP must consider maintaining bicycle access and safety at a level comparable to that which existed prior to the improvement or alteration.

Caltrans Deputy Directive 64, states: “the Department fully considers the needs of non-motorized travelers (including pedestrians, bicyclists, and persons with disabilities) in all programming, planning, maintenance, construction, operations, and project development activities and products. This includes incorporation of the best available standards in all of the Department’s practices. The Department adopts the best practices concept in the US DOT Policy Statement on Integrating Bicycling and Walking into Transportation Infrastructure.”

**Regional Active Transportation Plan/Complete Streets Policy**

MTC is developing the first regional Active Transportation Plan to guide investments in infrastructure. RM3 projects shall comply, as appropriate, with the following adopted components of the Active Transportation Plan and future elements as developed and adopted by MTC.

**Complete Streets Policy:** MTC Resolution 4493 requires agencies applying for regional transportation funds to consider safe mobility and improved connectivity to community destinations for all road users, and especially for people biking, walking, rolling and taking transit. This policy applies to project planning, design, funding, construction, reconstruction, and maintenance activities. The policy requires submittal of a Complete Streets Checklist for projects with a total project cost of \$250,000 or more requesting MTC discretionary funding.

**Regional Active Transportation Network:** Projects located on the regional Active Transportation Network shall incorporate design principles based on “All Ages and Abilities” contextual guidance provided by the National Association of City Transportation Officials, as well as the (Proposed) Public Rights-of-Way Accessibility Guidelines (PROWAG) issued by the U.S. Access Board. Compliance with this is primarily tracked through completion of a Complete Streets Checklist as described above.

The Complete Streets Policy, Complete Streets Checklist, and the Active Transportation Network map can be found on the MTC Complete Streets webpage:

<https://mtc.ca.gov/planning/transportation/complete-streets>

**Resolution 4530 Transit-Oriented Communities Policy and Resolution 3434 Transit-Oriented Development Policy**

In order to support the development of communities around new transit lines and stations, MTC adopted a [Transit-Oriented Communities \(TOC\) Policy](#) that applies to existing and planned

transit stops and stations served by key rail, ferry, and bus rapid transit services. As of the release of RM3 funds and start of RM3 allocations, the TOC policy is in an initial implementation period and guidance for compliance with the TOC policy is under development. RM3 projects, as appropriate shall comply with the current guidance and compliance requirements of the TOC policy or the precursor Transit-Oriented Development policy (MTC Resolution No. 3434, Revised) in effect at time of allocation. For fixed-guideway transit extensions that are current moving forward and have been planned under the TOD policy, local jurisdictions must be in compliance with the requirements of the TOD Policy and must commit to achieving TOC Policy compliance by the adoption of the OBAG 4 program, estimated in 2026, through written documentation with MTC.

### **Major Project Advancement Policy**

To support implementation of the transportation investments identified in Plan Bay Area 2050, MTC adopted the Major Project Advancement Policy, or MAP, through MTC Resolution 4537. The MAP includes a funding endorsement framework to guide regional discretionary funding and endorsement, policy reinforcements, and risk management. As of the release of RM3 funds and start of RM3 allocations, the latter two components were under development. RM3 projects, as appropriate, shall comply with MAP requirements in effect at the time of allocation.

### **Intelligent Transportation Systems Policy**

In collaboration with federal, state, and local partners, MTC developed the regional Intelligent Transportation Systems (ITS) Architecture. The San Francisco Bay Area Regional ITS Architecture is a roadmap for integrated and collaborative ITS projects in the Bay Area over the next 10 years and beyond. The Architecture provides the knowledge base necessary to make the most out of technological advances for planning and deployment of intelligent transportation systems that are connected and standardized across the region and beyond.

MTC, state and federal agencies require projects funded with federal highway trust funds to meet applicable ITS Architecture requirements. MTC requires all applicable projects to conform to the regional ITS architecture. Through the on-line Fund Management System (FMS) application process, RM3 project sponsors will identify the appropriate ITS category, if applicable. Information on the regional ITS architecture can be found at: <http://mtc.ca.gov/our-work/operate-coordinate/intelligent-transportation-systems-its>.

### **Transit Coordination Policy**

#### **Res. 3866 (Transit Coordination Implementation Plan)**

Res. 3866 establishes coordination requirements for Bay Area transit operators to improve the transit customer experience when transferring between transit operators and in support of regional transit projects like Clipper<sup>®</sup>, 511, the Hub Signage Program, and the Transit Passenger Survey Program. Any agency that is an eligible recipient of funds subject to allocation or programming by MTC – including RM3 capital funds – is subject to Res. 3866 requirements, or successor resolution in place at the time of allocation. If a transit operator fails to comply, MTC may invoke the provisions of MTC Resolution No. 3866, which could affect access to funds.

### **Ongoing Regional Coordination**

As of the release of RM3 funds and start of RM3 allocations, multiple transit coordination efforts are ongoing at MTC, including the Bay Area Fare Coordination and Integration Study and implementation of the Network Management Business Case Evaluation. As these or other efforts

develop and are adopted into regional policy, MTC will incorporate the policies and any associated requirements into the RM3 Policies and Procedures.

### **MTC Resolution No. 4104 Compliance – Traffic Operations System Policy**

All major new freeway projects included in *Plan Bay Area 2040* and subsequent regional transportation plans shall include the installation and activation of freeway traffic operations system (TOS) elements to effectively operate the region’s freeway system and coordinate with local transportation management systems. MTC requires all applicable RM3 projects to conform to the regional policy. For purposes of this policy, a major freeway project is a project that adds lanes to a freeway, constructs a new segment of freeway, upgrades a segment to freeway status, modifies a freeway interchange, modifies freeway ramps, or reconstructs an existing freeway. TOS elements may include, but are not limited to, changeable message signs, closed-circuit television cameras, traffic monitoring stations and detectors, highway advisory radio, and ramp meters.

### **Regional Communications Infrastructure**

MTC Resolution No. 4104, Traffic Operations System Policy, requires the installation and activation of freeway traffic operations system elements. In order to facilitate implementation of technology-based strategies focused on enhancing safety, mobility and economic vitality of communities, and to expand interoperability among partner agencies, projects must install fiber communications conduit infrastructure if project limits overlap with a proposed project in the final 2019 Regional Communications Strategic Investment Plan, when both financially feasible and consistent with goals stated in the Bay Area Regional Communications Infrastructure Plan.

RM3 projects seeking funds for environmental or plans, specifications, and estimates (PS&E) phases should consider incorporating communications infrastructure into project design, ideally at the project scoping phase leading to programming. A checklist of technical recommendations are listed in the final 2019 Regional Communications Infrastructure Plan (available at the MTC website at <https://mtc.ca.gov/our-work/operate-coordinate/intelligent-transportation-systems/regional-communications-network>). For future RM3 funding commitments on new projects, projects sponsors should work with MTC to identify the appropriate communications component to support the completion of regional communications network throughout the Bay Area. A project is considered “new” if it does not have an approved Project Study Report or applicable scoping document as of December 15, 2019.

