

Metropolitan Transportation Commission Programming and Allocations Committee

December 11, 2019

Agenda Item 3b

MTC Resolution No. 4404

Subject: MTC Resolution No. 4404. Regional Measure 3 Policies and Procedures

Background: Regional Measure 3 (RM3) was approved by voters 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 dollar of the toll increase was implemented on January 1, 2019. 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. However, in the meantime, some project sponsors desire to move projects forward, especially in situations where project phases could be underway if RM3 funds were available. Staff proposes a Letter of No Prejudice (LONP) process as an option to address this situation. To provide clarity and guidance for RM3 project sponsors, staff proposes to establish the LONP process as part of the overall RM3 Policies and Procedures.

RM3 Policies and Procedures

RM3 Policies and Procedures are included as Attachment A to MTC Resolution No. 4404, and closely follow the Regional Measure 2 Policies and Procedures (MTC Resolution No. 3636, Revised), which have been effective in guiding the region and project sponsors in delivering over \$1.4 billion in RM2 capital improvements to date. The attached RM3 Policies and Procedures currently only include the capital program; guidance for the operating program will be proposed for inclusion at a later date.

Key provisions held over from the RM2 Policies and Procedures include:

- The general process for accessing capital funds, wherein project sponsors submit a board-approved allocation request, obtain an allocation from the Commission, and then proceed with project implementation on a reimbursement basis.
- Allocating principles such as the intent of achieving a deliverable product, not replacing any previously committed funds if shortfalls would result, allocating only to fully funded project phases inclusive of RM3 funds, phase at a time allocations, requirement of environmental clearance prior to any right-of-way or construction expenditure, allocations to right-of-way only after project has construction funds committed, proportional spend-down rates across fund sources, and consideration of operating requirements for transit capital projects. Generally, flexibility is given for consideration of exceptions as warranted.
- Eligible expenses are defined for environmental studies and preliminary engineering, design, right-of-way acquisition and utility relocation, construction, and project sponsor/implementing agency costs.
- Sections dealing with project cancellation, maintenance and operating costs, cost escalation and increases, and cost savings.
- Sections related to project reporting requirements and progress reports, project close-out, and at-risk reports.
- Consistency with other regional, state, and federal plans and policies.

Key additions to the RM3 Policies and Procedures include:

- Letter of No Prejudice option and guidance.
- Evidence of adequate risk management as an allocation principle.
- Expiration dates for capital allocations, set according to the cash flow plan outlined in the allocation request.
- Guidance on when MTC may increase oversight of a given project beyond the standard reports and invoice reviews.
- Consistency with Title VI, MTC Traffic Operations System Policy, and Interregional Project Funding and Coordination Policy

MTC/BATA Sponsored Projects, Programmatic Listings, and Projects Without Named Sponsor

The RM3 Policies and Procedures include a section on MTC/BATA-sponsored or co-sponsored projects, which include Bay Area Corridor Express Lanes, Goods Movement and Mitigation, San Francisco Bay Trail/Safe Routes to Transit, Core Capacity Transit Improvements, Dumbarton Corridor Improvements, Richmond-San Rafael Bridge Access Improvements, North Bay Transit Access Improvements, and Next-Generation Clipper Transit Fare Payment System. MTC/BATA will develop these programs in separate processes, in partnership with any listed co-sponsors and in accordance with statute, and programming decisions will be made through Commission action. These programs are ineligible for the LONP process until they have been developed, and specific project(s) have been identified and approved by the respective governing body(ies).

Further, Streets and Highways Code Section 30914.7(a) lists two projects, the Caltrain Downtown Extension and Tri-Valley Transit Access Improvements, without a directly named project sponsor. MTC will allocate funds to these projects in accordance with that Section.

RM3 Letter of No Prejudice Detail

Under an RM3 LONP, a project sponsor would obtain Commission approval to move forward with a specific scope of work, using non-RM3 funds, and retain RM3 eligibility for that scope. If and when RM3 litigation is resolved and the Commission can make RM3 allocations, the project sponsor would be able to receive an allocation for that scope of work, and be reimbursed with RM3 funds. The project sponsor would proceed with an LONP at their own risk; if RM3 funds do not become available for allocation, there is no expectation that MTC will provide alternate funds. The LONP process is intended only for programmed capital projects that will deliver a usable segment with available funds (e.g., complete construction phase, final design, environmental document, and purchased right-of-way).

