

**Metropolitan Transportation Commission
Programming and Allocations Committee**

May 13, 2020

Agenda Item 2h – 20-0533

MTC Resolution No. 4412, Revised

Subject: Regional Measure 3 (RM3) Letters of No Prejudice to Alameda County Transportation Commission (ACTC) for the 7th Street Grade Separation Project; and I-680/SR-84 Interchange Reconstruction and SR-84 Expressway Widening Project.

Background: **Regional Measure 3 Letters of No Prejudice (LONP)**
Bay Area voters approved Regional Measure 3 (RM3) on June 5, 2018, and on December 19, 2018, the Bay Area Toll Authority (BATA) adopted a toll schedule phasing in the resulting toll increase. The first 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. In December 2019, MTC approved a Letter of No Prejudice (LONP) process as part of the overall RM3 Policies and Procedures to allow project sponsors to move projects forward with alternate funds, at-risk, while maintaining RM3 eligibility if and when RM3 funds are available.

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

7th Street Grade Separation (East) Project

The Alameda County Transportation Commission (ACTC) has submitted an RM3 LONP request for \$55 million for construction of the 7th Street Grade Separation (East) project, part of RM3 Project 3: Goods Movement and Mitigation Program. The project will realign and reconstruct the existing substandard railroad underpass between I-880 and Maritime Street. The project is being delivered by ACTC and will be maintained by Union Pacific Railroad, Port of Oakland, and City of Oakland once completed.

On March 26, 2020, the ACTC Commission committed \$80 million of the \$160 million RM3 Goods Movement and Mitigation Program for the GoPort Suite of Projects, which the 7th Street Grade Separation project is part. This action is consistent with MTC's March 25, 2020 action adopting the Goods Movement Programming Framework, including \$80 million committed to the GoPort Suite of Projects. The 7th Street Grade Separation (East) project has \$175 million in Senate Bill 1 (SB1) Trade Corridor Enhancement Program (TCEP) funds. ACTC intends to request allocation of TCEP funds in June 2020. Construction is expected to begin in October 2020, and the project is expected to be complete and in operation by December 2023.

I-680/SR-84 Interchange Reconstruction and SR-84 Expressway Widening

ACTC also submitted an RM3 LONP request for \$85 million for the construction of the I-680/SR-84 Interchange Reconstruction and SR-84 Expressway Widening project, RM3 Project 30. The project will upgrade SR-84 in southern Alameda County from south of Ruby Hill Drive to I-680, construct operational improvements to the I-680/SR-84 Interchange, and extend the existing southbound express lane from SR-84 to north of Koopman Road. Construction is expected to begin in November 2020, and the project is expected to be complete and in operation by September 2023. ACTC will deliver the project and Caltrans will be the owner-operator of the completed facilities.

LONP Funding Source

The RM3 Policies and Procedures require that the project sponsor provides a non-RM3 source of funding to cover the portion that would be covered by RM3 funds, and that a plan be provided in case the RM3 funds never become available. In lieu of RM3 funds at this time, ACTC will use its local option sales tax funds (Measures B and BB) to construct the project. ACTC understands the risk that RM3 funds may never become available.

Staff has reviewed the Initial Project Reports and LONP requests and recommend issuing LONPs. Issuing LONPs will preserve the eligibility of activities related to construction of the 7th Street Grade Separation (East) and I-680/SR-84 Interchange Reconstruction and SR-84 Expressway Widening projects occurring after the issuance of the LONP, for future RM3 allocation and reimbursement in the event that RM3 legislation is resolved favorably

An RM3 LONP does not represent a general funding commitment by MTC. In the event RM3 funds do not become available, there is no expectation that MTC or BATA will provide alternate funds.

Issues: If the RM3 litigation is not resolved favorably, funds may never become available to reimburse ACTC. ACTC has acknowledged this risk in its agency resolution and MOU.

