Metropolitan Transportation Commission
Programming and Allocations Committee

April 8, 2009 **Item Number 2d**

Resolution No. 3636, Revised

Subject: Amendment to the Regional Measure 2 Policies and Procedures, MTC Resolution No. 3636, Revised.

Background: The Bay Area Toll Authority (BATA) recently completed the Fiscal Year 2007-08 audit on the RM 2 program. While this year's audit report had fewer findings compared to last year, staff proposes amending some areas of the existing RM2 Policies and Procedures to address the audit findings and streamline the procedures. As well, staff is taking this opportunity to make other minor clarifications and technical changes to the policies and procedures. The proposed amendments will be reviewed by the Transit Finance Working Group and the Partnership Technical Advisory Committee in April.

Capital Program:

1) Invoicing and Reimbursements: Some sponsors have requested MTC for "more frequently than monthly" invoicing on an exception basis. Keeping this in mind, staff is proposing changes to the Invoicing and Reimbursements section of the policies and procedures to allow sponsors with extenuating circumstances to submit requests for supplemental invoices (adding up to more than one per month), which must be approved in advance by MTC staff.

2) Technical Amendments: Staff is also proposing to make technical/language amendments to the policies and procedures to update certain sections to reflect the present conditions of the program. The intent of the policies and procedures in these areas remains the same.

Operating Program:

1) Performance Measure for Farebox Recovery: It is recommended that the measure be modified so that farebox recovery is determined using an average of the audit year plus two years in arrears or just the audit year, whichever is better. This helps account for fluctuations in the transit market beyond the control of operators.

2) Technical Amendments: Staff is proposing language adjustments that clarify and update the operating project policies and procedures, but maintain the intent of the legislation and original performance measures.

Issues: None

Recommendation: Refer Resolution No 3636, Revised to the Commission for approval.

Attachments: MTC Resolution Nos. 3636, Revised

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Date:	June 23, 2004	
W.I.:	1255	
Referred by:	PAC	
Revised:	11/17/04-C	09/21/05-C
	03/28/07-C	05/28/08-C
	02/25/09-C	04/22/09-C

ABSTRACT

Resolution No. 3636, Revised

This resolution adopts the policies and procedures for the Regional Traffic Relief Plan of Regional Measure 2 (RM2), included in Attachment A, *Regional Measure 2 Regional Traffic Relief Plan Policies and Procedures* (with attachments).

This Resolution was revised on November 17, 2004 to add the performance measures for transit operating projects and to make technical changes to the Regional Measure 2 Policies and Procedures.

This Resolution was revised on September 21, 2005 to modify the eligible costs for project sponsors and implementing agencies, clarify transit vehicle purchase requirements, modify progress reporting requirements and frequency, and make minor technical changes.

This Resolution was revised on March 28, 2007 to make clarifications to the invoicing procedures, modify timely use of funds requirements, add project close out procedures, and make minor technical changes.

This Resolution was revised on May 28, 2008 to make changes to the invoicing and reimbursements section and the allocation budget plan section of the IPR format, and make minor technical changes.

This Resolution was revised on February 25, 2009 to allow for the invoicing of projects more frequently than monthly, if explicitly provided for in the project allocation conditions.

This Resolution was revised on April 22, 2009 to make technical changes to reflect the present conditions of the program and make changes to the invoicing and reimbursements section.

Additional discussion of this Resolution is available in the Executive Director's memoranda to the Programming and Allocations Committee dated June 9, 2004 and November 10, 2004, and the Summary Sheet dated September 14, 2005, May 14, 2008, February 11, 2009 and April 8, 2009.

