



METROPOLITAN
TRANSPORTATION
COMMISSION

Bay Area Metro Center
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San Francisco, CA 94105
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Memorandum

TO: Commission

DATE: April 18, 2018

FR: Executive Director

W.I. 1512

RE: MTC Resolution No. 4328 – Agreement to Exchange Sonoma County Transportation Authority Regional Transportation Improvement Program funds with MTC Regional Discretionary Funds

At the Programming and Allocations Committee meeting on April 10, 2018, the Committee considered a proposed funding exchange agreement with the Sonoma County Transportation Authority (SCTA) for a cost increase for the US-101 Marin-Sonoma Narrows (MSN) project. Following the meeting, SCTA requested the agreement include a clause for mutual indemnification, considering the agreement is for an exchange of funds rather than a funding contribution. We are agreeable to the revision.

Staff recommends approval of MTC Resolution No. 4328, which has been updated to reflect the mutual indemnification clause.



Steve Heminger

SH:rm

Attachment:

MTC Resolution No. 4328, Attachment A (as revised, above)

**Metropolitan Transportation Commission
Programming and Allocations Committee****April 11, 2018****Agenda Item 4b****Resolution Nos. 4202, Revised and 4328**

Subject: Revision to the One Bay Area Grant (OBAG 2) program and implementation of a funding exchange agreement with the Sonoma County Transportation Authority (SCTA) for the US-101 Marin-Sonoma Narrows (MSN) project.

Background: In July 2016, the Commission approved the final One Bay Area Grant (OBAG 2) program, which includes programming of federal Surface Transportation Block Grant Program (STP) and the Congestion Mitigation and Air Quality Improvement (CMAQ) funds. In July 2017, the Commission amended the OBAG 2 program to include the Marin-Sonoma Narrows Segment B2 phase 2 project.

US-101 Marin-Sonoma Narrows Segment B2 Phase 2

SCTA has worked diligently over the past couple decades to provide improvements along the US-101 corridor through Sonoma County. Recently, SCTA secured funding for the Marin-Sonoma Narrows project, Segment B2 Phase 2, which completes High-Occupancy Vehicle (HOV) lanes from the Sonoma-Marín County Line to Petaluma. In early March, Caltrans and SCTA opened bids on the project. The lowest bid exceeded the engineer's estimate by over \$3.4 million. In order for Caltrans and SCTA to award the contract and begin work, SCTA must secure the additional funds.

Summary: **SCTA Funding Exchange**

SCTA has requested the assistance of MTC to facilitate delivery of the US-101 Marin-Sonoma Narrows (Segment B2 Phase 2) project by providing \$3.4 million in STP/CMAQ funds now, in exchange for an equal amount of future Sonoma County Regional Transportation Improvement Program (RTIP) funds. The fund exchange would be implemented via an agreement between MTC and SCTA (attached as MTC Resolution No. 4328).

Staff believes this agreement is beneficial to the region as it allows a ready-to-go project to proceed and provides an equal amount of future funding to MTC in exchange.

MTC staff will return to the Commission to program the RTIP funding in the next RTIP cycle (2020).

Issues: 1. The SCTA funding exchange agreement is conditioned upon the execution of the cooperative agreement between SCTA and Caltrans for the additional funds, SCTA's approval of the exchange agreement, and

CTC's approval of the project amendment to include the change in project cost.

2. MTC staff anticipates that other upcoming projects are likely to experience similar cost pressures. Factors that could drive up costs above the engineer's estimate include the region's robust economy and the addition of Senate Bill 1 funded projects competing for limited contractor resources. MTC staff recommends the exchange with SCTA because Sonoma has agreed to commit future funding to repay MTC. However, MTC's capacity to make such agreements is limited due to varying programming priorities and staff does not anticipate being able to assist every project that experiences cost increases.

Recommendation: Refer Resolution Nos. 4202 Revised and 4328, to the Commission for approval. Because Resolution No. 4202, Revised is also proposed for revision under Agenda Item 2f, it is included under that agenda item with all proposed revisions. Further, MTC Resolution No. 4202 is also on the April Joint Planning Committee agenda for consideration of Priority Development Area (PDA) planning grants. Only the applicable recommendations approved by the Planning Committee and by the Programming and Allocations Committee will be referred to the Commission.