### **Interregional Project Funding and Coordination Policy**

MTC Resolution No. 4399 establishes a policy instructing use of regional discretionary funds on projects crossing beyond MTC’s jurisdictional boundary. This policy, limited to capital projects of more than \$100 million or more in total cost, establishes conditions for projects receiving regional discretionary funds and specific requirements based on the funded phase(s). RM3 projects, as applicable, shall comply with this policy.

### **MTC/BATA-SPONSORED RM3 PROGRAMS**

S&HC Section 30914.7(a) lists several programs with MTC or BATA as a sponsor, co-sponsor, or as involved in determining projects:

- (2) Bay Area Corridor Express Lanes
- (3) Goods Movement and Mitigation
- (4) San Francisco Bay Trail/Safe Routes to Transit
- (11) Core Capacity Transit Improvements
- (17) Dumbarton Corridor Improvements
- (25) Richmond-San Rafael Bridge Access Improvements
- (26) North Bay Transit Access Improvements
- (28) Next-Generation Clipper Transit Fare Payment System

MTC/BATA will develop the above-listed programs in partnership with any listed co-sponsors, and in accordance with statute and the RM3 Policies and Procedures, in separate processes. These programs are ineligible for the Letter of No Prejudice process until they have been developed.

Additionally, S&HC Section 30914.7(a) includes two projects without a directly named project sponsor:

(9) Caltrain Downtown Extension. Extend Caltrain from its current terminus at Fourth Street and King Street to the Transbay Transit Center. The Metropolitan Transportation Commission shall allocate funding to the agency designated to build the project, which shall be the project sponsor. Three hundred twenty-five million dollars (\$325,000,000).

(14) Tri-Valley Transit Access Improvements. Provide interregional and last-mile transit connections on the Interstate 580 corridor in the County of Alameda within the Tri-Valley area of Dublin, Pleasanton, and Livermore. The Metropolitan Transportation Commission shall consult with the Alameda County Transportation Commission, the Bay Area Rapid Transit District, and local jurisdictions to determine the project sponsor. One hundred million dollars (\$100,000,000).

MTC will allocate funds to these projects in accordance with S&HC Section 30914.7(a).

## SECTION 3 – OPERATING PROGRAM GUIDANCE

### **BACKGROUND**

Regional Measure 3 (RM3) will provide operating assistance for the following purposes: San Francisco Transbay Terminal (Salesforce Transit Center), Expanded Ferry Service, and Regional Express Bus. These projects are identified in Section 30914.7(c) of the California Streets and Highways Code (California S&HC).

~~Guidance for operations assistance for Expanded Ferry Service will be amended into this document at a later date.~~

RM3 funds for operating assistance will be made available annually in accordance with the policies and procedures defined in this section.

### **ALLOCATION PROCESS**

Prior to the beginning of each fiscal year MTC will adopt a project specific budget for RM3 operating funds. It is against this budget, subject to meeting eligibility requirements and fund availability, that project sponsors should request operating allocations.

### **Funding Amounts**

Section 30914.7(c) of the California S&HC establishes that not more than 16 percent, up to sixty million dollars (\$60,000,000) of the revenues generated each year from the toll increase approved by voters through RM3 shall be made available for operations assistance. Of the annual RM3 Operating Program, the following guidance determines funding levels for operating assistance for the Transbay Terminal, ~~and~~ Regional Express Bus, ~~and~~ Expanded Ferry Service:

1. Transbay Terminal: 8 percent of the amount available for operating assistance, not to exceed five million dollars (\$5,000,000) shall be made available annually for the Transbay Terminal
2. Regional Express Bus: 34% of the amount available for operating assistance, not to exceed twenty million dollars (\$20,000,000) shall be made available annually for Regional Express Bus
3. Expanded Ferry Service: 58% of the amount available for operating assistance, not to exceed thirty-five million dollars (\$35,000,000) shall be made available annually for Expanded Ferry Service

Over the first four years of allocation, spanning Fiscal Year (FY) 2018-19 to FY2021-22, the San Francisco Bay Area Water Emergency Transportation Authority (WETA) is outlined to receive a total of seventy million dollars (\$70,000,000), followed by 58% of funds available for operating assistance from year five onward. However, WETA has agreed to receive 58% of the amount available for operating assistance for the first four years of allocation as well so that RM3 operating assistance can be made available to other eligible operators in light of the transit operating funding needs resulting from the COVID-19 pandemic and its-going effects on operating revenue.

In the event that a portion or all of the toll revenue is not needed for the Transbay Terminal or Regional Express Bus operations, the Metropolitan Transportation Commission shall reduce the allocation accordingly.

### **Regional Express Bus Program Sponsors**

The RM3 statute does not identify eligible sponsors or routes, or a methodology for making such determinations, for Regional Express Bus operating assistance allocations. Beginning in FY 2022-23, a simplified methodology using data available from Regional Measure 2 (RM2) will be used to identify eligible sponsors and program RM3 operating assistance Regional Express Bus funding amounts. RM3 operating assistance for Regional Express Bus will be distributed between RM2 express bus sponsors [SHC Section 30914 (d) (1) to (5)] based on ridership on RM2-supported express bus routes and the combined loss in RM2 express bus operating revenues for FY2021-22 and FY2022-23 (relative to RM2 express bus operating revenues in FY2018-19).

Regional Express Bus routes to be funded with RM3 funds are not identified under this interim methodology. Section 30914.7(c) of the California S&HC directs recipients to utilize RM3 Operating Program funds to operate express bus services that carry the highest number of transit passengers.

In future years, the methodology to identify RM3 Regional Express Bus operating assistance project sponsors and funding amounts may be revised to consider a broader range of factors and/or identify specific routes eligible for RM3 operating assistance.

### **Environmental Documentation**

Operation of transit service is normally a Class I categorical exemption under the California Environmental Quality Act (CEQA). Applicants are asked to self-certify that their RM3 operating project is exempt from CEQA. For projects that are not exempt from CEQA review, all applicants are required to indicate that an environmental document has been filed with the County Clerk. Applicants should consult their environmental officer for guidance in completion of this requirement.

### **Allocation Applications**

An allocation request will be considered complete and ready for consideration by the Commission when all of the component elements to the request are submitted and approved for forwarding to the Commission by MTC staff. Each request must be submitted using the most current forms available on the MTC website. Most operating project sponsors will prepare their requests as part of an application for Transportation Development Act funds submitted to MTC annually. For project sponsors that do not receive those funds, applications for operating assistance should be submitted sixty days prior to the expected allocation date and should include the following material:

1. Cover letter detailing the allocation request;
2. Implementing Agency Resolution; \*
3. Operating Agreement;
4. Opinion of Legal Counsel; \*
5. Environmental documentation;
6. Certifications and assurances; and



## 7. Fiscal audit.

- \* Project sponsors have the option of consolidating the ‘Implementing Agency Resolution’ and the ‘Opinion of Legal Counsel.’

Appendix B details the formats for the Implementing Agency Resolution, Operating Agreement, the Opinion of Legal Counsel, and the Certifications and Assurances. RM3 operating project sponsors not eligible for Transportation Development Act funding should contact MTC for the most recent Operating Agreement.

Staff will review the operating assistance request to ensure that the project request meets eligibility per S&H code 30914.7(c), compliance with financial audit requirements, satisfaction of established performance measures, and other requirements outlined in this Policies and Procedures manual.

