

Metropolitan Transportation Commission Programming and Allocations Committee

June 9, 2021

Agenda Item 2g - 21-0632

MTC Resolutions Nos. 3989 Revised, and 4469

Subject: Funding exchange agreement with the Solano Transportation Authority (STA) for the I-80 managed lanes project.

Background: In Fall 2020, the California Transportation Commission (CTC) programmed over \$123 million in Senate Bill 1 (SB1) Trade Corridor Enhancement Program (TCEP) funds for the Solano I-80 Managed Lanes project. This project also has funding from Regional Measure 3 (RM3) which has been challenged and is currently under review in the California Supreme Court.

The Solano Transportation Authority (STA) has requested the assistance of MTC to move forward with the project in order to maintain the delivery commitment to the CTC for the Solano I-80 Managed Lanes project, and to avoid escalation costs for a project ready to proceed to construction but on hold due to lack of funding. The STA does not have sufficient funding available to move the project forward while RM3 is on hold.

In April 2021, the Commission approved a Letter of No Prejudice (LONP), allowing STA to proceed with the project using other funds and be eligible for reimbursement with RM3 funds when and if RM3 funds are made available. The Commission also approved the use of federal MTC discretionary funds, such as Surface Transportation Block Grant Program (STBGP), Congestion Mitigation and Air Quality Improvement (CMAQ), or Federal Highway Infrastructure Program (FHIP) funds, to secure the LONP, with STA repaying these funds to MTC once RM3 funds become available.

The attached agreement outlines the terms and conditions under which MTC is to provide federal regional discretionary funds, in exchange for STA unrestricted funds. Highlights of the agreement include:

- Total amount not to exceed roughly \$64 million.
- STA to repay MTC with unrestricted funds that may be used by MTC anywhere within the region.
- STA to pay one percent of any remaining unpaid balance if a final resolution of the pending RM3 litigation allows distribution of RM3 funds and is delayed beyond the end of federal fiscal year 2023.
- The STA is not required to repay these funds if the pending litigation is not resolved in favor of allowing disbursement of RM3 funds.

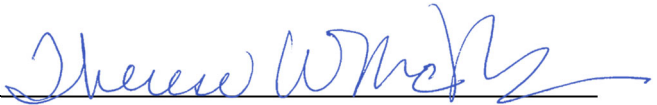
The STA unrestricted funds will be placed into the MTC Exchange Account for programming to projects at the discretion of the Commission.

Issues: The exchange assumes RM3 is resolved in favor of allowing disbursement of RM3 funds, and for the STA to provide a one-time payment of one percent of any remaining unpaid balance if a favorable outcome occurs after the end of federal fiscal year 2023. This is in recognition of the lost opportunity for the use of these funds in the first year of the OBAG 3 program.

If the pending litigation is not resolved in favor of allowing disbursement of RM3 funds, the regional discretionary funds and one-time payment subject to this exchange agreement would not be required to be paid by STA. While risk of non-repayment exists, the trade-off is that a regionally significant project will be able to proceed with federal funds that leverage substantial state competitive funding.

Recommendation: Refer MTC Resolution Nos. 3989, Revised and 4469 to the Commission for approval.

Attachments: MTC Resolution No. 3989 Revised, Attachment A
MTC Resolution No. 4469


Therese W. McMillan

Date: February 23, 2011
W.I.: 1512
Referred by: PAC
Revised: 10/26/11-C 02/26/14-C 12/21/16-C
07/26/17-C 02/28/18-C 03/28/18-C
11/28/18-C 03/27/19-C 06/26/19-C
09/25/19-C 11/20/19-C 03/25/20-C
11/20/20-C 05/26/21-C 06/23/21-C

ABSTRACT

Resolution No. 3989, Revised

This resolution establishes the procedures governing the MTC Exchange Program. This resolution supersedes MTC Resolution No. 3018.

Attachment B was revised on October 26, 2011 to provide \$376,000 in Exchange Program funding to the intertribal Electric Vehicle project.

Attachments B and C were respectively revised on February 26, 2014 to include \$10 million in Exchange Program funding for Transit Oriented Affordable Housing (TOAH), and update final balances of the initial STP Exchange Program (Resolution 3018) to reflect final project close out.