Attachments: MTC Resolution No. 4328

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

ABSTRACT

Resolution No. 4328

This resolution establishes the conditions for the exchange of Sonoma County Transportation Authority (SCTA) Regional Transportation Improvement Program (RTIP) funds with MTC regional discretionary funds, such as federal Surface Transportation Block Grant Program (STP) funds and/or Congestion Mitigation and Air Quality Improvement (CMAQ) funds, in Sonoma County. An agreement for the conditions of this exchange of funds between MTC and SCTA 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 sheets dated April 11, 2018.

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

RE: Agreement to Exchange Sonoma County Transportation Authority Regional Transportation Improvement funds with MTC Regional Discretionary Funds

Metropolitan Transportation Commission
Resolution No. 4328

WHEREAS, the Metropolitan Transportation Commission (MTC) is the regional transportation planning agency 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 Sonoma County Transportation Authority (SCTA) is implementing the US-101 Marin-Sonoma Narrows (MSN) Segment B2 Phase 2 project hereinafter referred to as the “Project”; and

WHEREAS, SCTA has requested the assistance of MTC to facilitate delivery of the Project by providing regional discretionary funds, such as Surface Transportation Block Grant Program (STP) and/or Congestion Mitigation and Air Quality Improvement (CMAQ) funds, hereinafter referred to as “STP/CMAQ funds” available in the near term in exchange for future Regional Transportation Improvement Program (RTIP) funds from Sonoma County’s RTIP share, hereinafter referred to as “RTIP funds” available in future years; and

WHEREAS, SCTA has agreed to repay MTC for the STP/CMAQ funds requested pursuant to the terms set forth in an agreement between MTC and SCTA; 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 advancement and exchange of STP/CMAQ funds with SCTA RTIP 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 repaid RTIP funds shall be available for the programming of projects 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 SCTA RTIP 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 April 25, 2018.

Agreement between the Metropolitan Transportation Commission (MTC) and the Sonoma County Transportation Authority (SCTA) for the exchange of federal Surface Transportation Block Grant Program (STP) and/or Congestion Mitigation and Air Quality Improvement (CMAQ) funds, for Sonoma County Regional Transportation Improvement Program (RTIP) funds

This AGREEMENT is entered into on the first day of May 2018, by and between the SONOMA COUNTY TRANSPORTATION AUTHORITY, (“AUTHORITY”), 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) AUTHORITY is the sponsoring agency for the US-101 Marin-Sonoma Narrows (MSN) Segment B2 Phase 2 Project (“PROJECT”).
- (2) PROJECT will be implemented over several years to relieve traffic congestion in Sonoma County.
- (3) AUTHORITY has requested the assistance of MTC to facilitate delivery of the PROJECT by providing three million, four hundred thousand dollars (\$3.4 million) in regional discretionary funds, such as Surface Transportation Block Grant Program (STP) and/or Congestion Mitigation and Air Quality Improvement (CMAQ) funds (“STP/CMAQ FUNDS”) for PROJECT in fiscal year 2017-18 in exchange for Sonoma County Regional Transportation Improvement Program (RTIP) funds (“RTIP FUNDS”).
- (4) AUTHORITY makes programming recommendations to MTC related to RTIP FUNDS that normally would be available in fiscal years 2021-22 and 2022-23 of the State Transportation Improvement Program (STIP).
- (5) 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 three million, four hundred thousand dollars (\$3.4 million) in STIP/CMAQ FUNDS for PROJECT.
- (6) AUTHORITY agrees to provide future Sonoma County RTIP FUNDS to MTC as specified in this Agreement.
- (7) AUTHORITY and MTC desire to proceed with the funding agreement immediately, as nothing in this Agreement adversely affects MTC's responsibility to provide regional discretionary funds to other existing programmed projects in the Bay Area.
- (8) AUTHORITY and MTC mutually desire to specify the terms and conditions under which MTC is to provide STP/CMAQ FUNDS to AUTHORITY, in exchange for AUTHORITY's assignment of RTIP FUNDS to be repaid to MTC.