Date: June 23, 2004
W.I.: 1255
Referred by: PAC
Revised: 11/17/04-C
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03/28/07-C
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04/22/09-C

Regional Measure 2 Regional Traffic Relief Plan Policies and Procedures

Amended April 22, 2009

MTC Resolution No. 3636
Attachment A

Metropolitan Transportation Commission

Programming and Allocations Section
http://www.mtc.ca.gov

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SECTION 1 – GENERAL PROVISIONS

BACKGROUND

On March 2, 2004, voters passed Regional Measure 2 (RM2), raising the toll for all vehicles on the seven State-owned toll bridges in the San Francisco Bay Area, by $1.00. This extra dollar 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 916 (Chapter 715, Statutes of 2004). Specifically, RM2 establishes the Regional Traffic Relief Plan and identifies specific capital projects and programs and transit operating assistance eligible to receive RM2 funding as identified in Sections 30914(c) & (d) of the California Streets and Highways Code.

The following serve as the general provisions in the management of RM2 funding.

FUND MANAGEMENT

The collection of toll revenue is estimated to equal $113 million annually. Costs to administer the program are an annual drawdown on the revenue and an annual limit of up to 38 percent, a funding cap estimated to be reached in 2010, is made available for the RM2 operation projects. Available revenue for capital allocations will vary annually and capital allocations will be approved with respect to the fund management of the overall program. Final allocation decisions will be subject to the availability of funds. Finally, first year costs (FY 2004-05) include the required reimbursements to counties for the costs of administering the RM2 ballot measure as part of the March 2nd 2004 general election, as well as the 4-month discount from July 2004 through October 2004 to encourage more users to sign up for FasTrak®, the Bay Area's electronic toll collection system.

Program Financing Costs

It is the intent of the Commission to implement those projects and programs outlined in Streets and Highways Code Section 30914 (c) and (d), to the funding amounts designated. The cost of bonding and financing associated with RM2, including interest payments shall be considered a program cost and shall be identified in the annual RM2 Budget as the first priority repayment. The financing costs are not expected to reduce the overall funding level available to projects and programs.

Funding Exchanges

Generally, the exchange of RM2 funding with other types of funding from projects not identified in RM2 shall not be allowed, nor shall projects be substituted.

Matching Funds

A local match is not required for RM2 funds. Complementary funds (non-RM2 funds), for the project phase where RM2 funds are being requested and identified in the financial plan must be available at the time of allocation. Regional Measure 2 funds can be used as the match for federal fund sources requiring a non-federal match.

PUBLIC INVOLVEMENT PROCESS

The capital improvement projects and operating assistance for transit services identified for funding in RM2 are established by state legislation (Senate Bill 916, Chapter 715, Statutes of

2004) approved by the voters on March 2, 2004. In accordance with the legislation as approved by the voters, the Bay Area Toll Authority (BATA) is the financial manager for RM2 funds, whose responsibilities include the preparation of financial plans, the issuance of debt financing, and the disbursal 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 also serves as the project sponsor, for the regional Transit Connectivity Study, as well as certain regional customer service projects, such as the Transit Commuter Benefits promotion, the Real Time Transit information program, and implementation of TransLink®.

Generally, in conducting its review and approval responsibilities stipulated under RM2, MTC will adhere to its public participation policies as outlined in MTC Resolution No. 2648, MTC's Policy and Procedures on Public Involvement.

Specific statutory provisions require further that as part of its assessment of the status of programs and projects under RM2, 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. 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 Policy and Procedures on Public Involvement 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 transit program or project in the same corridor.

INDEMNIFICATION OF MTC

The sponsor shall indemnify and hold harmless MTC, its 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 RM2 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, its 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 2 (RM2) Regional Traffic Relief Plan are those projects identified to receive funding under Section 30914(c) of the California Streets and Highways Code (S&HC). Sponsors are required to submit an initial report to establish the baseline project data. These reports are the backbone of the allocation and funding agreements for the capital projects. 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 projects are delivered within the investments of the toll payers.

