

**Metropolitan Transportation Commission
Programming and Allocations Committee**

July 11, 2018

Agenda Item 3c

MTC Resolutions Nos. 4202 and 4356

- Subject:** Agreement for the exchange of \$1.2 million in Santa Clara Valley Transportation Authority (VTA) measure funds with an equal amount of Surface Transportation Block Grant Program (STP) funds and/or Congestion Mitigation and Air Quality Improvement program (CMAQ) funds, for the State Route 85 Transit Guideway Study.
- Background:** Santa Clara Measure B, approved by the voters of Santa Clara on November 8, 2016, established a sales tax for funding traffic relief and other transportation improvements. The voters recognized the significance of State Route 85 by providing \$350 million within the sales tax measure for improvement projects to relieve congestion in the corridor. The Measure requires that a Transit Guideway Study be prepared to form the basis for VTA's future infrastructure investments within the State Route 85 corridor.
- Subsequent to approval by the voters, a lawsuit challenging the validity of Measure B was filed and has delayed disbursement of these funds. VTA has prevailed in trial court and the challenger has appealed.
- VTA has requested the assistance of MTC to expedite initiation of the State Route 85 Transit Guideway Study by providing \$1.2 million in MTC discretionary funds now, to be repaid in full once the lawsuit is resolved and VTA is able to disburse funds. MTC has STP/CMAQ funds available for such an exchange.
- Issues:** Repayment of Santa Clara Measure B funds by VTA is contingent upon a finding by the courts in VTA's favor. Under the terms of this agreement, VTA is not required to re-pay the advance if the courts ultimately rule against VTA. Of course if VTA loses the challenge to the Measure, the region would have much more significant problems to deal with than this \$1.2 million advance.
- Recommendation:** Refer MTC Resolution Nos. 4202 and 4356 to the Commission for approval. Because Resolution 4202 is proposed for revision under item 2e, it is included under that item with all proposed revisions. Only items referred by the Committee will be forwarded to the Commission.
- Attachments:** MTC Resolution No. 4356
Letter from VTA
MTC Resolution No. 4202, Revised, can be found under Agenda Item 2e to this packet.

Date: July 25, 2018
W.I.: 1515
Referred by: PAC

ABSTRACT

Resolution No. 4356

Establishes conditions for the exchange of Santa Clara Valley Transportation Authority (VTA) unrestricted Measure funds with Surface Transportation Block Grant Program (STP) and /or Congestion Mitigation and Air Quality Improvement (CMAQ) funds. An agreement for the conditions of this exchange of funds between MTC and VTA is included.

The resolution includes the following attachments:

Attachment A – Funding Exchange Agreement

Further discussion of this action is contained in the Programming and Allocation summary sheet dated July 11, 2018.

Date: July 25, 2018
W.I.: 1515
Referred by: PAC

RE: Agreement to Exchange Santa Clara Valley Transportation Authority Measure funds with MTC Regional Discretionary Funds

METROPOLITAN TRANSPORTATION COMMISSION
RESOLUTION NO. 4356

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

WHEREAS, MTC is the designated Metropolitan Planning Organization (MPO) for the nine-county San Francisco Bay Area region; and

WHEREAS, the Santa Clara Valley Transportation Authority (VTA) is the sponsoring agency for the State Route 85 (SR 85) Transit Guideway Study which will study one of the most congested stretches of highway in Silicon Valley; and

WHEREAS, the voters in Santa Clara County recognized the significance of SR 85 with the passage of Measure B in 2016, which provides \$350 million for improvements projects to relieve congestion in the corridor; and

WHEREAS, as required by the local sales tax measure, the SR 85 Transit Guideway Study will form the basis for VTA's future infrastructure investments within the corridor; and

WHEREAS, VTA has requested the assistance of MTC to expedite delivery of the SR 85 Transit Guideway Study by providing \$1.2 million in Surface Transportation Block Grant Program and /or Congestion Mitigation and Air Quality Improvement funds (STP/CMAQ) in fiscal year 2018-19, in exchange for Santa Clara Valley Transportation Authority Measure funds; and