Transbay Terminal Operating Expenditure and Letter Request

The RM3 expenditure plan holds that of the 16 percent set-aside from revenues generated each year for operating assistance, eight percent (not to exceed \$5 million per year) shall be made available for costs associated with operating the San Francisco Transbay Terminal.

The Transbay Joint Powers Authority has requested a letter from MTC stating that if and when litigation is resolved, and the Commission can make RM3 allocations, funds currently held in escrow for the San Francisco Transbay Terminal may be used to reimburse eligible operating costs incurred by the Terminal in Fiscal Year 2019-20.

The Transbay Joint Powers Authority intends to use funding from its reserve account or alternative sources to satisfy operating costs and understands that future reimbursement of these costs with RM3 funds is contingent on positive resolution of the litigation.


Outreach to Project Sponsors

A draft of the RM3 Policies and Procedures was sent for review to named project sponsors, entities otherwise named in the statute establishing RM3, Bay Area County Transportation Agencies, transit agencies eligible for the North Bay Transit Access Improvements project, and entities likely to be key in determining project sponsors where none is named. Staff has also presented the topic at various Partnership meetings. Several regional partners submitted comments; key themes included support for establishing an LONP process, comments related to the programming of multi-sponsor or umbrella projects, questions to clarify interpretation of policy, and requests for consideration of project sponsor cash flow concerns regarding the program's reimbursement basis policy. The attached resolution incorporates staff recommendation after receiving this feedback, and staff has reached out to partners to provide clarification or feedback where no changes are proposed from the draft document. In general, MTC is committed to working with project sponsors to deliver the RM3 program in a responsible, effective manner.

Issues: Until and unless RM3 litigation is resolved favorably, approved Regional Measure 3 Policies and Procedures would likely only be used in practice to issue Letters of No Prejudice.

Recommendation: Refer MTC Resolution No. 4404 to the Commission for approval and direct the MTC Executive Director, or designee to send a letter to TJPA stating that if and when litigation is resolved and the Commission can make RM3 allocations, funds currently held in escrow for the San Francisco Transbay Terminal may be used to reimburse eligible operating costs incurred by the Terminal in Fiscal Year 2019-20.

Attachments: MTC Resolution No. 4404


Therese W. McMillan

Date: December 18, 2019
Referred by: PAC

ABSTRACT

Resolution No. 4404

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).

Additional discussion of this Resolution is available in the Executive Director's memorandum to the Programming and Allocations Committee dated December 11, 2019.

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

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.

Regional Measure 3 Policies and Procedures

December 2019

**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.

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 Commission action. Thirty days prior to the Commission 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 Commission action):

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

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

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

LONP Application Package (30 days prior to Commission 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.

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 rescoped 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 passage of Regional Measure 3, the current RTP/SCS is Plan Bay Area 2040; the next RTP/SCS would be Plan Bay Area 2050, with an anticipated adoption date in 2021.

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)

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 Policy Mandates/Routine Accommodations Policy

MTC Resolution 3765 requires agencies applying for regional transportation funds to consider the needs of bicyclists and pedestrians in the process of planning and designing a project. Furthermore, it is encouraged that all bicycle projects programmed in the RTIP support the Regional Bicycle Network. Guidance on considering bicycle transportation can be found in MTC’s 2009 Regional Bicycle Plan (a component of Transportation 2035) and Caltrans Deputy Directive 64. MTC’s Regional Bicycle Plan, containing federal, state and regional policies for accommodating bicycles and non-motorized travel, is available on MTC’s Web site at: <http://mtc.ca.gov/our-work/plans-projects/bicycle-pedestrian-planning>.

Resolution 3434 TOD policy

In order to support the development of communities around new transit lines and stations, MTC adopted a [Transit-Oriented Development \(TOD\) Policy](#) that applies to key transit extension projects in the Bay Area. RM3 projects, as appropriate shall comply with the TOD policy, or any successor TOD policy in effect at 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®, 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.

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

(This section to be amended in at a later date.)

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

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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

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(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 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 (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 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

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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 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 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.

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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

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

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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 Work Plan

The implementing agency must submit a detailed Work Plan covering the deliverables for which a RM3 funding allocation is being sought. The Work Plan should be consistent with the parameters included in the Board approved Initial Project Report, and must have sufficient detail regarding each deliverables' scope, cost and schedule. The elements of the work plan 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 Work Plan must be submitted with the allocation application request.

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Appendix B – OPERATING PROGRAM FORMS

(This section to be amended in at a later date.