CAPITAL PROJECT DEFINITION

Initial Project Report (IPR)

Project sponsors with projects identified to receive funding under Section 30914(c) of the S&HC are required to submit an Initial Project Report (IPR) to MTC before July 1, 2004. An updated report must be submitted as needed or as requested by MTC; at a minimum, sponsors must submit an updated IPR 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 identification of lead sponsor, 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, a summary of any impediments to the completion of the project and a detailed financial plan. Specific information on the Initial Project Report format is included in Appendix A.

Useable Segment/ Deliverable Product

RM2 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 acquisition/ rehabilitation) available for public usage when allocating to the construction phase.

The expenditure of RM2 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 RM2 revenues are funding only a phase or segment of a larger project, it must be demonstrated that the RM2 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, such as but not limited to: 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 RM2 capital projects shall also serve as the process for executing funding agreements, in lieu of a separate funding agreement for each capital project. These agreements are fully executed through a process of project sponsor governing board certification followed by Commission allocation action. Notwithstanding, under S&HC 30914(e), MTC has the option of entering into a memorandum of understanding between itself and a capital project sponsor addressing specific requirements to be met prior to the allocation of funds.

An IPR for capital projects, as outlined in S&HC 30914(e) and detailed in Appendix A and B, 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 RM2 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 RM2 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 IPR and allocation of RM2 funds will serve as the final 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

For the capital program, allocations will be considered as requested and final allocation decisions will be subject to the availability of funds in the overall RM2 program. (capital and operating elements). The Commission will carefully consider each allocation and apply the following principles in its allocation decisions:

1. **Replacement Fund Source Not Allowed.** RM2 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 RM2 funds or with a combination of RM2 funds and other allocated funds. To receive an allocation of RM2 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 RM2 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. However, multiple phases may proceed at the same time.

4. **Environmental Clearance.** RM2 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 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.

5. **Conditions of Right of Way Allocations.** RM2 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. If the Commission approves an allocation of RM2 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 RM2 funds shall waive any of the laws, regulations, or policies that may apply.

6. **Deliverable Product.** RM2 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 to the Commission in the Initial Project Report 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 30914(f).

7. **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.

8. **Complementary Funds Spend Down Rate.** Other fund sources committed to a project phase that are complementary to RM2 funds will be expected to be spent down at an approximate proportional rate to RM2 funds. Exceptions and proposals to consider alternative cash flows from other fund sources must be approved in advance, in writing by MTC staff.

9. **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 service meets operating requirements.

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. Draft Initial Project Report
2. 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 Indemnification*
3. Board or Official Governing Body Approved Initial Project Report (IPR)
4. Environmental Documentation
5. Evidence of Allocation and Commitment of Complementary Funds

* Project sponsors have the option of consolidating the 'Opinion of Legal Counsel / MTC Indemnification' within the 'Implementing Agency Governing Board Resolution of Project Compliance'.

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 of 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 RM2 funds. The advertising, bid opening, or awarding of a contract by the sponsor shall in no way prejudice the Commission into making an allocation they deem unsuitable. Final allocation decisions will be subject to the availability of funds.

If a project or project component is ready for implementation earlier than RM2 funding is available, the sponsor may request an allocation of funds covering eligible expenditures but only with the full understanding that reimbursement will be deferred until RM2 funds are available in accordance with the approved allocation.

Eligible Expenses

To ensure that that RM2 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.

Note that for all project phases, RM2 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 (c). 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 (c) and approved by the Commission in the IPR is not eligible for reimbursement under RM2.

2. **Design Costs**
   RM2 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 (c) and as approved by the Commission in the IPR. 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; 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**
RM2 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 RM2 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-RM2 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**
RM2 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 IPR. RM2 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 and vehicle procurements for the implementation of the approved RM2 projects are eligible for construction funds. Vehicles procured with RM2 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 RM2. These changes are applicable to expenses beginning July 1, 2005. Prior to July 1, 2005, overhead expenses are not eligible for reimbursement.

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 RM2 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 RM2 and matching fund sources are reimbursed and drawn down at approximately the same rate as the RM2 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.