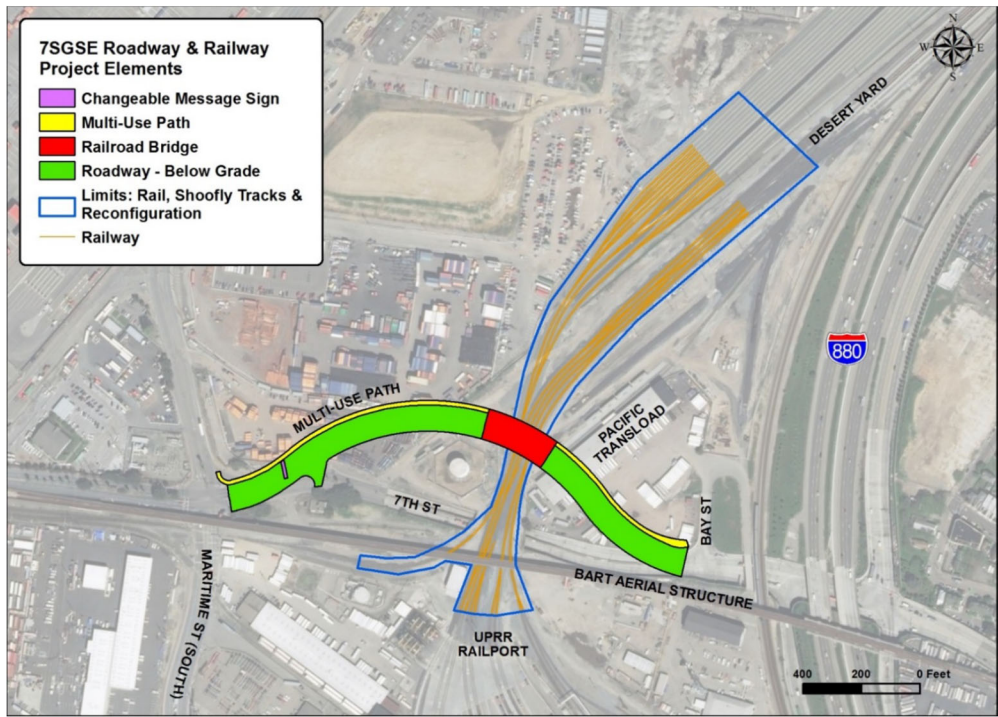
Recommendation: Staff requests that the Commission approve MTC Resolution No. 4412, Revised.

Attachments: Attachment A: Project Area Maps
MTC Resolution No. 4412, Revised



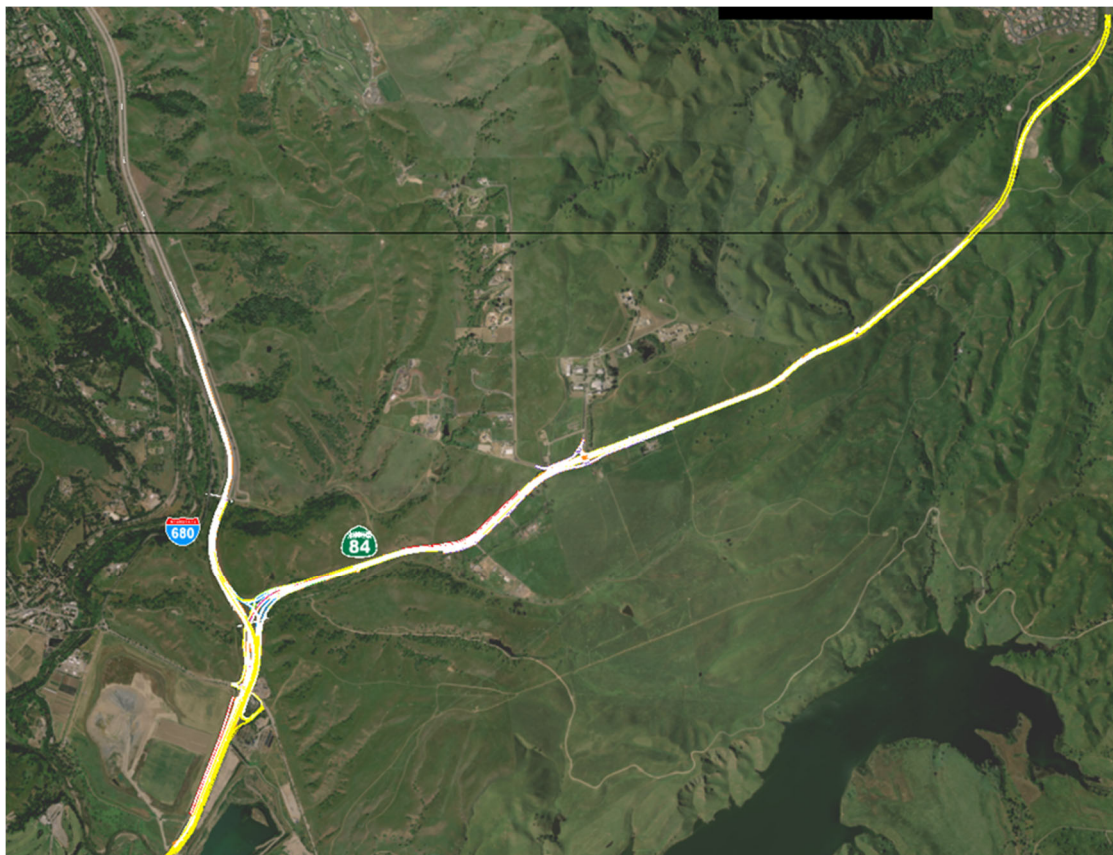
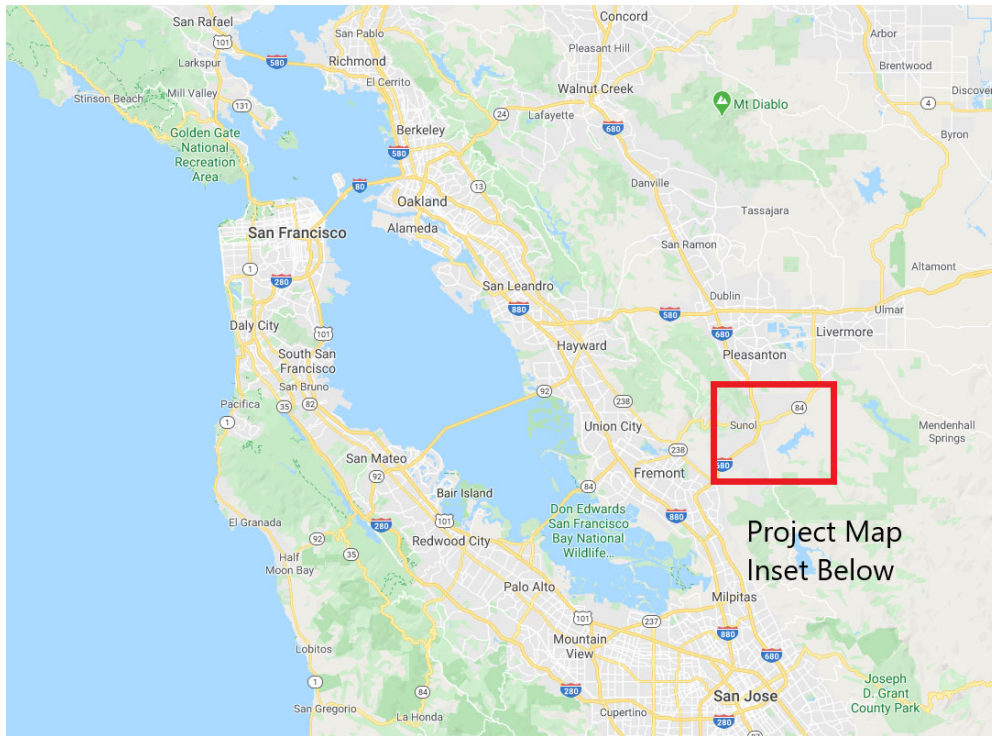
Therese W. McMillan