### Operating Agreements

In order for RM3 funds to be expended on a project, project sponsors must execute an operating agreement with MTC that meets the requirements outlined in Section 30914.7(c) of the California S&HC. ~~Operating agreements will be executed annually as Program Supplements to the MTC Master Funding Agreement to reflect that fiscal year’s allocation amount.~~ These agreements are to be executed through a process of project sponsor governing board certification followed by Commission allocation action. The annual funding agreement will consist of approval by both project sponsors and MTC of the terms outlined in the sponsor Implementing Agency Resolution and Operating Agreement. The Implementing Agency Resolution should provide evidence of a full funding plan, adherence to performance measures, local agreement to conditions, local certification of absence of legal impediments and local indemnification of the Commission and adherence to the planned activity as outlined in the Operating Agreement.

In the case of operating assistance for the Transbay Terminal and Regional Express Bus, the operating agreement shall include:

1. An operating plan that is consistent with the adopted performance measures described later in this section.
2. A schedule of projected fare revenues or other forecast revenue and any other operating funding that will be dedicated to the service or terminal. The schedule shall include the most recently completed fiscal year, current fiscal year, and a projection for the next five fiscal years
3. Performance statistics for performance measures defined later in this section for the most recently completed fiscal year, current fiscal year, and a projection for the next five fiscal years
4. Explanation of the methodology used to forecast fare revenues, other operating revenues, and performance measures

In the case of operating assistance for Expanded Ferry Service, the operating agreement shall include:

1. An operating plan that is consistent with the adopted performance measures described later in this section. As outlined in S&HC 30914.7(c), the plan should establish systemwide and route-specific performance measures related to farebox recovery, ridership, and any other measures deemed appropriate by WETA in consultation with

MTC. The plan should also establish a five-year plan for new or enhanced service and describe incremental steps needed to achieve a reasonable level of service productivity and cost-effectiveness.

2. A schedule of projected fare revenues or other forecast revenue and any other operating funding that will be dedicated to the service or terminal. The schedule shall include the most recently completed fiscal year, current fiscal year, and a projection for the next five fiscal years
3. Performance statistics for performance measures defined later in this section for the most recently completed fiscal year, current fiscal year, and a projection for the next five fiscal years
4. Explanation of the methodology used to forecast fare revenues, other operating revenues, and performance measures

## **ELIGIBILITY**

### **Reimbursable Activities**

Transit services eligible to receive operating assistance under RM3 are those projects identified under Section 30914.7(c) of the California S&HC. These services have been determined to reduce congestion or to make improvements to travel in the toll bridge corridors. Due to other federal, state and regional requirements, full eligibility for the receipt of RM3 funding is not determined until approval of the funding allocation by the Commission.

Operating costs included in the operating expense object classes of the uniform system of accounts, exclusive of depreciation and amortization expenses and direct costs for providing charter service, are eligible for RM3 operating assistance. Eligible expenses for operating follow the eligibility criteria for Transportation Development Act funds.

Service initiation costs for RM3 routes – including preparation of environmental clearance – are an eligible expense.

No operator or transit service claimant shall be eligible to receive moneys during the fiscal year from RM3 operating assistance plus RM2 operating assistance, Transportation Development Act Local Transportation Fund, and/or State Transit Assistance, as applicable for operating costs that exceed its actual operating cost for the service identified in California S&HC 30914.7(c) or subsequently amended through an action by the MTC Commission (including payment for disposition of claims arising out of the operator's liability) in the fiscal year less the amount of fare revenues received during the fiscal year.

The period of eligibility for operating expenses is for the fiscal year for which the allocation is made. The term fiscal year has reference to the year commencing July 1 and ending June 30 of the following year.

### **Regional Express Bus Route Eligibility**

Section 30914.7(c) of the California S&HC states that Regional Express Bus operating assistance shall be distributed for bus service in the bridge corridors. The following definitions should be used to determine whether a bus route is eligible to receive RM3 Regional Express Bus operating assistance.

1. Express Bus is defined as either:
  - i. Commuter bus service, defined by the Federal Transit Administration's National Transit Database as local fixed-route bus transportation primarily connecting outlying areas with a central city. Service is characterized by the use of motorcoach vehicles (also known as over-the-road buses), multiple trip tickets, multiple stops in outlying areas, limited stops in the central city, and at least five miles of closed-door service; or
  - ii. Rapid bus service, which is characterized by features to expedite service such as reduced stop spacing (e.g., rapid service pattern) or operation in corridors with designated right-of-way (e.g., bus priority lanes) or transit signal priority.
  
2. Bridge Corridor is defined as either:
  - i. The extents of a BATA Bridge and its approaches; or
  - ii. Arterials that run parallel to a freeway leading to a bridge corridor; or
  - iii. Local streets or arterials connecting to transit service that crosses or runs parallel to a BATA bridge (e.g., BART, AC Transit Transbay Bus, etc.)

### **DISBURSEMENT OF FUNDS**

After approval by the Commission, allocations of RM3 operating funds will be disbursed in accordance with the terms and conditions established in the allocation instructions or program supplement by MTC. Generally, allocation instructions will direct payments to be made on a reimbursement basis no more frequently than once per month. A system of monthly advance payments subject to quarterly adjustments to reflect actual expenses against monthly invoices will be considered by MTC on a case-by-case basis. Sponsors are required to submit the final fiscal year invoice by July 30<sup>th</sup>. All disbursements are subject to the availability of bridge toll revenues, determination of eligible expenses, and execution of the operating agreement. Specific invoicing procedures will be provided to the sponsor.

Disbursement of RM3 operating assistance may be delayed, cancelled, or adjusted based on MTC audit findings of ineligible expenses. Delinquency of report submittals or failure to comply with other RM3 operating assistance conditions could be grounds for withholding disbursement of funding or rescinding allocations.

Funds for operation of the Transbay Terminal and Regional Express Bus must be spent by the deadline provided by MTC in the allocation instructions. Funds that are not utilized within the time provide are returned to the Bay Area Toll Authority (BATA).

### **WETA Operating Reserve**

In accordance with S&HC 30914.7(c)(2)(B)(ii), annual funding made available to WETA for Expanded Ferry Service that is not requested for expenditure by WETA in a given year shall be held by BATA in a reserve account. Funds from this account shall be made available to WETA for any capital or operating purpose. In order to access these funds, WETA shall submit a request to MTC detailing how the funds will be used to support the objectives of RM3. WETA will retain interest earned by funds held in the reserve account.

## **MONITORING REQUIREMENTS**

### **Performance Measures**

Prior to allocation of revenue for transit operating assistance under subdivision (c) of Section 30914.7 of the S&HC, MTC shall adopt performance measures, and sponsors shall report performance to MTC annually. Interim performance measures and relevant definitions are included in Appendix B Part 2.

In the case of operating assistance for the Transbay Terminal and Regional Express Bus, MTC shall:

1. Adopt performance measures related to farebox recovery, ridership, or other indicators, as appropriate. Performance measures shall be developed in consultation with the affected project sponsors. The performance measures are included in Appendix B, Part 2.
2. Grant a project sponsor at least five years to achieve the adopted performance measures. MTC shall use a ridership forecast as the basis for performance measure quantification. If the project sponsor does not achieve the performance measures within the specified timeframe, the project sponsor shall notify MTC, and MTC may revise the performance measures, extend the timeframe to achieve the performance measures, or take action to reduce the funding available for operations if the performance measures are not met within the new timeframe.