Attachments A and B were revised on December 21, 2016 to program \$1.1 million to the Bay Bridge Forward Commuter Parking Initiative and update the name of the Transit Oriented Affordable Housing Program.

Attachments A and B were revised on July 26, 2017 to program \$8.2 million to the Regional Priority Conservation Area (PCA) program and \$2.8 million to the Regional Active Operational Management Program. An additional \$1 million in exchange funds will be committed to a specific project or program through a future Commission action. This action and associated agreement and programming actions are contingent upon California Transportation Commission (CTC) approval of the amendment to the baseline agreement for the Marin Sonoma Narrows project to accept STP/CMAQ funds rather than local funds.

Attachment B was revised on February 28, 2018 to program \$10 million to the Bay Area Preservation Pilot; \$1,024,000 to Richmond's Bike Share Capital and Outreach project; \$826,000 for the joint Transportation Authority of Marin/Sonoma County Transportation Authority (TAM/SCTA) Bike Share Capital and Outreach project along the SMART Corridor;

and redirect \$2,800,000 from Regional Active Operational Management to the Bay Bridge Forward Commuter Parking Initiative project.

Attachment B was revised on March 28, 2018 to program \$30,000 to the Bay Area Greenprint Priority Conservation Area (PCA) Improvements.

Attachments A and B were revised on November 28, 2018 to add the SCVTA SR 85 Transit Guideway Study and the CCTA I-680 NB HOV/Express Lane exchange agreements, and to program \$4,000,000 in Exchange funds to the following projects: \$619,000 to CCTA for Innovative Deployment for Enhanced Arterials; \$621,000 to the city of Walnut Creek for innovative Deployment for Enhanced Arterials; \$500,000 to the city of Richmond for the Richmond-San Rafael Bridge Bikeway Access; \$1,160,000 to MTC for Richmond-San Rafael Bridge Forward; and \$1,100,000 to MTC for Napa Valley Transportation Demand Management Strategies.

Attachment B was revised on March 27, 2019 to change the recipient of the Concord IDEA project from CCTA to the City of Concord and reduce the funding from \$619,000 to \$589,000; and reduce the funding amount for the MTC Richmond-San Rafael Bridge Forward project from \$1,160,000 to \$1,046,000; and redirect these funds to a new project with MTC as the recipient for the Concord IDEA project for \$144,000. The matching funds for the Concord IDEA project as identified in MTC Resolution 4357, are included within the \$144,000 amount. These changes result in no net change to total funds committed to-date.

Attachment A was revised on June 26, 2019 to cancel the \$1,200,000 exchange agreement with the SCVTA for the SR 85 Transit Guideway Study as the funds provided through the exchange are no longer needed.

Attachment B was revised on September 25, 2019 to reflect MTC as the direct recipient of exchange funds for the Concord and Walnut Creek IDEA projects; funds will be provided on a reimbursement basis to each project sponsor pursuant to their respective funding agreements with MTC.

Attachment B was revised on November 20, 2019 to program \$6,023,000 to 13 projects as part of the Priority Conservation Area (PCA) Grant program; funds will be provided on a

reimbursement basis to each project sponsor pursuant to their respective funding agreements with MTC.

Attachment B was revised on March 25, 2020 to redirect \$25,000 from MTC's Bay Bridge Forward Commuter Parking Initiative to MTC's Fruitvale Quick Build project.

Attachment B was revised on November 20, 2020 to program \$647,000 to four projects as part of the Priority Conservation Area (PCA) Grant program. For the Yerba Buena Island Multi-Use Pathway, which provides access to the San Francisco-Oakland Bay Bridge, \$1 million of federal OBAG 2 funds are being provided at this time for cash flow purposes. The Bay Area Toll Authority will repay non-federal funds to the MTC Exchange Program within three years. MTC's funds for the Twin Peaks trail will be provided to the Coastal Conservancy for management of the two fund sources for this project. Because the Conservancy is a state entity, the funds will be provided as an up-front grant rather than on a reimbursement basis. Funds for projects other than the Twin Peaks Trail will be provided on a reimbursement basis to each project sponsor pursuant to their respective funding agreements with MTC.