Attachment A-1
Project Area Map: 7th Street Grade Separation (East) Project



Attachment A-2

Project Area Map: I-680/SR-84 Interchange Reconstruction Project



Project limits highlighted in white and yellow

Date: March 25, 2020
Referred by: PAC
Revised: 05/27/20-C

ABSTRACT

MTC Resolution No. 4412, Revised

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

This resolution includes the following attachments:

Attachment A – Mission Bay Ferry Landing (WETA) LONP Summary

Attachment B – Goods Movement GoPort 7th Street Grade Separation (Alameda County Transportation Commission (ACTC)) LONP Summary

Attachment C – I-680/SR-84 Interchange Reconstruction and SR-84 Expressway Widening (ACTC) LONP Summary

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

Additional discussion of this allocation is contained in the Programming and Allocations Committee Summary sheets dated March 11, 2020 and May 13, 2020.

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

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

METROPOLITAN TRANSPORTATION COMMISSION
RESOLUTION No. 4412

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

WHEREAS, Streets and Highways Code Sections 30950 *et seq.* created the Bay Area Toll Authority (“BATA”) which is a public instrumentality governed by the same board as that governing MTC; and

WHEREAS, on June 5, 2018, a special election was held in the City and County of San Francisco, and the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma (individually, each a “County” and, collectively, the “Counties”) to approve a toll increase of three dollars (\$3.00) phased in over time, including a one dollar (\$1.00) toll increase on January 1, 2019, a one dollar (\$1.00) toll increase on January 1, 2022, and a one dollar (\$1.00) toll increase on January 1, 2025, for vehicles traveling on the state-owned bridges located in the San Francisco Bay Area (“Regional Measure 3”); and

WHEREAS, on September 26, 2018, the Bay Area Toll Authority (“Authority”) adopted Resolution No. 126 accepting certified statements from the Registrar of Voters of the City and County of San Francisco and each of the Counties and observing that a majority of all voters voting on Regional Measure 3 (“RM3”) at such special election voted affirmatively for RM3; and