Regional Express Bus performance measures will apply to RM3-funded service only, as opposed to systemwide performance.

In the case of operating assistance for Expanded Ferry Service, WETA shall:

1. Adopt a plan that includes systemwide and route-specific performance measures related to farebox recovery, ridership, and any other measures deemed appropriate by WETA in consultation with MTC. WETA will consult with MTC throughout the development of this plan to ensure that it supports the objectives of RM3. This plan will also prioritize the use of RM3 capital funding to support its mission as the operator of ferry services.

In the case of operating assistance for Expanded Ferry Service, MTC shall:

1. Grant WETA at least five years to achieve the systemwide and route-specific performance measures adopted in the plan described above. If WETA does not achieve the performance measures within the specified time frame, WETA, in consultation with MTC, may propose a new timeframe, not longer than an additional five years, to achieve the performance measures and take needed steps to remedy the service to meet the new measures. In the event that performance measures are not met within the new timeframe, WETA may seek additional time to achieve the measures and MTC may determine whether services should continue and may establish other conditions to service in consultation with WETA.

Failure to report and meet performance measures established by MTC may be grounds for delays or adjustment to future allocations. Meeting performance targets, in the case of Regional Express Bus, is not guarantee of continued funding in future years. MTC may revise this Policies and Procedures document to identify a new methodology to determine the programming of Regional Express Bus funds, irrespective of the performance, of any route.

**Fiscal Audit**

Prior to annual allocation of transit operating assistance by MTC, MTC may conduct an independent audit that contains audited financial information, including an opinion on the status and costs of the project and its compliance with the approved performance measures. At a minimum, the fiscal audit will provide the auditor's professional opinion as to whether RM3 operating assistance was spent on eligible costs and performance measures status.

All fiscal and accounting records and other supporting papers shall be retained for a minimum of four years following the close of the fiscal year of expenditure.

**Cooperation with MTC and MTC's Consultants**

Recipients of RM3 operating assistance funds agree to work cooperatively with MTC staff and MTC consultants to provide operating statistics that will be used to monitor the performance of the RM3 operating program and consistency with MTC adopted performance measures. This includes but is not limited to assisting in the collection of survey data, on-board vehicle counts, and making available relevant ridership and costs information. It is important to note that, in most cases, these performance measures will be route-specific and therefore require isolation of the operating cost, passenger boardings, and fare revenue for the route or line for which RM3 operating assistance is provided.

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## **Appendix A – Capital Allocation/Letter of No Prejudice Request Forms**

### **Part 1A: RM3 Implementing Agency Resolution of Project Compliance – Allocation Request**

#### **Resolution No.**

**Implementing Agency:**

**Project Title:**

WHEREAS, SB 595 (Chapter 650, Statutes 2017), commonly referred as Regional Measure 3, identified projects eligible to receive funding under the Regional Measure 3 Expenditure Plan; and

WHEREAS, the Metropolitan Transportation Commission (MTC) is responsible for funding projects eligible for Regional Measure 3 funds, pursuant to Streets and Highways Code Section 30914.7(a) and (c); and

WHEREAS, MTC has established a process whereby eligible transportation project sponsors may submit allocation requests for Regional Measure 3 funding; and

WHEREAS, allocation requests to MTC must be submitted consistent with procedures and conditions as outlined in Regional Measure 3 Policies and Procedures (MTC Resolution No. 4404; and

WHEREAS, (agency name) is an eligible sponsor of transportation project(s) in the Regional Measure 3 Expenditure Plan; and

WHEREAS, the (project title) is eligible for consideration in the Regional Measure 3 Expenditure Plan, as identified in California Streets and Highways Code Section 30914.7(a); and

WHEREAS, the Regional Measure 3 allocation request, attached hereto in the Initial Project Report and incorporated herein as though set forth at length, lists the project, purpose, schedule, budget, expenditure and cash flow plan for which (agency name) is requesting that MTC allocate Regional Measure 3 funds; now, therefore, be it

RESOLVED, that (agency name), and its agents shall comply with the provisions of the Metropolitan Transportation Commission's Regional Measure 3 Policies and Procedures); and be it further

RESOLVED, that (agency) certifies that the project is consistent with the Regional Transportation Plan (RTP); and be it further

RESOLVED, that the year of funding for any design, right-of-way and/or construction phases has taken into consideration the time necessary to obtain environmental clearance and permitting approval for the project; and be it further

RESOLVED, that the Regional Measure 3 phase or segment is fully funded, and results in an operable and useable segment; and be it further

RESOLVED, that (agency name) approves the allocation request and updated Initial Project Report, attached to this resolution; and be it further

RESOLVED, that (agency name) approves the cash flow plan, attached to this resolution; and be it further

RESOLVED, that (agency name) has reviewed the project needs and has adequate staffing resources to deliver and complete the project within the schedule set forth in the allocation request and updated Initial Project Report, attached to this resolution; and, be it further

RESOLVED, that (agency name) is an eligible sponsor of projects in the Regional Measure 3 Expenditure Plan, in accordance with California Streets and Highways Code 30914.7(a); and be it further

RESOLVED, that (agency name) is authorized to submit an application for Regional Measure 3 funds for (project name) in accordance with California Streets and Highways Code 30914.7(a); and be it further

RESOLVED, that (agency name) certifies that the projects and purposes for which RM3 funds are being requested is in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), and with the State Environmental Impact Report Guidelines (14 California Code of Regulations Section 15000 et seq.) and if relevant the National Environmental Policy Act (NEPA), 42 USC Section 4-1 et. seq. and the applicable regulations thereunder; and be it further

RESOLVED, that there is no legal impediment to (agency name) making allocation requests for Regional Measure 3 funds; and be it further

RESOLVED, that there is no pending or threatened litigation which might in any way adversely affect the proposed project, or the ability of (agency name) to deliver such project; and be it further

RESOLVED, that (agency name - include for transit projects/sponsors only) agrees to comply with the requirements of MTC's Transit Coordination Implementation Plan as set forth in MTC Resolution 3866; and be it further

RESOLVED, that (agency name) indemnifies and holds harmless MTC, BATA, and their Commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of (agency name), its officers, employees or agents, or subcontractors or any of them in connection

with its performance of services under this allocation of RM3 funds. (Agency name) agrees at its own cost, expense, and risk, to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against MTC, BATA, and their Commissioners, officers, agents, and employees, or any of them, arising out of such act or omission, and to pay and satisfy any resulting judgments. In addition to any other remedy authorized by law, so much of the funding due under this allocation of RM3 funds as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages, and be it further

RESOLVED, that (agency name) shall, if any revenues or profits from any non-governmental use of property (or project) that those revenues or profits shall be used exclusively for the public transportation services for which the project was initially approved, either for capital improvements or maintenance and operational costs, otherwise the Metropolitan Transportation Commission is entitled to a proportionate share equal to MTC's percentage participation in the projects(s); and be it further

RESOLVED, that assets purchased with RM3 funds including facilities and equipment shall be used for the public transportation uses intended, and should said facilities and equipment cease to be operated or maintained for their intended public transportation purposes for its useful life, that the Metropolitan Transportation Commission (MTC) shall be entitled to a present day value refund or credit (at MTC's option) based on MTC's share of the Fair Market Value of the said facilities and equipment at the time the public transportation uses ceased, which shall be paid back to MTC in the same proportion that Regional Measure 3 funds were originally used; and be it further

RESOLVED, that (agency name) shall post on both ends of the construction site(s) at least two signs visible to the public stating that the Project is funded with Regional Measure 3 Toll Revenues; and be it further

RESOLVED, that (agency name) authorizes its (Executive Director, General Manager, or his/her designee) to execute and submit an allocation request for the (environmental/ design/ right-of-way/ construction) phase with MTC for Regional Measure 3 funds in the amount of (\$\_\_\_\_\_), for the project, purposes and amounts included in the project application attached to this resolution; and be it further

RESOLVED, that the (Executive Director, General Manager, or his/her designee) is hereby delegated the authority to make non-substantive changes or minor amendments to the allocation request or IPR as he/she deems appropriate.