Attachment A was revised on May 26, 2021 to add the Transportation Authority of Marin's (TAM's) US 101 Marin-Sonoma Narrows (MSN) High-Occupancy Vehicle (HOV) Lanes project for \$75,651,097.

Attachment A was revised on June 23, 2021 to add the Solano Transportation Authority's (STA's) Solano I-80 Managed Lanes project for \$63,464,510.

Further discussions are contained in the Programming and Allocations Committee summary sheet dated February 9, 2011, October 12, 2011, February 12, 2014, December 14, 2016, July 12, 2017, February 14, 2018, March 7, 2018, November 14, 2018, March 6, 2019, June 12, 2019, September 4, 2019, November 8, 2019, March 11, 2020, November 4, 2020, May 12, 2021, and June 9, 2021.

Date: February 23, 2011
W.I.: 1512
Referred by: PAC

Re: MTC Exchange Program

METROPOLITAN TRANSPORTATION COMMISSION
RESOLUTION NO. 3989

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

WHEREAS, MTC is the designated Metropolitan Planning Organization (MPO) for the nine-county San Francisco Bay Area region (the region) and is the recipient for various federal fund sources for the San Francisco Bay Area; and

WHEREAS, MTC develops policies and procedures to be used in the selection of projects to be funded with various federal fund sources within the region consistent with the regional Transportation Plan (RTP); and

WHEREAS, selected projects are sometimes incompatible with or ineligible for federal funding and projects are often ready for implementation in advance of funding availability; and

WHEREAS, MTC assisted the Santa Clara County Traffic Authority (SCCTA) in 1994 by providing Surface Transportation Program (STP) funds, which initiated the original Exchange program implemented through MTC Resolution 3018; and

WHEREAS, the original exchange funding under MTC Resolution 3018 is nearly exhausted and MTC has entered into new funding exchange agreements where the implementation of specific projects with federal funds in exchange for local funds can achieve regional goals and objectives; now, therefore, be it

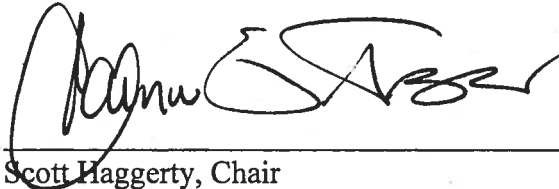
RESOLVED that Attachments A and B reflect the Exchange program balance and agreements approved by the Commission subject to this resolution; and be it further

RESOLVED, that attachment C lists the projects and amounts from the original STP Exchange program (MTC Resolution 3018) incorporated into the new MTC Exchange program; and be it further

RESOLVED that the Executive Director or designee is authorized to revise Attachments A, B and, C as necessary to reflect Commission actions and the on-going balances within the MTC Exchange program; and be it further

RESOLVED that MTC Resolution No. 3018 is superseded by this resolution.

METROPOLITAN TRANSPORTATION COMMISSION



Scott Haggerty, Chair

This resolution was entered into by the Metropolitan Transportation Commission at a regular meeting of the Commission held in Oakland, California on February 23, 2011.

**MTC Exchange Program
Funding Agreements
Attachment A
June 23, 2021**

	Agency	Project	Res No.	Res Date	Funding Provided by MTC		Funding Provided by Others	To-Date
					To-Date			
1	SCTA	SON US 101 Steele Lane HOV	3731	2/22/2006	CMAQ	\$1,500,000	Meas M	\$1,500,000
2	TAM	MRN US 101 HOV Gap Closure	3842	11/28/2007	CMAQ	\$12,500,000	Meas A	\$13,253,049
3	SFMTA	SFPark Parking Pricing	3963	5/26/2010	CMAQ	\$22,000,000	Parking Rev	\$22,799,802
4	CCTA	I-80 San Pablo Dam Road I/C	4264	12/21/2016	STP	\$1,100,000	Meas J	\$1,100,000
5	SCTA	SON US 101 MSN Phase B	4305	7/26/2017	STP	\$12,000,000	Meas M	\$4,000,000
6	SCVTA	SCL SR 85 Transit Guideway Study	4356	7/25/2018	STP	\$1,200,000	Meas B	\$0
7	CCTA	CC I-680 NB HOV/Express Lane	4357	9/26/2018	STP	\$4,000,000	Meas J	\$4,000,000
8	TAM	MRN US 101 MSN HOV Lane	4468	5/26/2021	STP/CMAQ/FHIP	\$75,651,097	Unrestricted Funds	
9	STA	SOL I-80 Managed Lanes	4469	6/23/2021	STP/CMAQ/FHIP	\$63,464,510	Unrestricted Funds	
Total:						\$193,415,607		\$46,652,851