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 AUTHORITY in accordance with this Agreement.
- (2) To program a maximum total of three million, four hundred thousand dollars (\$3.4 million) of MTC-apportioned STP/CMAQ FUNDS including apportionment and obligation authority to AUTHORITY for implementation of PROJECT, subject to and contingent upon the availability of federal apportionment and obligation authority.

Section II

AUTHORITY AGREES:

- (1) To allow the programming of RTIP FUNDS in the amount of three million, four hundred thousand dollars (\$3.4 million) by MTC to a project of MTC's discretion anywhere within the San Francisco Bay Area region, as the top priority for Sonoma County in future RTIPs after the programming of Planning, Programming and Monitoring (PPM), AB 3090s and Grant Anticipation Revenue Vehicles (GARVEEs)
- (2) To seek authorization from the Federal Highway Administration (FHWA) of entire amount of the STP/CMAQ FUNDS by December 31, 2018.
- (3) To meet all federal, state and regional project funding delivery requirements associated with STP/CMAQ FUNDS.

Section III

IT IS MUTUALLY AGREED:

- (1) The term of this Agreement shall commence on May 1, 2018. This Agreement shall terminate upon the satisfaction of AUTHORITY's obligations to MTC with RTIP FUNDS, as outlined in Section II of this Agreement. Notwithstanding the above, AUTHORITY may terminate this Agreement by written notice to MTC if AUTHORITY has not received an authorization of the STP/CMAQ FUNDS by December 31, 2018 and no arrangement for availability of these funds after December 31, 2018 has been made by MTC to the satisfaction of AUTHORITY. If the Agreement is terminated by AUTHORITY, MTC will reprogram the \$3.4 million in STP/CMAQ funds to other projects selected at MTC's discretion.
- (2) Each party shall indemnify, defend, protect, hold harmless and release the other, its officers, commissioners, directors, representatives, agents, and employees from and against any and all claims, injuries, suits, demands, losses, proceedings, damages, causes of action, or liability, 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 each such indemnifying party, its officers, employees or agents, or subcontractors or any of them in connection with the performance of this Agreement.

- (3) MTC reserves the right to withhold from AUTHORITY future regional discretionary funds otherwise going to AUTHORITY, after consultation with AUTHORITY, if AUTHORITY fails to meet its obligation to make the full payment to MTC.
- (4) This Agreement shall bind and benefit the parties hereto and their heirs, successors, and permitted assigns.
- (5) MTC and AUTHORITY 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) All required, reports, demands and notices may be sent by regular mail or electronic mail. Notices that are mailed by regular mail shall be deemed delivered two (2) business days after deposited in the mail. Notices may be personally delivered and shall be deemed delivered at the time delivered to the appropriate address set forth below. Notices delivered by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return electronic mail or other written acknowledgment of receipt); provided that, if such notice is not sent during normal business hours of the recipient, such notice shall be deemed to have been sent at the opening of business on the next business day of the recipient. Unless and until notified otherwise in writing, a party shall send or deliver all such communications relating to this Agreement to the following address:

James Cameron
Sonoma County Transportation Authority
490 Mendocino Ave., Suite 206
Santa Rosa, CA 95401
james.cameron@scta.ca.gov

Ross McKeown
Metropolitan Transportation Commission
375 Beale St., Ste. 800
San Francisco, CA 94105
rmckeown@bayareametro.gov

- (8) This Agreement is the entire agreement among MTC and AUTHORITY relating to the subject matter of this Agreement. MTC and AUTHORITY 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 AUTHORITY 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 AUTHORITY represent and warrant that they are authorized to execute this Agreement.
- (12) This Agreement may be executed in counterparts.

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

SONOMA COUNTY
TRANSPORTATION AUTHORITY

METROPOLITAN TRANSPORTATION
COMMISSION

Chair

Steve Heminger, Executive Director

Suzanne Smith, Executive Director

Approved as to Form:

Legal Counsel