RESOLVED, that a copy of this resolution shall be transmitted to MTC in conjunction with the filing of the (agency name) application referenced herein.



**Part 1B: RM3 Implementing Agency Resolution of Project Compliance – Letter of No Prejudice Request**

**Resolution No.**

**Implementing Agency:**

**Project Title:**

WHEREAS, SB 595 (Chapter 650, Statutes 2017), commonly referred to as Regional Measure 3, identified projects eligible to receive funding under the Regional Measure 3 Expenditure Plan; and

WHEREAS, the Metropolitan Transportation Commission (MTC) is responsible for funding projects eligible for Regional Measure 3 funds, pursuant to Streets and Highways Code Section 30914.7(a) and (c); and

WHEREAS, MTC has established a process whereby eligible transportation project sponsors may submit allocation requests for Regional Measure 3 funding; and

WHEREAS, Letter of No Prejudice (LONP) requests to MTC must be submitted consistent with procedures and conditions as outlined in Regional Measure 3 Policies and Procedures (MTC Resolution No. 4404); and

WHEREAS, (agency name) is an eligible sponsor of transportation project(s) in the Regional Measure 3 Expenditure Plan; and

WHEREAS, the (project title) is eligible for consideration in the Regional Measure 3 Expenditure Plan, as identified in California Streets and Highways Code Section 30914.7(a); and

WHEREAS, the Regional Measure 3 LONP request, attached hereto in the Initial Project Report and LONP Request Form, and incorporated herein as though set forth at length, lists the project, purpose, schedule, budget, expenditure and cash flow plan for which (agency name) is requesting that MTC issue an LONP for Regional Measure 3 funds; now, therefore, be it

RESOLVED, that (agency name), and its agents shall comply with the provisions of the Metropolitan Transportation Commission's Regional Measure 3 Policies and Procedures; and be it further

RESOLVED, that (agency) will fund the scope of work covered under the LONP with (fund source(s)); and be it further

RESOLVED, that (agency) proceeds with this scope of work at-risk, in the event that RM3 funds do not become available for allocation; and be it further

RESOLVED, that (agency) will only be eligible for reimbursement for this scope of work from RM3 funds following an allocation by MTC, for expenses incurred following the date of the LONP approval; and be it further

RESOLVED, that (agency) certifies that the project is consistent with the Regional Transportation Plan (RTP); and be it further

RESOLVED, that the year of funding for any design, right-of-way and/or construction phases has taken into consideration the time necessary to obtain environmental clearance and permitting approval for the project; and be it further

RESOLVED, that the Regional Measure 3 phase or segment is fully funded, and results in an operable and useable segment; and be it further

RESOLVED, that (agency name) approves the LONP request and updated Initial Project Report, attached to this resolution; and be it further

RESOLVED, that (agency name) approves the cash flow plan, attached to this resolution; and be it further

RESOLVED, that (agency name) has reviewed the project needs and has adequate staffing resources to deliver and complete the project within the schedule set forth in the LONP request and updated Initial Project Report, attached to this resolution; and, be it further

RESOLVED, that (agency name) is an eligible sponsor of projects in the Regional Measure 3 Expenditure Plan, in accordance with California Streets and Highways Code 30914.7(a); and be it further

RESOLVED, that (agency name) is authorized to submit an application for an LONP request for Regional Measure 3 funds for (project name) in accordance with California Streets and Highways Code 30914.7(a); and be it further

RESOLVED, that (agency name) certifies that the projects and purposes for which RM3 funds are being requested is in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), and with the State Environmental Impact Report Guidelines (14 California Code of Regulations Section 15000 et seq.) and if relevant the National Environmental Policy Act (NEPA), 42 USC Section 4-1 et. seq. and the applicable regulations thereunder; and be it further

RESOLVED, that there is no legal impediment to (agency name) making LONP requests for Regional Measure 3 funds; and be it further

RESOLVED, that there is no pending or threatened litigation which might in any way adversely affect the proposed project, or the ability of (agency name) to deliver such project; and be it further

RESOLVED, that (agency name - include for transit projects/sponsors only) agrees to comply with the requirements of MTC's Transit Coordination Implementation Plan as set forth in MTC Resolution 3866; and be it further

RESOLVED, that (agency name) shall indemnify and hold harmless MTC, its Commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of (agency name), its officers, employees or agents, or subcontractors or any of them in connection with its performance of services under this allocation of RM3 funds. (Agency name) agrees at its own cost, expense, and risk, to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against MTC, BATA, and their Commissioners, officers, agents, and employees, or any of them, arising out of such act or omission, and to pay and satisfy any resulting judgments. In addition to any other remedy authorized by law, so much of the funding due under any future allocation of RM3 funds to this scope as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages, and be it further

RESOLVED, that (agency name) shall, if any revenues or profits from any non-governmental use of property (or project) that those revenues or profits shall be used exclusively for the public transportation services for which the project was initially approved, either for capital improvements or maintenance and operational costs, otherwise the Metropolitan Transportation Commission is entitled to a proportionate share equal to MTC's percentage participation in the project(s); and be it further

RESOLVED, that assets purchased with RM3 funds including facilities and equipment shall be used for the public transportation uses intended, and should said facilities and equipment cease to be operated or maintained for their intended public transportation purposes for its useful life, that the Metropolitan Transportation Commission (MTC) shall be entitled to a present day value refund or credit (at MTC's option) based on MTC's share of the Fair Market Value of the said facilities and equipment at the time the public transportation uses ceased, which shall be paid back to MTC in the same proportion that Regional Measure 3 funds were originally used; and be it further

RESOLVED, that following an allocation of RM3 funds for this scope of work (agency name) shall post on both ends of the construction site(s) at least two signs visible to the public stating that the Project is funded with Regional Measure 3 Toll Revenues; and be it further

RESOLVED, that (agency name) authorizes its (Executive Director, General Manager, or his/her designee) to execute and submit an LONP request for the (environmental/ design/ right-of-way/ construction) phase with MTC for Regional Measure 3 funds in the amount of (\$\_\_\_\_\_), for the project, purposes and amounts included in the project application attached to this resolution; and be it further

RESOLVED, that the (Executive Director, General Manager, or his/her designee) is hereby delegated the authority to make non-substantive changes or minor amendments to the LONP request or IPR as he/she deems appropriate.