Date: June 23, 2021
W.I.: 1515
Referred by: PAC

ABSTRACT

Resolution No. 4469

Establishes conditions for the exchange of Solano Transportation Authority (STA) unrestricted funds with Surface Transportation Block Grant Program (STBGP) and/or Congestion Mitigation and Air Quality Improvement (CMAQ) and/or Federal Highway Infrastructure Program (FHIP) funds provided by the Metropolitan Transportation Commission (MTC). An agreement for the conditions of this exchange of funds between STA and MTC is included.

The resolution includes the following attachment:

Attachment A – Funding Exchange Agreement

Further discussion of this action is contained in the Programming and Allocation summary sheet dated June 9, 2021.

Date: June 23, 2021
W.I.: 1515
Referred by: PAC

RE: Agreement for the Exchange of MTC Regional Discretionary Funds with Solano Transportation Authority Unrestricted funds

METROPOLITAN TRANSPORTATION COMMISSION
RESOLUTION NO. 4469

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

WHEREAS, MTC is the designated Metropolitan Planning Organization (MPO) for the nine-county San Francisco Bay Area region; and

WHEREAS, the Solano Transportation Authority (STA) is a local transportation authority created under California Public Utilities Code 180000 et seq.; and

WHEREAS, the Solano Transportation Authority (STA) is the sponsoring agency for the Solano I-80 Managed Lanes project, which received Trade Corridor Enhancement Program (TCEP) funds from the California Transportation Commission (CTC) and has Regional Measure 3 (RM3) fund in the funding plan; and

WHEREAS the collection of funds under Regional Measure 3 has been challenged and is currently under review in the California Supreme Court; and

WHEREAS, STA has requested the assistance of MTC to maintain the delivery commitment for the Solano I-80 Managed Lanes project by providing Surface Transportation Block Grant Program (STBGP) and/or Congestion Mitigation and Air Quality Improvement (CMAQ) and/or Federal Highway Infrastructure Program (FHIP) funds, hereinafter referred as “MTC Regional Discretionary Funds” in the near term in exchange for STA non-federal unrestricted funds hereinafter referred to as “STA Unrestricted Funds” in the longer term; and

WHEREAS, STA agrees to repay MTC for the MTC Regional Discretionary Funds with STA Unrestricted Funds as specified in this Agreement, attached and incorporated by reference; and

WHEREAS, the agreement is substantially in the form set forth in Attachment A to this resolution, attached and incorporated as though set forth at length; now, therefore, be it

RESOLVED, that MTC approves the exchange of MTC Regional Discretionary Funds with STA Unrestricted Funds for the purposes and within the maximum amount established, and subject to the conditions, set forth in Attachment A; and, be it further

RESOLVED, that the STA Unrestricted Funds shall be placed into the MTC Exchange Account for programming to project(s) at the discretion of the Commission; and, be it further

RESOLVED, that MTC's Executive Director is authorized to execute Attachment A, and to make non-substantive changes or minor amendments as deemed appropriate: and, be it further

RESOLVED, that upon execution of Attachment A by the signatory agencies, MTC staff shall implement the exchange of the MTC Regional Discretionary Funds with STA Unrestricted Funds.

METROPOLITAN TRANSPORTATION COMMISSION

Alfredo Pedroza, Chair

The above resolution was approved by the Metropolitan Transportation Commission at a regular meeting of the Commission held in San Francisco, California, and at other remote Locations, on June 23, 2021.

Agreement between the Metropolitan Transportation Commission (MTC) and the Solano Transportation Authority (STA) for the exchange of federal regional discretionary funds for STA non-federal unrestricted funds.