WHEREAS, on December 19, 2018, the Authority adopted Resolution No. 128 adopting a toll schedule phasing in the toll increase approved pursuant to RM3, effective on January 1, 2019; and

WHEREAS, RM3 establishes the RM3 Expenditure Plan and identifies specific capital projects and programs and operating programs eligible to receive RM3 funding as identified in Sections 30914.7(a) and (c) of the California Streets and Highways Code; and

WHEREAS, BATA shall fund the projects of the RM3 Expenditure Plan by bonding or transfers to MTC; and

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

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

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

WHEREAS, the claimants to which an LONP is issued under this resolution have certified that the projects and purposes listed and recorded the Attachments are in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), and with the State Environmental Impact Report Guidelines (14 California Code of Regulations Section 15000 et seq.); now, therefore, be it

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

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

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

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

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

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

RESOLVED, that an RM3 LONP does not represent a general funding commitment by MTC; in the event that RM3 funds do not become available, there is no expectation that MTC or BATA will provide alternate funds; and be it further

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

METROPOLITAN TRANSPORTATION COMMISSION



Scott Haggerty, Chair

The above resolution was entered into by the Metropolitan Transportation Commission at the regular meeting of the Commission held in San Francisco, California, on March 25, 2020.



Regional Measure 3

Letter of No Prejudice Project Summary

Project Information

| | | |
|---|--|----------------------------|
| RM3 Project Number | 3.1 | |
| Project Title | Goods Movement & Mitigation; Subproject: 7th St. Grade Separation East | |
| Lead Sponsor(s) | Other Sponsor(s) | Implementing Agency |
| Alameda County Transportation Commission (ACTC) | | ACTC |
| Legislated Project Description | RM3 Legislated Funding (in \$1,000s) | |
| (3) Goods Movement and Mitigation. Provide funding to reduce truck traffic congestion and mitigate its environmental effects. Eligible projects include, but are not limited to, improvements in the County of Alameda to enable more goods to be shipped by rail, access improvements on Interstate 580, Interstate 80, and Interstate 880, and improved access to the Port of Oakland. The Metropolitan Transportation Commission shall consult and coordinate with the Alameda County Transportation Commission to select projects for the program. Eligible applicants include cities, counties, countywide transportation agencies, rail operators, and the Port of Oakland. The project sponsor is the Metropolitan Transportation Commission and the Alameda County Transportation Commission. | \$160,000 | |
| Sponsor Programming and LONP Request Action | | |
| ACTC's Commission approved ACTC Resolution No. 20-005 on 3/26/2020, approving a \$55,000,000 RM3 LONP request. At the same meeting, ACTC also approved programming \$80,000,000 of the RM3 Goods Movement and Mitigation Program to the GoPort Suite of Projects (which includes the 7th Street Grade Separation project). | | |
| Detailed Project Description | | |
| The 7SGSE Project is one of the three projects included in the GoPort Program. This subproject proposes to realign and reconstruct the existing substandard railroad underpass between I-880 and Maritime Street, to increase clearance for trucks, meet other current geometric and seismic standards, and improve the shared pedestrian/bicycle pathway. | | |
| LONP Phase | LONP Amount (in \$1,000s) | LONP Approval Date |
| CON | \$55,000 | 22-Apr-20 |
| Scope - Activities eligible for future allocation and reimbursement if RM3 funds become available | | |
| The LONP preserves future RM3 eligibility for costs related to construction of the 7th Street Grade Separation project incurred after the LONP approval date. | | |
| Conditions - In addition to the successful outcome of RM3 litigation, eligibility for future allocation and reimbursement is conditioned upon the following: | | |
| 1 If ACTC is successful in securing other grant funding, such as federal INFRA funds, this LONP is subject to cancelation. | | |



Regional Measure 3

Letter of No Prejudice Project Summary

Project Funding Plan and Schedule

| | |
|---------------------------------------|--|
| RM3 Project Number | 3.1 |
| Project Title | Goods Movement & Mitigation; Subproject: 7th St. Grade Separation East |
| RM3 Replacement Funding Source | Measure BB, ACTC's Local Option Sales Tax |