RESOLVED, that a copy of this resolution shall be transmitted to MTC in conjunction with the filing of the (agency name) application referenced herein.

**Appendix A**

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**Part 2: RM3 Sample Opinion of Legal Counsel**

Project sponsors have the option of including the terms and conditions specified below within the Resolution of Local Support as included in Part 1. If a project sponsor elects not to include the specified language within the Resolution of Local Support, then the sponsor shall provide MTC with a current Opinion of Counsel stating that the agency is an eligible sponsor of projects for the Regional Measure 3; that the agency is authorized to perform the project for which funds or Letter of No Prejudice are requested; that there is no legal impediment to the agency applying for the funds or Letter of No Prejudice; and that there is no pending or anticipated litigation which might adversely affect the project or the ability of the agency to carry out the project. A sample format is provided below.

(Date)

To: Metropolitan Transportation Commission  
Fr: (Applicant)  
Re: Eligibility for Regional Measure 3 funds

This communication will serve as the requisite opinion of counsel in connection with the allocation of (Applicant) \_\_\_\_\_ for funding from Regional Measure 3 Expenditure Plan made available pursuant to Streets and Highways Code Section 30914.7(a)(c) for (Project Name) \_\_\_\_\_

1. (Applicant) \_\_\_\_\_ is an eligible sponsor for the Regional Measure 3 funding.
2. (Applicant) \_\_\_\_\_ is authorized to submit [an/a] [allocation/Letter of no Prejudice] request for Regional Measure 3 funding for (project) \_\_\_\_\_  
\_\_\_\_\_
3. I have reviewed the pertinent state laws and I am of the opinion that there is no legal impediment to (Applicant) \_\_\_\_\_ making applications for Regional Measure 3 funds. Furthermore, as a result of my examinations, I find that there is no pending or threatened litigation that might in any way adversely affect the proposed projects, or the ability of (Applicant) \_\_\_\_\_ to carry out such projects.

Sincerely,

\_\_\_\_\_  
Legal Counsel

\_\_\_\_\_  
Print name

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### **Part 3: RM3 Initial Project Report (IPR) Format**

Section 30914.7(d) of the California Streets and Highways Code required that project sponsors with projects listed in the capital program of the Regional Traffic Relief Plan (Section 30914.7(a)) submit an Initial Project Report (IPR) to the Metropolitan Transportation Commission (MTC) by December 5, 2018. Furthermore, MTC requires the project sponsor to submit an updated report along with any funding allocation or Letter of No Prejudice request. The governing board of the agency submitting the allocation or Letter of No Prejudice request must approve the updated IPR before MTC can approve the IPR, Letter of No Prejudice, or allocation of funds. MTC will approve the report, or updated report, in conjunction with the funding allocation or Letter of No Prejudice.

This report shall include all information required to describe the project in detail, including the status of any environmental documents relevant to the project, additional funds required to fully fund the project, the amount, if any, of funds expended to date, and a summary of any impediments to the completion of the project. This report, or an updated report, shall include a detailed financial plan and shall notify the commission if the project sponsor will request toll revenue within the subsequent 12 months. The Initial Project Report is outlined below, with the electronic template available at <http://www.mtc.ca.gov>.

- **Project Description and Sponsor Information**, including identification of lead sponsor in coordination with all identified sponsors, and identification of agency to seek and receive allocations from MTC,
- **Project Delivery Information**, including summary of any impediments to the completion of the project, status of any environmental documents relevant to the project, status of the project phases and delivery milestones, and discussion of the operability of the project once completed.
- **Project Budget Information**, including the total budget for the project, and any prior expenditure.
- **RM3 Funding Need Information**, including RM3 expenditure (cash flow) plan, status of any prior RM3 expenditures, and identification of any RM3 funding needs for the next fiscal year, and beyond.
- **Project Funding Information**, including identification of committed funding to the project, any uncommitted funding required to fully fund the project, and segregation of the RM3 deliverable segment if different from the total project. Any timely use of funds requirements must be noted and incorporated into the overall funding schedule of the financial plan. The RM3 phase or component must be fully funded with committed funds, and it must be demonstrated that the RM3 funded phase or component results in a useable or operable segment. For transit projects resulting in expanded or enhanced services, the sponsor shall document the financial capacity to operate and maintain those services for a period of at least 10 years following the year services are initiated.
- **Allocation Budget Plan**. The sponsor must complete an Estimated Budget Plan (EBP) outlining the agency costs, consultant costs, and any other costs associated with the delivery of the Work Plan element for the allocation request. The EBP should represent

both the RM3 funds as well as the complementary funds (for projects with complementary fund sources) for the entire work scope.

- **Governing Board Action**, including verification of approval of the IPR. The IPR must be approved by the board or governing body of the agency responsible for preparing and submitting the IPR and requested the allocation of RM3 funding prior to MTC approval of the IPR and allocation of funds. Verification of the governing board action should be attached to the IPR.
- **Agency Contact and IPR Preparation Information**, including agency and project manager, and IPR preparer contact information, and date the report was prepared or updated.

#### **Part 4: Environmental Documentation**

Pursuant to California Environmental Quality Act Public Resources Code §21000, et seq., all applicants are required to submit a valid environmental document that has been certified by the County Clerk for each project. Please refer to Public Resources Code and Title 14 of the California Code of Regulations for more information. Applicants are urged to refer to the statutory and regulatory sections cited when preparing any environmental assessment under CEQA or NEPA. Applicants should consult their environmental officer for guidance in completion of this requirement. If a project is federally funded or is anticipated to be federally funded, project sponsors must submit approved National Environmental Protection Act documents.

#### **Part 5: RM3 Evidence of Allocation and Commitment of Complementary Funds**

Applicants are required to submit evidence of the commitment of complementary funds for the phase for which the applicant is seeking an allocation of RM3 funds. Copies of the applicable resolution(s) and/or governing body actions allocating the funds to the phase, within the years displayed in the cash flow plan, must be attached to the allocation request. The applicant must demonstrate that the phase is entirely funded prior to the allocation of RM3 funds.

#### **Part 6: RM3 Allocation Request Form**

The implementing agency must submit a **completed Allocation Request Form** covering the deliverables for which a RM3 funding allocation is being sought. The **Request Form** should be consistent with the parameters included in the Board approved Initial Project Report, and must have sufficient detail regarding each deliverable's scope, cost and schedule. **An Allocation Request Form template is available from MTC by contacting staff or on the website at <http://www.mtc.ca.gov>.** The elements of the **Request Form** will serve as the basis of MTC staff review of project sponsor invoices. MTC staff will work with sponsors to ascertain the work breakdown level appropriate to the funding request being made. The **Request Form** must be submitted with the allocation application request.



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## **Appendix B – OPERATING PROGRAM FORMS**

### **PART 1 – RM3 OPERATING AGREEMENTS**

The information outlined below should be included as an attachment to the Operating Agreement at the time of the execution of the Program Supplement. Applicants should contact MTC for the most recent Operating Agreement forms.

