

Metropolitan Transportation Commission Programming and Allocations Committee

June 9, 2021

Agenda Item 2b - 21-0590

Regional Measure 3 (RM3): Preserving RM3 Eligibility for Salesforce Center

Subject: Request for the MTC Executive Director, or designee to send a letter to the Transbay Joint Powers Authority to preserve their ability to receive RM3 operating funds for FY 2019-20 through FY 2021-22. Approval to allocate future RM3 funds would still require further Commission action.

Background: Regional Measure 3 was approved by voters on June 5, 2018. On January 1, 2019, BATA implemented the first dollar of the associated toll increase allowed by the measure. Since RM3 remains in litigation, collected revenues are being held in escrow and RM3 funds are currently not being allocated to projects. As with Regional Measure 2, a maximum percentage of total RM3 revenue shall be made available annually for the purposes of providing operating assistance.

The Transbay Joint Powers Authority (TJPA) has been identified to receive a portion of RM3 operating funds to support operations of the Transbay Terminal, the Salesforce Transit Center. Last fiscal year, TJPA requested approval to be eligible for future reimbursement of operating expenses incurred in FY 2019-20. Due to Shelter-in-Place (SIP) orders and efforts related to the pandemic, staff was unable to address their request at that time. TJPA has made an additional request to be able to be reimbursed for eligible costs incurred in FY 2020-21 as well as the upcoming fiscal year, FY 2021-22.

MTC Policy Precedent

The Regional Measure 3 Policies and Procedures (MTC Resolution 4404) includes the following provision specific to capital projects:

“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. . . .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.” (page 14)

While specific to capital projects, staff recommends that similar consideration be made for costs incurred for operating projects, where a single project sponsor has been identified

Transbay Terminal and Letter Request

The RM3 expenditure plan includes operating funds for the San Francisco Transbay Terminal, under the following project description:

“Eight percent of the amount available for operating assistance. . . , not to exceed five million dollars (\$5,000,000). These funds are available for transportation-related costs associated with operating the terminal. The Transbay Joint Powers Authority shall pursue other long-term, dedicated operating revenue to fund its operating costs. To the extent that a portion or all of the toll revenue provided pursuant to this subparagraph is not needed in a given fiscal year, the Metropolitan Transportation Commission shall reduce the allocation accordingly.” SHC 30914.7 (c)(2)(a)

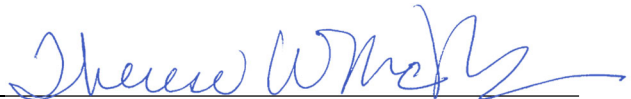
The Salesforce Transit Center reopened on July 1, 2019. Budget information as well as the FY 2019-20 fiscal audit demonstrate a need for RM3 operating funding. Annual funding for the three fiscal years under consideration would likely be significantly less than the amount identified in statute because the current RM3 toll rate is less than the \$3 authorized and toll collection has been reduced due to the COVID-19 pandemic.

Since Regional Measure 3 remains in litigation, staff recommends that approval be granted to the request from TJPA to preserve the eligibility for RM3 operating funds. If RM3 litigation is successfully resolved, staff will assess the eligibility of operating costs incurred and the need for funding before recommending an allocation of funds for FY 2019-20 through FY 2021-22 expenses, up to the amount permissible for any given fiscal year.

Issues: MTC typically does not allow reimbursement for operating costs after the fiscal year that revenue is earned or that the costs have been incurred. Any costs incurred by TJPA that rely on eventual RM3 funds are performed at-risk to the project sponsor and there is no guarantee of reimbursement.

Recommendation: Direct the MTC Executive Director, or designee to send a letter to TJPA clarifying that past and future eligible operating costs incurred in the operation of the Transbay Terminal may be reimbursed by the Commission subject to available funding and other conditions as the Commission may determine.

Attachments: None.


Therese W. McMillan