

**Metropolitan Transportation Commission****April 22, 2020****Agenda Item 7b****MTC Resolution No. 3738, Revised**

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**Subject:** Revisions to the BART Car Replacement Funding Exchange and Reserve Account, authorizing a disbursement of \$220.1 million.

**Background:** In 2006, MTC and the San Francisco Bay Area Rapid Transit District (BART) signed the BART Car Replacement Funding Exchange and Reserve Account Agreement (Agreement) to set aside funds for the eventual purchase of new railcars to replace BART's aging fleet. MTC agreed to program eligible Federal Highway (FHWA) or Federal Transit Administration (FTA) funds to BART's preventive maintenance program in exchange for BART depositing an equal amount of local funds into the Exchange Account. Since that time, approximately \$390 million has been deposited into the account.

**Previous Actions**

There have been two prior authorized withdrawals of \$15.5 million in 2012 and \$18 million in December 2019. As of December 31, 2019, the balance of the account, including accrued interest, was \$399 million.

In September 2017, the Commission adopted Resolution No. 4302, the Exchange Account Agreement Supplemental, which committed up to \$179 million from the Exchange Account to BART for the costs of new railcars included in BART's Transbay Corridor Core Capacity Project (TCCCP) in order to support the advancement of the TCCCP for funding through the FTA's Capital Investment Grant (CIG) Program. Since that time, BART has been advanced through the CIG Program and is now in the Engineering phase, anticipating receipt of a Full-Funding Grant Agreement by the end of the year.

**Proposed Action**

The action proposed today would authorize the withdrawal of \$220.1 million from the Exchange Account, which BART would use for progress payments associated with its contract with Bombardier for 775 railcars. The BART Board of Directors also authorized this withdrawal at their March 12, 2020 meeting, as required by the Agreement.

The remainder of the Exchange Account balance will continue to accrue interest until further deposits are requested and authorized to support BART's railcar procurement projects.

Overall, MTC has committed to over \$1.7 billion of regionally-controlled funds for the railcar replacement project, a nearly \$2.6 billion project. The funding plan summary below shows MTC's commitment along with other fund sources on the project:

**Table 1. BART Railcar Replacement Project Funding Plan Summary**


Source	Amount (\$millions)
FTA/FHWA Funds & Financing Proceeds	1,295
BART (incl. LCTOP & STA)	499
BART Car Exchange Account	252
Santa Clara Valley Transportation Authority (VTA)	200
SFO Net Operating Reserves Account	145
California High-Speed Rail Authority	140
Regional Measure 2 Funds	53
<b>Total</b>	<b>\$ 2,584</b>

**Issues:**

1. Following action by the Commission in October 2016, staff has been pursuing financing against future FTA revenues to fund major capital projects in the TCP program. As part of this process, MTC has obtained a Letter of No Prejudice (LONP) from FTA, authorizing the use of about \$1 billion of future FTA formula funds to be used to repay debt service on financing. This is included in Table 1 above. There is a related item on the Bay Area Infrastructure Financing Authority (BAIFA) agenda today, as BAIFA is proposed to be the issuer per the LONP. Staff will return to the Commission in the coming months with more details about this process and to request authorization to proceed. ~~Meanwhile, this withdrawal authorization is contingent on BART Board approval of the Tax & Regulatory Agreement required as part of the financing.~~

**Recommendation:** Staff requests the Commission approve MTC Resolution No. 3738, Revised.

**Attachments:** MTC Resolution No. 3738, Revised. Attachment B

  
Therese W. McMillan

Date: May 24, 2006  
W.I.: 1512  
Referred By: PAC  
Revised: 11/15/06-ED 09/26/07-C  
12/15/10-C 11/28/12-C  
12/18/13-C 01/27/16-C  
09/28/16-C 12/18/19-C  
04/22/20-C

### ABSTRACT

#### Resolution No. 3738, Revised

This resolution approves the principles, process, and schedule for exchanging federal, state, and local funds and the criteria for reserving these funds for BART's A, B, C1, and C2 cars until the cars are eligible for replacement, beginning in 2013, and the funds are needed by BART.