#### **1. Description of Proposed Service**

- a. Map of service area
- b. Description of markets being served (both travel demand as well as inter-operator connections)
- c. Description of methodology used to estimate ridership/assign ridership

#### **2. Service Description (Regional Express Bus Only)**

- a. Service start/end times
- b. Headways in the peak and off-peak
- c. Vehicles in service during the peak and off-peak
- d. Daily revenue vehicle hours

#### **3. Budget Information**

- a. Basis of expense projections (i.e., description of cost model)
- b. Basis of fare revenue projections (assumptions on fare structure, including any increases over the five years, and resulting average fare)
- c. Description of other operating funding sources – if subsidies from other agencies are included, describe status of commitments
- d. Five-year projections and audited past actual and adjusted current year information for operating cost and revenue. Revenue projections should disaggregate fare revenue, TDA, local sales tax, private sector contributions, and other subsidies

#### **4. Operating Data and Performance Measures**

- a. Projections for future fiscal years and audited past actual and adjusted current year information for service parameters including annual ridership, weekday ridership, revenue vehicle hours, and revenue miles
- b. Projections for future fiscal years and audited past actual and adjusted current year information for performance measures, as applicable and specified in Appendix B Part 2

#### **5. Implementation Schedule and Status Report**

- a. Proposed start date, if applicable
- b. Environmental clearance – status and schedule (if applicable)
- c. If partnering with other agencies, provide letters of support from partners
- d. Description of potential implementation issues
- e. Once operational, please provide a status report on the implementation to-date as well as any planned schedule adjustments or other service changes in the coming year.

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## **PART 2 – RM3 PERFORMANCE MEASURES FOR OPERATING PROJECTS**

Note that the RM3 performance measures detailed in this section are interim measures that may evolve in a future fiscal year to include additional focus areas and specific numeric targets, where appropriate. Project sponsors should proceed with monitoring performance for these performance measures until this Policies and Procedures manual is revised.

The objective in establishing performance measures is to ensure that RM3 operating dollars are directed toward services that are financially well-managed, aligned with regional policies, and effective at meeting customer needs. Given that the three components of the RM3 operating program have varying market demands and policy goals, different performance measures apply.

Recipients shall report progress toward performance measures through their annual Operating Agreements. In the interim, performance shall be measured in terms of year-to-year improvement. In the future, the RM3 Policies and Procedures manual may be revised to adopt numeric performance targets against which performance would be measured. In the case of Regional Express Bus, performance shall be measured for RM3-funded routes and not systemwide.

Recipients shall have five years following the establishment of performance measures to meet the standards set for RM3 operating projects. If sponsors have not met the adopted performance measure targets by the close of this period, MTC and project sponsors will take steps as outlined in the RM3 Policies and Procedures. Potential responses include extending the time frame allotted to meet performance measures, revising performance measures, or adjusting future RM3 funding amounts. Meeting performance targets, in the case of Regional Express Bus, is not guarantee of continued funding in future years. MTC may revise this Policies and Procedures document to identify a new methodology to determine the programming of Regional Express Bus funds, irrespective of the performance, of any route.

For the purposes of RM3 operating program performance measures, the following definitions of terms shall apply:

1. **Ridership:** ridership shall be measured as change in boardings (total of all adult, youth and student, senior and disabled, inter-operator paid transfer, and non-revenue boardings) on an RM3-funded service divided by the revenue vehicle hours (the total number of hours that each transit vehicle is in revenue service, including layover time) for the same RM3-funded service.
2. **Farebox recovery:** farebox recovery shall be defined as the ratio of fares collected on the RM3-funded segment to the total operating costs for that same segment. Operating costs are defined as the fully allocated cost for providing service to the RM3-funded segment (consistent with data provided as part of the annual Operating Assistance Plan Agreement). Operators may adjust fare revenues for discounted products (e.g., youth fares, senior fares, multi-ride passes, etc.) to the Clipper standard one-ride fare for the purposes of this calculation.
3. **Operating cost:** operating cost shall be quantified as the fully loaded operating cost, unless an alternative methodology is approved by MTC staff. Fully loaded operating cost is defined as the hourly operating rate that includes both direct and indirect costs. The total service cost shall include both revenue and non-revenue hours for the segment or route/s receiving funds.

**Appendix B**

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**Express Bus Performance Measures**

Performance Measure	Performance Target
1. Farebox recovery ratio	Greater than or equal to prior year (yes/no)
2. Passengers per total hour	Greater than or equal to prior year (yes/no)
3. Percent of trips departing on-time	Greater than or equal to prior year (yes/no)
4. Percent of missed trips	Less than or equal to prior year (yes/no)

**Expanded Ferry Service Performance Measures**

Performance Measure	Performance Target
1. Farebox recovery ratio	Greater than or equal to prior year (yes/no)
2. Passengers per total hour	Greater than or equal to prior year (yes/no)
3. Percent of trips departing on-time	Greater than or equal to prior year (yes/no)
4. Percent of missed trips	Less than or equal to prior year (yes/no)

**Appendix B****Transbay Terminal Performance Measures**

Performance Measure	Performance Target
1. Estimated annual boardings	Greater than or equal to prior year (yes/no)
2. Percent of trips departing Salesforce Transit Center on-time	Greater than or equal to prior year (yes/no)
3. Annual change in lease revenue	Greater than or equal to prior year (yes/no)
4. Provide MTC with the latest version of the following maintenance planning documents, including any review drafts, as an attachment to the operating agreement: <ul style="list-style-type: none"> <li>a. Asset Management Plan</li> <li>b. Building Maintenance Plan</li> <li>c. Risk Management Plan</li> </ul>	Documents provided by deadline (yes/no)
5. Provide MTC with the following customer experience documents, including any review drafts, as an attachment to the operating agreement. This memo should include topics such as: <ul style="list-style-type: none"> <li>a. Memo describing coordination with transit operators</li> <li>b. Memo describing enhancements to cleanliness, safety, elevator/escalator asset condition, wayfinding, park facilities, and commercial facilities</li> <li>c. Customer experience survey results</li> </ul>	Documents provided by deadline (yes/no)
6. Provide MTC with the latest version of the following financial planning documents, including any review drafts, as an attachment to the operating agreement: <ul style="list-style-type: none"> <li>a. 5-year Operations Funding Plan identifying the envisioned revenue sources and amounts to meet projected operating needs</li> <li>b. Budget, including a comparison of budgeted and actual expenditures and a comparison of revenues and expenditures between the current and past year</li> <li>c. Reserve Summary comparing target reserve amounts to actual reserve amounts</li> </ul>	Documents provided by deadline (yes/no)
7. Annual meeting of TJPA partners and MTC to be held within three months of delivering the information listed above to discuss performance and pertinent issues related to the capital, operating, and financial performance of the Salesforce Transit Center.	Meeting held by deadline (yes/no)
8. Percent of near-term recommendations for the <a href="#">Salesforce Transit Center Wayfinding Improvement Plan</a> (a joint TJPA-MTC study concluding in 2020) implemented within 5 years of report completion	Greater than or equal to prior year (yes/no)

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### **PART 3 – CERTIFICATIONS AND ASSURANCES**

(Sample form is available on the MTC website)

Applicant certifies that, if RM3 funding was received in the prior year, it has included the RM3 costs and revenues in its general fiscal audit for that year. Applicant also assures that it will include the RM3 costs and revenues in its general fiscal audit for the year in which funds are requested.