Project Funding Plan

Project Schedule

| Phase | Funding Source | Committed? (Yes/No) | Total Amount (\$1,000s) | Start | End |
|------------------------------|---|------------------------|----------------------------|--------|--------|
| ENV | ACTC Measure BB | Yes | \$ 5,400 | Aug-01 | Oct-18 |
| | | | | | |
| | | | | | |
| | ENV Subtotal | | \$ 5,400 | | |
| PSE | ACTC Measure BB | Yes | \$ 13,620 | Oct-18 | Mar-20 |
| | SB1- Local Partnership Program | Yes | \$ 7,980 | | |
| | | | | | |
| | PSE Subtotal | | \$ 21,600 | | |
| ROW | ACTC Measure BB | | \$ 54,000 | Oct-18 | Mar-20 |
| | | | | | |
| | ROW Subtotal | | \$ 54,000 | | |
| CON | SB1- Trade Corridor Enhancement Program | Yes | \$ 175,000 | Oct-20 | Dec-23 |
| | ACTC Measure BB | Yes | \$ 6,000 | | |
| | ACTC Measure BB (RM3 replacement) | Yes | \$ 55,000 | | |
| | CON Subtotal | | \$ 236,000 | | |
| Capital Funding Total | | | \$ 317,000 | | |



Regional Measure 3

Letter of No Prejudice Project Summary

Project Information

| | | |
|--|--|----------------------------|
| RM3 Project Number | 30 | |
| Project Title | Interstate 680/State Route 84 Interchange Reconstruction Project | |
| Lead Sponsor(s) | Other Sponsor(s) | Implementing Agency |
| Alameda County Transportation Commission (ACTC) | | ACTC, Caltrans |
| Legislated Project Description | RM3 Legislated Funding (in \$1,000s) | |
| (30) Interstate 680/State Route 84 Interchange Reconstruction Project. Improve safety and regional and interregional connectivity by conforming State Route 84 to expressway standards between south of Ruby Hill Drive and the Interstate 680 interchange in southern Alameda County and implementing additional improvements to reduce weaving and merging conflicts and help address the additional traffic demand between Interstate 680 and State Route 84. | \$85,000 | |
| Sponsor Programming and LONP Request Action | | |
| ACTC's Commission approved ACTC Resolution No. 20-006 on 3/26/2020, approving a \$85,000,000 RM3 LONP request. | | |
| Detailed Project Description | | |
| The Project proposes to upgrade SR-84 in southern Alameda County from south of Ruby Hill Drive to I-680, construct operational improvements to the SR-84/I-680 Interchange, and extend the existing southbound express lane from SR-84 to north of Koopman Road. | | |
| LONP Phase | LONP Amount (in \$1,000s) | LONP Approval Date |
| CON | \$85,000 | 22-Apr-20 |
| Scope - Activities eligible for future allocation and reimbursement if RM3 funds become available | | |
| The LONP preserves future RM3 eligibility for costs related to construction of the I-680/SR-84 Interchange Reconstruction project incurred after the LONP approval date. | | |
| Conditions - In addition to the successful outcome of RM3 litigation, eligibility for future allocation and reimbursement is conditioned upon the following: | | |
| 1 | None | |
| | | |



Regional Measure 3

Letter of No Prejudice Project Summary

Project Funding Plan and Schedule

| | |
|---------------------------------------|--|
| RM3 Project Number | 30 |
| Project Title | Interstate 680/State Route 84 Interchange Reconstruction Project |
| RM3 Replacement Funding Source | Measures B and BB, ACTC's Local Option Sales Taxes |

Project Funding Plan

Project Schedule

| Phase | Funding Source | Committed? (Yes/No) | Total Amount (\$1,000s) | Start | End |
|------------------------------|--|------------------------|----------------------------|--------|--------|
| ENV | ACTC Measure Funds | Yes | \$ 2,816 | May-15 | May-18 |
| | Tri-Valley Transportation Development Fees | Yes | \$ 2,940 | | |
| | | | | | |
| | ENV Subtotal | | \$ 5,756 | | |
| PSE | ACTC Measure Funds | Yes | \$ 8,400 | Jun-18 | Apr-20 |
| | Tri-Valley Council Transportation Fees | Yes | \$ 8,850 | | |
| | | | | | |
| | PSE Subtotal | | \$ 17,250 | | |
| ROW | ACTC Measure Funds | Yes | \$ 17,350 | Jun-18 | Apr-20 |
| | Tri-Valley Council Transportation Fees | Yes | \$ 3,150 | | |
| | ROW Subtotal | | \$ 20,500 | | |
| CON | ACTC Measure Funds | Yes | \$ 100,678 | Nov-20 | Sep-23 |
| | State Transportation Improvement Program | Yes | \$ 11,114 | | |
| | SB1- Local Partnership Program | Yes | \$ 3,802 | | |
| | ACTC Measure Funds (RM3 replacement) | Yes | \$ 85,000 | | |
| | CON Subtotal | | \$ 200,594 | | |
| Capital Funding Total | | | \$ 244,100 | | |