This resolution was revised through administrative action by the Executive Director on November 15, 2006 to include the final version of the agreement between MTC and BART. The revisions specify that the amount of local funds BART agrees to deposit into the Account is equal to 100% of the federal reimbursement less any BART principal previously withheld for retention in the Account, delete a reference to early termination of the agreement, and made a few other terminology changes.

This resolution was revised by the Commission on September 26, 2007 to make a minor correction in Attachment B to the amount programmed in FY 2006-07, and to include in Attachment B a reference to \$45 million in Third Cycle STP funds that were programmed to the BART Car Replacement project by the Commission in MTC Resolution 3723, Revised.

This resolution was revised by the Commission on December 15, 2010 to incorporate references to FTA funds programmed to the BART Car Replacement Project in conjunction with MTC Resolution 3918.

This resolution was revised by the Commission on November 28, 2012 to amend Attachment B to update the amount of federal programming subject to the Funding Exchange Agreement, and to authorize the withdrawal of up to \$15.5 million from the Funding Exchange Account under specified conditions.

This resolution was revised by the Commission on December 18, 2013 to revise the language of Attachment A regarding BART's deposits of local funds into the Funding Exchange Account,

## ABSTRACT

MTC Resolution No. 3738, Revised

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and to amend Attachment B to update the amount of federal programming subject to the Funding Exchange Agreement.

This resolution was revised by the Commission on January 27, 2016 to amend Attachment B to update the amount of federal programming subject to the Funding Exchange Agreement.

This resolution was revised on September 28, 2016 to amend Attachment B to update the amount of federal programming subject to the Funding Exchange Agreement.

Attachment B of this resolution was revised on December 18, 2019 to authorize the withdrawal of \$18 million from the Funding Exchange Account under specified conditions.

Attachment B of this resolution was revised on April 22, 2020 to authorize the withdrawal of \$220.1 million from the Funding Exchange Account under specified conditions.

Further discussion of the BART car fund exchange and reserve account is contained in the “Executive Director” memorandum and the Programming and Allocations Summary Sheet dated May 10, 2006, the Programming and Allocations Summary Sheets dated September 12, 2007, November 10, 2010, November 14, 2012, December 11, 2013, January 13, 2016, September 14, 2016, and December 11, 2019, and the Commission Summary Sheet dated April 22, 2020.

Date: May 24, 2006  
W.I.: 1512  
Referred By: PAC

RE: BART Car Replacement Funding Exchange and Reserve Account

METROPOLITAN TRANSPORTATION COMMISSION  
RESOLUTION NO. 3738

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

WHEREAS, MTC has adopted a 25-year regional transportation plan (RTP), entitled the Transportation 2030 Plan, (MTC Resolution No. 3681, approved February 23, 2005); and

WHEREAS, the Transportation 2030 Plan identifies a funding shortfall of \$1.3 billion over the next twenty-five years for high priority transit capital projects; and

WHEREAS, the Bay Area Rapid Transit District's (BART) fleet replacement program, which is scheduled to begin in 2013, comprises a significant portion of the region's high priority transit capital shortfall; and

WHEREAS, MTC and BART staff have been in discussions over the development of a program to fund the BART A, B, C1, and C2 car replacement program, hereinafter called "Project", set to begin in 2013, by exchanging federal, state, and local funds for BART local funds and establishing a reserve for such funds, and propose that MTC and BART enter into an agreement articulating the principles for accomplishing such fund exchanges and establishing a reserve capital funding account for the Project; and

WHEREAS, MTC as the regional planning agency has facilitated discussions about financing the Project, including exchanging regional funds and reserving funds for this purpose in coordination with members of the Bay Area Partnership and have afforded opportunity for comment; and