Applicant certifies to one of the following:

- 1) For bus operators, that it has submitted a copy of the California Highway Patrol (CHP) certification, which was issued within the last 13 months indicating compliance with California Vehicle Code §1808.1 and Public Utility Code §99251 (CHP "pull notice system and periodic reports").
- 2) For rail or ferry operators, it certifies that it is current on all inspections and certifications required by federal and state agencies.

Applicant for RM3 funds certifies that it has current SB 602 "joint fare revenue sharing agreements" in place with transit operators in the MTC region with which its service connects, and that it has submitted valid and current copies of all such agreements to MTC.

Applicant also agrees to participate in the Integrated Fare Structure and Transit Connectivity studies authorized in SB 916 (Chapter 715, Statutes of 2004).

Applicant for funds certifies that it complies with MTC's Transit Coordination Implementation Plan (MTC Resolution No. 3866, revised) and with Public Utilities Code §99314.5(c) and §99314.7).

The applicant may be asked to certify such other assurances as MTC may deem appropriate consistent with the RM3 Policies and Procedures outlined above.

**PART 4 – SAMPLE RM3 OPERATING BOARD RESOLUTION**

Resolution No.

Implementing Agency:

Project Title:

WHEREAS, SB 595 (Chapter 650, Statutes 2017), commonly referred as Regional Measure 3, identified projects eligible to receive funding under the Regional Measure 3 Expenditure Plan; and

WHEREAS, the Metropolitan Transportation Commission (MTC) is responsible for funding projects eligible for Regional Measure 3 funds, pursuant to Streets and Highways Code Section 30914.7(a) and (c); and

WHEREAS, MTC has established a process whereby eligible transportation project sponsors may submit allocation requests for Regional Measure 3 funding; and

WHEREAS, allocation requests to MTC must be submitted consistent with procedures and conditions as outlined in Regional Measure 3 Policies and Procedures (MTC Resolution No. 4404; and

WHEREAS, (agency name) is an eligible sponsor of transportation project(s) in the Regional Measure 3 Expenditure Plan; and

WHEREAS, the (project title) is eligible for consideration in the Regional Measure 3 Expenditure Plan, as identified in California Streets and Highways Code Section 30914.7(a); and

WHEREAS, the Regional Measure 3 allocation request, attached hereto in the Operating Agreement and incorporated herein as though set forth at length, enumerates the project details for which (agency name) is requesting that MTC allocate Regional Measure 3 funds; now, therefore, be it

RESOLVED, that (agency name), and its agents shall comply with the provisions of the Metropolitan Transportation Commission’s Regional Measure 3 Policies and Procedures); and be it further

RESOLVED, that (agency) certifies that the project is consistent with the Regional Transportation Plan (RTP); and be it further

RESOLVED, that (agency name) approves the updated Operating Agreement, attached to this resolution; and be it further

RESOLVED, that (agency name) approves the certification of assurances, attached to this resolution; and be it further

RESOLVED, that (agency name) is an eligible sponsor of projects in the Regional Measure 3 Expenditure Plan, in accordance with California Streets and Highways Code 30914.7(c); and be it further

**Appendix B**

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RESOLVED, that (agency name) is authorized to submit an application for Regional Measure 3 funds for (project name) in accordance with California Streets and Highways Code 30914.7(c); and be it further

RESOLVED, that (agency name) certifies that the projects and purposes for which RM3 funds are being requested are in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), and with the State Environmental Impact Report Guidelines (14 California Code of Regulations Section 15000 et seq.) and, if relevant the National Environmental Policy Act (NEPA), 42 USC Section 4-1 et. seq. and the applicable regulations thereunder; and be it further

RESOLVED, that there is no legal impediment to (agency name) making allocation requests for Regional Measure 3 funds; and be it further

RESOLVED, that there is no pending or threatened litigation which might in any way adversely affect the proposed project, or the ability of (agency name) to deliver such project; and be it further

RESOLVED, that (agency name - include for transit projects/sponsors only) agrees to comply with the requirements of MTC's Transit Coordination Implementation Plan as set forth in MTC Resolution 3866; and be it further

RESOLVED, that (agency name) indemnifies and holds harmless MTC, BATA, and their Commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of (agency name), its officers, employees or agents, or subcontractors or any of them in connection with its performance of services under this allocation of RM3 funds. (Agency name) agrees at its own cost, expense, and risk, to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against MTC, BATA, and their Commissioners, officers, agents, and employees, or any of them, arising out of such act or omission, and to pay and satisfy any resulting judgments. In addition to any other remedy authorized by law, so much of the funding due under this allocation of RM3 funds as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages, and be it further

RESOLVED, that (agency name) shall, if any revenues or profits from any non-governmental use of property (or project) that those revenues or profits shall be used exclusively for the public transportation services for which the project was initially approved, either for capital improvements or maintenance and operational costs, otherwise the Metropolitan Transportation Commission is entitled to a proportionate share equal to MTC's percentage participation in the projects(s); and be it further

RESOLVED, that (agency name) authorizes its (Executive Director, General Manager, or his/her designee) to execute and submit an allocation request for operating or planning costs for (Fiscal Year) with MTC for Regional Measure 3 funds in the amount of (\$\_\_\_\_\_), for the project, purposes and amounts included in the project application attached to this resolution; and be it further

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RESOLVED, that the (Executive Director, General Manager, or his/her designee) is hereby delegated the authority to make non-substantive changes or minor amendments to the Operating Agreement as he/she deems appropriate.

RESOLVED, that a copy of this resolution shall be transmitted to MTC in conjunction with the filing of the (agency name) application referenced herein.



**PART 5 – SAMPLE OPINION OF LEGAL COUNSEL**

Project sponsors have the option of including specified terms and conditions within the Resolution of Local Support as included in Part 4. If a project sponsor elects not to include the specified language within the Resolution of Local Support, then the sponsor shall provide MTC with a current Opinion of Counsel stating that the agency is an eligible sponsor of projects for the Regional Measure 3; that the agency is authorized to perform the project for which funds are requested; that there is no legal impediment to the agency applying for the funds; and that there is no pending or anticipated litigation which might adversely affect the project or the ability of the agency to carry out the project. A sample format is provided below.

(Date)

To: Metropolitan Transportation Commission  
Fr: (Applicant)  
Re: Eligibility for Regional Measure 3 funds

This communication will serve as the requisite opinion of counsel in connection with the allocation of (Applicant) \_\_\_\_\_ for funding from Regional Measure 3 Expenditure Plan made available pursuant to Streets and Highways Code Section 30914.7(a)(c) for (Project Name) \_\_\_\_\_.

1. (Applicant) \_\_\_\_\_ is an eligible sponsor for the Regional Measure 3 funding.
2. (Applicant) \_\_\_\_\_ is authorized to submit an allocation request for Regional Measure 3 funding for (project) \_\_\_\_\_.
3. I have reviewed the pertinent state laws and I am of the opinion that there is no legal impediment to (Applicant) \_\_\_\_\_ making applications for Regional Measure 3 funds. Furthermore, as a result of my examinations, I find that there is no pending or threatened litigation that might in any way adversely affect the proposed projects, or the ability of (Applicant) \_\_\_\_\_ to carry out such projects.

Sincerely,

\_\_\_\_\_  
Legal Counsel

\_\_\_\_\_  
Print name