This AGREEMENT is entered into on the first day of July 1, 2021, by and between the SOLANO TRANSPORTATION AUTHORITY (“AUTHORITY”) created under California Public Utilities Code 180000 et seq. and the METROPOLITAN TRANSPORTATION COMMISSION (“MTC”), a regional transportation agency created under California Government Code Sections 66500 et seq.

Recitals

- (1) AUTHORITY is the sponsoring agency for the Solano I-80 Managed Lanes Project within Solano County (“PROJECT”).
- (2) PROJECT will be implemented over several years to relieve traffic congestion on I-80 for travelers within Solano County and between the San Francisco Bay Area and Sacramento regions and beyond.
- (3) PROJECT received Senate Bill 1 (SB1) Trade Corridor Enhancement Program (TCEP) funds from the California Transportation Commission (CTC) and has Regional Measure 3 (RM3) funds in the funding plan.
- (4) Project delivery is a deciding factor in the CTC granting TCEP competitive funding, with PROJECT scheduled to go to construction this year.
- (5) PROJECT is currently on hold and unable to proceed without RM3 funds being made available for PROJECT.
- (6) AUTHORITY has requested the assistance of MTC to maintain the delivery commitment of PROJECT by providing sixty-three million, four-hundred sixty-four thousand, five-hundred ten dollars (\$63,464,510) in federal regional discretionary funds such as Surface Transportation Block Grant Program (STBGP) and/or Congestion Mitigation and Air Quality Improvement (CMAQ) and/or federal Highway Infrastructure Program (FHIP) funds, hereinafter referred to as (“REGIONAL DISCRETIONARY FUNDS”) for PROJECT, in exchange for non-federal funds with no spending or eligibility limitations hereinafter referred to as “STA UNRESTRICTED FUNDS”
- (7) MTC, the transportation planning, coordinating, and financing agency for the nine-county San Francisco Bay Area, is eligible to program and assign REGIONAL DISCRETIONARY FUNDS, and has discretionary funding authority for the funds requested for PROJECT.
- (8) AUTHORITY and MTC desire to proceed with the funding agreement immediately, as nothing in this Agreement adversely affects MTC's responsibility to provide regional discretionary funds to other existing programmed projects in the Bay Area.
- (9) AUTHORITY and MTC mutually desire to specify the terms and conditions under which MTC is to provide REGIONAL DISCRETIONARY FUNDS to AUTHORITY, in

exchange for AUTHORITY's provision of STA UNRESTRICTED FUNDS to be repaid to MTC.

Now, therefore, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

Section I

MTC AGREES:

- (1) To perform such actions and to deliver such documents as are necessary to provide REGIONAL DISCRETIONARY FUNDS to AUTHORITY in accordance with this Agreement.
- (2) To program in the federal Transportation Improvement Program (TIP) by August 1, 2021, a maximum total of sixty-three million, four-hundred sixty-four thousand, five-hundred ten dollars (\$63,464,510) of MTC-apportioned REGIONAL DISCRETIONARY FUNDS to AUTHORITY for implementation of PROJECT.

Section II

AUTHORITY AGREES:

- (1) To coordinate with Caltrans as the implementing agency of the construction phase of PROJECT to seek authorization from the Federal Highway Administration (FHWA) of entire amount of the REGIONAL DISCRETIONARY FUNDS by December 31, 2021.
- (2) To meet all federal, state, and regional project funding delivery requirements associated with REGIONAL DISCRETIONARY FUNDS.
- (3) To request allocation and payment/reimbursement of sixty-three million, four-hundred sixty-four thousand, five-hundred ten dollars (\$63,464,510) in Regional Measure 3 funds from MTC and/or the Bay Area Toll Authority (BATA), within sixty (60) days of final disposition of the RM3 court case, if such disposition allows distribution of RM3 funds to local projects.
- (4) To provide STA UNRESTRICTED FUNDS in the amount of sixty-three million, four-hundred sixty-four thousand, five-hundred ten dollars (\$63,464,510) to MTC within sixty (60) days following receipt of RM3 funds from MTC or the Bay Area Toll Authority (BATA).
- (5) To provide MTC a one-time payment of one percent of any remaining unpaid balance if a final favorable resolution of the pending RM3 litigation is delayed past the end of federal fiscal year 2023. Authority shall not use RM3 funds to cover this one-time payment.
- (6) To indemnify, defend and hold harmless MTC, its Commissioners, directors, officers, 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 AUTHORITY, its officers, employees or agents, or subcontractors or any of them in connection with its performance of PROJECT under this Agreement.