WHEREAS, MTC and BART have specified the terms and conditions of the Project in an agreement which is set forth in Attachment A to this Resolution, attached hereto and incorporated herein as though set forth at length; now, therefore be it

RESOLVED, that MTC approves Attachment A; and, be it further

RESOLVED, that Attachment B, Programmed Amounts, attached hereto and incorporated herein as though set forth at length, sets forth the agreed-upon funding amounts for the fund exchange, which may be amended from time to time by amendment to this Resolution; and, be it further

RESOLVED, that the Executive Director is authorized to execute Attachment A on behalf of MTC, and to make non-substantive changes or minor amendments as deemed appropriate subject to review by MTC's Office of General Counsel for form; and, be it further

RESOLVED, that upon execution of Attachment A by the signatory agencies, MTC staff shall commence implementing the fund exchange and establishing the BART Car Replacement Restricted Account.

METROPOLITAN TRANSPORTATION COMMISSION

A handwritten signature in black ink, appearing to read 'Jon Rubin', is written over a horizontal line.

Jon Rubin, Chair

The above resolution was entered into by the Metropolitan Transportation Commission at a regular meeting of the Commission held in Oakland, California on May 24, 2006.

Date: May 24, 2006  
 W.I.: 1512  
 Referred By: PAC  
 Revised: 11/15/06-ED 09/26/07-C  
 12/15/10-C 11/28/12-C  
 12/18/13-C 01/27/16-C  
 09/28/16-C 12/18/19-C  
 04/22/20-C

Attachment B  
 Resolution No. 3738, Revised  
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ATTACHMENT B  
 TABLE 1. PROGRAMMED FEDERAL FUNDING AMOUNTS SUBJECT TO  
 BART CAR REPLACEMENT FUNDING EXCHANGE AGREEMENT

Ready-to-go Project Title	Transportation Improvement Program	Fund Source	Amount	Fiscal Year Programming
Preventive Maintenance	REG050020	Surface Transportation Program	\$22,680,000	FY 2005-06
Preventive Maintenance	REG050020	Surface Transportation Program	\$22,681,000	FY 2006-07
Preventive Maintenance	REG050020	Surface Transportation Program	\$22,682,000	FY 2007-08
Preventive Maintenance	REG050020	Surface Transportation Program	\$22,683,000	FY 2008-09
Preventive Maintenance	REG050020	FTA Section 5307	\$25,940,067	FY 2010-11
Preventive Maintenance	REG050020	FTA Sections 5307 & 5309 FG	\$23,979,594	FY 2011-12
Preventive Maintenance	REG050020	FTA Sections 5307 & 5337	\$72,000,000	FY 2012-13
Preventive Maintenance	REG050020	FTA Sections 5307 & 5337 & Surface Transportation Program	\$77,000,000	FY 2013-14
Preventive Maintenance	REG050020	FTA Sections 5307 & 5337	\$52,815,324	FY 2014-15
Preventive Maintenance	REG050020	FTA Sections 5307 & 5337	\$47,116,668	FY 2015-16

ATTACHMENT B  
TABLE 2. AUTHORIZED WITHDRAWALS FROM BART CAR  
REPLACEMENT FUNDING EXCHANGE ACCOUNT

Withdrawal No.	Fiscal Year	MTC Approval Date	Authorized Amount	Conditions
01	2012-13	November 28, 2012	\$15,500,000	Funds to be withdrawn from the ACCOUNT are to be expended for PROJECT costs only.
02	2019-20	December 18, 2019	\$18,000,000	Funds to be withdrawn from the ACCOUNT are to be expended for PROJECT costs only.
03	2019-20	April 22, 2020	\$220,100,000	Funds to withdrawn from the ACCOUNT are to be expended for PROJECT costs only. <del>This authorized withdrawal is contingent on BART Board execution of Tax &amp; Regulatory Agreement related to FTA Financing for the PROJECT.</del>