

**Metropolitan Transportation Commission  
Programming and Allocations Committee**

**February 9, 2022**

**Agenda Item 2c - 22-0086**

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**MTC Resolution No. 4412, Revised**

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**Subject:**

Regional Measure 3 (RM3) Letter of No Prejudice to the Metropolitan Transportation Commission (MTC) for the Next Generation Clipper Regional Fare Payment System Integrator.

**Background:**

**Regional Measure 3 Letters of No Prejudice (LONP)**

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. RM3 is under litigation and collected RM3 revenue is being held in an escrow account. No allocations of RM3 funds are anticipated until and unless litigation is resolved in favor of RM3. In December 2019, MTC approved a Letter of No Prejudice (LONP) process as part of the overall RM3 Policies and Procedures to allow project sponsors to move projects forward with alternate funds, at-risk, while maintaining RM3 eligibility if and when RM3 funds are available.

Through MTC Resolution No. 4412, the Commission may approve specific RM3 LONPs, at the request of project sponsors, and following the RM3 Policies and Procedures. Details on each LONP request specifying the amount and scope for which RM3 eligibility will be preserved will be included in the attachments to the resolution.

**Next Generation Clipper Regional Fare Payment System Integrator**

MTC submitted an RM3 LONP request for \$30 million for the design phase of the Next Generation Clipper Regional Fare Payment System Integrator (Clipper 2) Project, RM3 project 28. The project will replace the entire backend Clipper system and many customer facing devices such as fare validators and sales terminals, modernize retail and customer service devices, and expand fare media options.

The project is currently in the design phase, which includes preliminary, conceptual, and final design reviews, as well as development and testing of the system. The project is progressing with

available funding sources. However, RM3 funds, or a replacement fund source, will be needed by Spring 2022 to avoid project delays and associated fines.

**LONP Funding Source**

The RM3 Policies and Procedures require that the project sponsor provides a non-RM3 source of funding to cover the portion that would be covered by RM3 funds, and that a plan be provided in case the RM3 funds never become available. In lieu of RM3 funds at this time, the project will use up to \$30 million in OBAG 3 funds, proposed to be programmed in item 2b on this agenda. In the event that the RM3 funds never become available, MTC will seek other non-federal funding sources to repay OBAG 3 and fund the remaining costs.

Staff has reviewed the Initial Project Report and LONP request and recommend issuing an LONP. Issuing an LONP will preserve the eligibility of activities related to the above-mentioned project occurring after the issuance of the LONP, for future RM3 allocation and reimbursement if RM3 legislation is resolved favorably.

**Issues:**

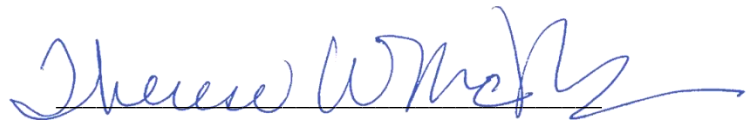
If the RM3 litigation is not resolved favorably, funds may never become available to reimburse OBAG 3. By approving this action, MTC is acknowledging this risk.

**Recommendation:**

Refer MTC Resolution No. 4412, Revised, to the Commission for approval.

**Attachments:**

- MTC Resolution No. 4412, Revised



Therese W. McMillan

Date: March 25, 2020  
Referred by: PAC  
Revised: 05/27/20-C 07/22/20-C  
10/28/20-C 12/16/20-C  
02/24/21-C 04/28/21-C  
06/23/21-C 07/28/21-C  
09/22/21-C 01/26/22-C  
02/23/22-C

## ABSTRACT

### MTC Resolution No. 4412, Revised

This resolution authorizes the Executive Director to issue Letters of No Prejudice for RM3 funds for eligible projects.

This resolution includes the following attachments:

- Attachment A – Mission Bay Ferry Landing (WETA) LONP Summary
- Attachment B – Goods Movement GoPort 7<sup>th</sup> Street Grade Separation (Alameda County Transportation Commission (ACTC)) LONP Summary
- Attachment C – I-680/SR-84 Interchange Reconstruction and SR-84 Expressway Widening (ACTC) LONP Summary
- Attachment D – I-80/680/SR-12 Interchange (Solano Transportation Authority) LONP Summary
- Attachment E – US-101/I-580 Direct Connector (Transportation Authority of Marin) LONP Summary
- Attachment F – SMART System Extension to Windsor and Healdsburg (SMART) LONP Summary
- Attachment G – US-101 Marin-Sonoma Narrows Marin Segment Project (Transportation Authority of Marin) LONP Summary
- Attachment H – I-680/SR-4 Interchange Improvement Phase 1 and 2A Project (Contra Costa Transportation Authority) LONP Summary
- Attachment I – Mokelumne Trail Bicycle/Pedestrian Overcrossing of SR-4 Project (Contra Costa Transportation Authority) LONP Summary
- Attachment J – SR-262 (Mission Blvd.) Cross Connector Project (Alameda County Transportation Commission) LONP Summary
- Attachment K – I-80 Westbound Truck Scales Project (Solano Transportation Authority) LONP Summary