Section III

IT IS MUTUALLY AGREED:

- (1) The term of this Agreement shall commence on July 1, 2021. With the exception of AUTHORITY'S indemnification, defense and hold harmless responsibilities under item 6 of section II above, which shall survive termination of this Agreement, the Agreement shall terminate upon the satisfaction of AUTHORITY's obligations to MTC with STA UNRESTRICTED FUNDS, as outlined in Section II of this Agreement. Notwithstanding the above, AUTHORITY may terminate this Agreement by written notice to MTC if AUTHORITY has not received an authorization of the REGIONAL DISCRETIONARY FUNDS by December 31, 2021 and no arrangement for availability of these funds after December 31, 2021 has been made by MTC to the satisfaction of AUTHORITY. If the Agreement is terminated by AUTHORITY, MTC will reprogram the REGIONAL DISCRETIONARY FUNDS to other projects selected at MTC's discretion.
- (2) If the pending litigation is not resolved in favor of allowing disbursement of RM3 funds, AUTHORITY is not obligated to repay the funds subject to this agreement.
- (3) MTC reserves the right to withhold from AUTHORITY future regional discretionary funds otherwise going to AUTHORITY, after consultation with AUTHORITY, if the pending RM3 litigation is resolved in favor of allowing disbursement of RM3 and AUTHORITY fails to meet its obligation to make the full payment to MTC under this agreement.
- (4) This Agreement shall bind and benefit the parties hereto and their heirs, successors, and permitted assigns.
- (5) MTC and AUTHORITY agree to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent, and purpose of the Agreement.
- (6) This Agreement may not be changed, modified, or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.
- (7) All required, reports, demands and notices may be sent by regular mail or electronic mail. Notices that are mailed by regular mail shall be deemed delivered two (2) business days after deposited in the mail. Notices may be personally delivered and shall be deemed delivered at the time delivered to the appropriate address set forth below. Notices delivered by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return electronic mail or other written acknowledgment of receipt); provided that, if such notice is not sent during normal business hours of the recipient, such notice shall be deemed to have been sent at the opening of business on the next business

day of the recipient. Unless and until notified otherwise in writing, a party shall send or deliver all such communications relating to this Agreement to the following address:

Daryl Halls
Executive Director
Solano Transportation Authority
One Harbor Center, Suite 130
Suisun City, CA 94585
dkhalls@sta.ca.gov

Ross McKeown
Assistant Director, Funding Policy and Programs
Metropolitan Transportation Commission
375 Beale St., Suite. 800
San Francisco, CA 94105
rmckeown@bayareametro.gov

- (8) This Agreement is the entire agreement among MTC and AUTHORITY relating to the subject matter of this Agreement. MTC and AUTHORITY acknowledge they have not relied upon any promise, representation or warranty not expressly set forth in this Agreement in executing this Agreement.
- (9) Should any part of this Agreement be declared unconstitutional, invalid, or beyond the authority of MTC or AUTHORITY to enter into or to carry out, such decision shall not affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.
- (10) No waiver by either party of any default or breach of any covenant by the other party shall be implied from any omission to take action on account of such default if such default persists or is repeated and no express waiver shall affect any default other than the default specified in such waiver and then such waiver shall be operative only for the time and to the extent stated in such waiver. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. No waiver of any provision under this Agreement shall be effective unless in writing and signed by the waiving party.
- (11) MTC and AUTHORITY represent and warrant that they are authorized to execute this Agreement.
- (12) This Agreement may be executed in counterparts.

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

SOLANO TRANSPORTATION
AUTHORITY

METROPOLITAN TRANSPORTATION
COMMISSION

Daryl K. Halls, Executive Director

Therese W. McMillan, Executive Director