WHEREAS, the VTA has agreed to repay MTC for the STP/CMAQ funds pursuant to the terms set forth in an agreement between MTC and VTA; and

WHEREAS, the agreement is substantially in the form set forth in Attachment A to this resolution, attached hereto and incorporated herein as though set forth at length; now, therefore, be it

RESOLVED, that MTC approves the exchange of STP/CMAQ funds with VTA Measure funds for the purposes and within the maximum amount established, and subject to the conditions, set forth in Attachment A; and, be it further

RESOLVED, that the exchanged Measure funds shall be placed into an exchange account for programming to project(s) at the discretion of the Commission; and, be it further

RESOLVED, that MTC's Executive Director is authorized to execute Attachment A, and to make non-substantive changes or minor amendments as deemed appropriate: and, be it further

RESOLVED, that upon execution of Attachment A by the signatory agencies, MTC staff shall implement the exchange of the STP/CMAQ funds with VTA Measure Funds.

METROPOLITAN TRANSPORTATION COMMISSION

Jake Mackenzie, Chair

This resolution was entered into by the Metropolitan Transportation Commission at a regular meeting of the Commission held in San Francisco, California, on July 25, 2018.

Agreement between the Metropolitan Transportation Commission and the Santa Clara Valley Transportation Authority for the exchange of MTC regional discretionary Surface Transportation Block Grant Program and/or Congestion Mitigation and Air Quality Improvement (STP/CMAQ) funds, for VTA Measure funds

This AGREEMENT is entered into on the first day of August 2018, by and between the SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, (“VTA”), created under California Public Utility Code 180000 et seq. and the METROPOLITAN TRANSPORTATION COMMISSION (“MTC”), a regional transportation agency created under California Government Code Sections 66500 et seq.

RECITALS

- (1) As authorized by a ballot measure (“Measure B”) approved by the voters in the County of Santa Clara on November 8, 2016, VTA established a sales tax (the “Measure B Sales Tax”) to establish a source of funding for traffic relief and other transportation improvements.
- (2) The voters in Santa Clara County recognized the significance of State Route 85 (“SR85”) with the passage of Measure B in 2016, which provides \$350 million for improvement projects to relieve congestion in the corridor.
- (3) As required by the local sales tax measure, an SR85 Transit Guideway Study (“PROJECT”) is to be prepared to form the basis for VTA’s future infrastructure investments within the corridor.
- (4) VTA is the sponsoring agency for the PROJECT which is part of the SR85 corridor improvements projects to relieve congestion in the corridor.
- (5) The validity of Measure B was challenged in a lawsuit filed in Santa Clara County. VTA prevailed in the lawsuit at the trial court level; however, the challenger has appealed, delaying disbursement of these funds until the action results in a final, non-appealable judgment.
- (6) VTA has requested the assistance of MTC to expedite initiation of the PROJECT by providing \$1.2 million in MTC discretionary Surface Transportation Block Grant Program (STP) and/or Congestion Mitigation and Air Quality Improvement (CMAQ) funds (“STP/CMAQ FUNDS”) for PROJECT in fiscal year 2018-19 in exchange for repayment of the \$1.2 million from Measure B funds (“MEASURE FUNDS”) if and when the lawsuit challenging Measure B results in a final, non-appealable judgment in VTA’s favor and VTA is able to disburse the Measure B funds.
- (7) MTC, the transportation planning, coordinating and financing agency for the nine-county San Francisco Bay Area, is eligible to program and assign STP/CMAQ FUNDS, and has discretionary funding authority of the \$1.2 million in STP/CMAQ FUNDS.

- (8) VTA and MTC desire to proceed with this funding exchange immediately, as nothing in this Agreement adversely affects MTC's responsibility to program regional discretionary funds to other programmed projects in the Bay Area.
- (9) VTA and MTC mutually desire to specify the terms and conditions under which MTC is to provide \$1.2 million in STP/CMAQ FUNDS to VTA, in exchange for VTA's agreement to reimburse MTC the \$1.2 million of MEASURE FUNDS if and when those funds are available for disbursement.