Attachment L – US-101 Marin-Sonoma Narrows Project (Transportation Authority of Marin) LONP Summary

Attachment M – I-80 Express Lanes Project (Solano Transportation Authority) LONP Summary

Attachment N – Vine Transit Maintenance Facility (Napa Valley Transportation Authority) LONP Summary

Attachment O – I-80 Express Lanes Project Toll System (Bay Area Infrastructure Financing Authority) LONP Summary

Attachment P – I-680 Southbound Express Lane (ACTC) LONP Summary

Attachment Q – Next Generation Clipper Regional Fare Payment System Integrator (MTC) LONP Summary

This resolution was revised by Commission Action on May 27, 2020 to add Attachments B and C, LONP Summaries for two RM3 projects sponsored by the Alameda County Transportation Commission (ACTC).

This resolution was revised by Commission Action on July 22, 2020 to add Attachments D and E, LONP Summaries for two RM3 projects sponsored by the Solano Transportation Authority (STA) and the Transportation Authority of Marin (TAM).

This resolution was revised by Commission Action on October 28, 2020 to add Attachment F, LONP Summary for an RM3 project sponsored by the Sonoma-Marín Area Rail Transit District (SMART).

This resolution was revised by Commission Action on December 16, 2020 to add Attachment G, LONP Summary for an RM3 project sponsored by the Transportation Authority of Marin (TAM).

This resolution was revised by Commission Action on February 24, 2021 to add Attachments H and I, LONP Summaries for two RM3 projects sponsored by the Contra Costa Transportation Authority (CCTA).

This resolution was revised by Commission Action on April 28, 2021 to add Attachment J, LONP Summary for SR-262 (Mission Blvd.) Cross Connector Project sponsored by the Alameda County Transportation Commission; Attachment K, LONP Summary for I-80 Westbound Truck Scales Project sponsored by the Solano Transportation Authority; Attachment L, LONP Summary for US-101 Marin-Sonoma Narrows Project sponsored by the Transportation Authority of Marin; and Attachment M, LONP Summary for I-80 Express Lanes Project sponsored by the Solano Transportation Authority.

This resolution was revised by Commission Action on June 23, 2021 to add Attachment N, LONP Summary for a project sponsored by the Napa Valley Transportation Authority (NVTa).

This resolution was revised by Commission Action on July 28, 2021 to amend Attachment M, LONP Summary for the I-80 Express Lanes Project in Solano County, and to add Attachment O, LONP Summary for the I-80 Express Lanes Toll System Project in Solano County.

This resolution was revised by Commission Action on September 22, 2021 to add Attachment P, LONP Summary for the I-680 Southbound Express Lanes Project in Alameda County.

This resolution was revised by Commission Action on January 26, 2022 to amend Attachment D, LONP Summary for the I-80/680/SR-12 Interchange Project in Solano County.

This resolution was revised by Commission Acton on February 23, 2022 to add Attachment Q, LONP Summary for the Next Generation Clipper Fare Payment System Integrator.

Additional discussion of this allocation is contained in the Programming and Allocations Committee Summary sheets dated March 11, 2020, May 13, 2020, July 10, 2020, October 14, 2020, December 9, 2020, February 10, 2021, April 14, 2021, June 9, 2021, July 14, 2021, September 8, 2021, January 12, 2022, and February 9, 2022.

Date: March 25, 2020  
W.I.: 1255  
Referred by: PAC

Re: Authorization to Issue Letters of No Prejudice for Regional Measure 3 Funds

METROPOLITAN TRANSPORTATION COMMISSION  
RESOLUTION No. 4412

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 adopted RM3 Policies and Procedures for the implementation of the RM3 Expenditure Plan, specifying the allocation criteria and project compliance requirements for RM3 funding (MTC Resolution No. 4404); and

WHEREAS, the RM3 Policies and Procedures established a process whereby eligible transportation project sponsors may request a Letter of No Prejudice (LONP) for Regional Measure 3 funding; and

WHEREAS, the Attachments to this resolution, attached hereto and incorporated herein as though set forth at length, list the scope, amount, and conditions for which project sponsors have requested an LONP, and the replacement funding source used in place of RM3 funds; and

WHEREAS, the claimants to which an LONP is issued under this resolution have certified that the projects and purposes listed and recorded the Attachments 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.); now, therefore, be it

RESOLVED, that MTC approves MTC staff's review of the LONP requests for the projects listed in the Attachments; and be it further

RESOLVED, that MTC authorizes the Executive Director to issue LONPs in accordance with the amount and activities as set forth in the Attachments; and, be it further

RESOLVED, that future allocation and reimbursement with RM3 funds will be conditioned upon successful outcome of RM3 litigation; and, be it further

RESOLVED, that future allocation and reimbursement with RM3 funds will be conditioned upon compliance with the provisions of the RM3 Policies and Procedures as set forth in length in MTC Resolution No. 4404; and be it further

RESOLVED, that future allocation and reimbursement of RM3 funds are further conditioned upon the project specific conditions as set forth in the Attachments; and, be it further

RESOLVED, that project sponsors receiving an LONP are responsible for delivering the usable project segment or complete phase with alternate funds before RM3 funds are available, at risk to the project sponsor; and be it further

RESOLVED, that 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; and be it further

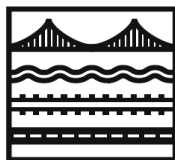
RESOLVED, that a certified copy of this resolution and applicable attachments shall be forwarded to the project sponsor.

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 March 25, 2020.



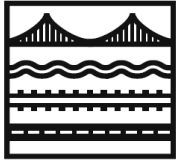


## Regional Measure 3

### Letter of No Prejudice Project Summary

#### Project Information

<b>RM3 Project Number</b>	28	
<b>Project Title</b>	Next Generation Clipper Regional Fare Payment System Integrator (Clipper 2.0)	
<b>Lead Sponsor(s)</b>	<b>Other Sponsor(s)</b>	<b>Implementing Agency</b>
Metropolitan Transportation Commission (MTC)		
<b>Legislated Project Description</b>	<b>RM3 Legislated Funding (in \$1,000s)</b>	
Provide funding to design, develop, test, implement, and transition to the next generation of Clipper, the bay area's transit fare payment system. The next-generation system will support a universal, consistent, and seamless transit fare payment system for the riders of transit agencies in the bay area. The project sponsor is the Metropolitan Transportation Commission	\$50,000	
<b>Sponsor Programming and LONP Request Action</b>		
MTC is expected to allocate \$30 million in OBAG 3 funds for this project concurrent with the approval and issuance of this LONP.		
<b>Detailed Project Description</b>		
Clipper 2.0 is a wholesale replacement of the entire backend system and many customer-facing devices like fare validators and sales terminals, as well as modernization of retail and customer service devices and expanded fare media options, including mobile and other capabilities. The C2 System Integrator project involves the supply and installation of computer systems and technology devices at offices and on buses, vehicles and transit station platforms.		
<b>LONP Phase</b>	<b>LONP Amount (in \$1,000s)</b>	<b>LONP Approval Date</b>
PS&E and CON	\$30,000	23-Feb-22
<b>Scope - Activities eligible for future allocation and reimbursement if RM3 funds become available</b>		
The LONP preserves future RM3 eligibility for costs related to the design and construction/implementation portions of the next generation Clipper system incurred after the LONP approval date. The design portion of the next-generation Clipper system includes preliminary, conceptual, and final design reviews, as well as development and testing of the system. Construction/implementation includes procurement and installation of equipment needed to implement the C2 system on vehicles and transit stations.		
<b>Conditions - In addition to the successful outcome of RM3 litigation, eligibility for future allocation and reimbursement is conditioned upon the following:</b>		
1	None	



## Regional Measure 3

### Letter of No Prejudice Project Summary

#### Project Funding Plan and Schedule

<b>RM3 Project Number</b>	28
<b>Project Title</b>	Next Generation Clipper Regional Fare Payment System Integrator (Clipper 2)
<b>RM3 Replacement Funding Source</b>	OBAG 3

Project Funding Plan				Project Schedule	
Phase	Funding Source	Committed? (Yes/No)	Total Amount (\$1,000s)	Start	End
ENV					
	ENV Subtotal		\$ -		
PSE	TCP	Y	\$ 28,474	Sep-18	Dec-22
	SGR FY 22	Y	\$ 7,118		
	OBAG 3 (RM3 Replacement)	Y	\$ 4,990		
	SGR FY 23	N	\$ 1,311		
	TBD	N	\$ 70,107		
	PSE Subtotal		\$ 112,000		
ROW					
	ROW Subtotal		\$ -		
CON	TCP	Y	\$ 19,267	Jun-23	Dec-25
	SGR FY 22	Y	\$ 4,229		
	OBAG 3 (RM3 Replacement)	Y	\$ 25,010		
	SGR FY23	N	\$ 6,840		
	RM3	N	\$ 20,000		
	TBD	N	\$ 6,653		
	CON Subtotal		\$ 82,000		
<b>Capital Funding Total</b>			\$ 194,000		