Now, therefore, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

Section I

MTC AGREES:

- (1) To perform such actions and to deliver such documents as are necessary to complete the delivery of STP/CMAQ FUNDS to VTA in accordance with this Agreement.
- (2) Upon execution of this Agreement, to program a maximum total of \$1.2 million of MTC-apportioned federal STP/CMAQ FUNDS, including authorizing apportionment and obligation authority, to VTA for implementation of PROJECT contingent upon the availability of federal apportionment and obligation authority.

Section II

VTA AGREES:

- (1) To request federal authorization/obligation of entire amount of the STP/CMAQ FUNDS by January 31, 2019, and to meet all federal, state and regional project funding delivery requirements associated with STP/CMAQ FUNDS.
- (2) To repay MTC the \$1.2 million of STP/CMAQ funds using MEASURE FUNDS within six months after entry of a final, non-appealable judgment in favor of VTA in the lawsuit challenging the validity of the Measure.
- (3) VTA shall indemnify, defend, protect, hold harmless, and release MTC's officers, commissioners, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense, arising from the negligence of VTA and its officers, commissioners, agents, and employees in the performance of this Agreement.

Section III

IT IS MUTUALLY AGREED:

- (1) The term of this Agreement shall commence on August 1, 2018. This Agreement shall terminate upon the earlier of (a) satisfaction of VTA's obligation to pay in full the amount to MTC under Section II, subsection (2) or (b) six months after entry of a final, non-appealable judgment finding that Measure B is invalid.
- (2) Nothing in this Agreement shall preclude VTA from making a payment in advance of the payment schedule.
- (3) Repayment of Santa Clara Measure B funds by VTA is contingent upon a final and non-appealable decision rendered by a court of competent jurisdiction finding that the Measure is valid. Under the terms of this agreement, VTA is not required to re-pay MTC the \$1.2 million advance of STP/CMAQ funds if the court decides, in a final and non-appealable decision, that Measure B is invalid.
- (4) This Agreement shall bind and benefit the parties hereto and their heirs, successors, and permitted assigns.
- (5) MTC and VTA agree to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of the Agreement.
- (6) This Agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.
- (7) Unless and until notified otherwise in writing, MTA and VTA shall send or deliver all such written communications relating to this Agreement to the following address:

Marcella Rensi
Santa Clara Valley Transportation Authority
3331 North First Street
San Jose CA 95134-1906
Marcella.rensi@vta.org

Ross McKeown
Metropolitan Transportation Commission
Bay Area Metro Center
375 Beale Street, Suite 800
San Francisco, CA 94105
rmckeown@bayareametro.gov

- (8) This Agreement is the entire agreement among MTC and VTA relating to the subject matter of this Agreement. MTC and VTA acknowledge they have not relied upon any promise, representation or warranty not expressly set forth in this Agreement in executing this Agreement.
- (9) Should any part of this Agreement be declared unconstitutional, invalid, or beyond the authority of MTC or AVTA to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.
- (10) No waiver by either party of any default or breach of any covenant by the other party shall be implied from any omission to take action on account of such default if such default persists or is repeated and no express waiver shall affect any default other than the default specified in such waiver and then such waiver shall be operative only for the time and to the extent stated in such waiver. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. No waiver of any provision under this Agreement shall be effective unless in writing and signed by the waiving party.
- (11) MTC and VTA represent and warrant that they are authorized to execute this Agreement.
- (12) This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, MTC and VTA have executed this Agreement as of the date first written above.

SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY

METROPOLITAN TRANSPORTATION
COMMISSION

Nuria I. Fernandez, General Manager

Steve Heminger, Executive Director

Approved as to form:

Counsel for Santa Clara VTA



June 14, 2018

Mr. Steve Heminger
Executive Director
Metropolitan Transportation Commission
Bay Area Metro Center
375 Beale Street, Suite 800
San Francisco, CA 94105-2066

Dear Mr. Heminger,

I am writing to you to request regional support to advance VTA's State Route 85 Transit Guideway Study, which focuses on a vital commute corridor. One of the most congested stretches of highway in Silicon Valley, SR 85 connects much of Santa Clara County's housing centers to major employment destinations featuring internationally recognized technology companies. The voters in Santa Clara County recognized the significance of SR 85 with the passage of Measure B in 2016, which provides \$350 million for improvements projects to relieve congestion in the corridor. As required by that local sales tax measure, the SR 85 Transit Guideway Study will ultimately form the basis for VTA's future infrastructure investments here, and will explore options for a dedicated transit lane on SR 85. The study will evaluate fixed-route transit and express lanes expansion projects along the 13-mile stretch of unused median right-of-way along SR 85. The tax payers of our county should be commended for stepping up to contribute toward congestion solutions in our community, and we ask that the region assist these efforts.

A lawsuit challenging the validity of Measure B has delayed the disbursement of these funds. However, VTA and the cities along the SR 85 corridor are confident that the plaintiff's appeal of the lower court ruling upholding our position will be rejected. As we await a decision, VTA advanced 2000 Measure A local sales tax funding for the initial phase of the study in 2017. However, the appeals process is lengthy, VTA can dedicate no additional Measure A funding to this study, and its first phase has since been completed. Continued delays to the study effectively defer project implementation, and threaten potential sources of outside funding.

We respectfully request that MTC work with VTA to identify \$1.2 million in MTC discretionary funds to allow completion of the study, as the lawsuit proceeds through the judicial process. It is our sincere intent that the funds would be repaid in full, provided the courts findings are in VTA's favor and thus making Measure B funds available for use. Without these funds VTA will not be able to provide reimbursement.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in blue ink that reads 'Nuria I. Fernandez'.

Nuria I. Fernandez
VTA's General Manager/CEO

State Route 85 Transit Guideway Study

2016 Measure B State Route 85 Category

2016 Measure B provides an estimated \$350 million for noise mitigation and transit and congestion relief projects including a new transit lane on State Route 85. The measure requires that VTA undertake a study of transportation alternatives (the SR 85 Transit Guideway Study) that would provide direction to a transit lane project.

2016 Measure B Lawsuit

VTA has been unable to spend any 2016 Measure B revenues on transportation projects due to a lawsuit that challenges the validity of the measure. Rather, revenues are accruing in an escrow account until the lawsuit is resolved. The Santa Clara County Superior Court dismissed the lawsuit in 2017, but the plaintiff subsequently appealed the dismissal. VTA anticipates a judgment from the State Appellate Court in fall 2018, but the plaintiff could appeal that decision to the State Supreme Court, further delaying the availability of 2016 Measure B funding to needed transportation improvements in Santa Clara County by a year or more.

Silicon Valley Express Lane Program Relevance

A potential right-of-way conflict exists between a potential median transit lane project and the planned expansion of express lanes on State Route 85. Both efforts could use the same unused median space on SR 85 between SR 87 and I-280. VTA has agreed to complete the SR 85 Transit Guideway Study prior to making a decision about how the median space will be used. As such, delays to the SR 85 Transit Guideway Study are potential delays to the express lanes program, which could delay the start of SR 85 express lane revenue collection or result in VTA missing windows of outside funding availability for the project.

SR 85 Transit Guideway Funding Advance

Given the relevance to the express lanes project and the eagerness of SR 85 Corridor cities to address congestion, VTA advanced \$600,000 in 2000 Measure A funds to start work on the first phase of the study while 2016 Measure B is under lawsuit. The first phase of work is now complete and study progress has effectively paused as VTA waits for Measure B or another source of funding to become available to continue work. The remaining phases include developing project alternatives and undertaking an alternatives analysis, which have an estimated cost of \$1.4 million and 8-12 month duration.