Availability for Audits
Sponsors of capital projects shall be available for an audit 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. 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).

Project Cancellation

1) If the RM2 project or project phase is not completed, the project sponsor shall repay MTC any RM2 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 RM2 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 Streets and Highways Code Section 30914 (c), it is the obligation of the project sponsor to arrange for all costs to operate and maintain the improvement constructed under RM2. No costs will be considered as eligible for reimbursement out of RM2 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
RM2 funding for any individual project or program shall be limited to the amount designated in the RM2 legislation without escalation notwithstanding the provisions of Section 30914(f). If funding beyond RM2 amounts are required to complete the project phase the sponsor is responsible for securing the additional funding prior to allocation of RM2 funds.

Cost Increases

In cases where more than RM2 funds are needed 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 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(f). 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 RM2 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 RM2 funds in excess of the allocation amount approved by the Commission.
In no case shall the financial responsibility of BATA and/or MTC regarding RM2 funds exceed the amount designated in S&HC 30914 (c) and (d) unless the Commission reassigns funds. Cost Savings and Cost Increases at Bid Opening
At the time of bid opening, the responsible low bid may exceed the funding commitment of RM2 funds as well as other fund sources. If in the event of construction budget exceedences, the sponsor may seek an allocation of any remaining RM2 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 RM2 funding allowable under Street and Highway Code Section 30914(c). 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 cost savings at bid opening, the sponsor shall consult with MTC staff on any proposed changes to the funding plan.

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 subsequent fiscal year (12 months). The Commission's capacity to allocate RM2 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 RM2 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 RM2. 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.
- Potential Claims: If RM 2 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.
- Address 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.

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 RM 2 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.

At Risk Report/Cooperation with Consultants
Upon receipt of the sponsor-submitted semi-annual progress reports, MTC shall 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 will be presented to the Commission to determine the ability of the project or project phase to be delivered, per Section 30914(f) 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

RTP Consistency
Capital projects seeking allocations must be consistent with the adopted Regional Transportation Plan (RTP), which state law requires be consistent with federal planning and programming requirements.

CMP Consistency
For capital projects, it is required that all committed project phases be included in a Countywide Plan. The phase of the project requiring funding shall be in an approved County Congestion Management Plan (CMP) or in an adopted Capital Improvement Program (CIP) for counties that have opted out of the CMP requirement, prior to seeking allocation of RM2 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 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 the Association of Bay Area Governments 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 RM2 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 RM2 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.

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 RM2 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
TEA-21 states that, "Bicycle transportation facilities and pedestrian walkways shall be considered, where appropriate, in conjunction with all new construction and reconstruction of transportation projects, except where bicycle and pedestrian use are not permitted" (Section 1202).

State Policy Mandates
Caltrans Deputy Directive 64 (http://www.dot.ca.gov/hq/tpp/offices/bike/DD64.pdf), 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."

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.

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. RM2 projects, as appropriate shall comply with the TOD policy.

Intelligent Transportation Systems Policy
In collaboration with federal, state, and local partners, MTC is developing the regional Intelligent Transportation Systems (ITS) architecture. MTC, state and federal agencies will soon require projects funded with federal highway trust funds to meet applicable ITS architecture requirements. Through the on-line WEBFMS application process, project sponsors will identify the appropriate ITS category, if applicable. Information on the regional ITS architecture can be found at: http://www.mtc.ca.gov/planning/ITS/index.htm.

Traffic Operations System Policy for Major New Freeway Projects
It is the Commission's policy that all major new freeway projects included in the Transportation 2030 Plan and subsequent regional transportation plans shall include traffic operations system (TOS) elements to effectively operate the region's freeway system and coordinate with local transportation management systems. MTC is requiring that all applicable RM2 projects 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, modifies a freeway interchange, or reconstructs an existing freeway. A project is considered "new" if it does not have an approved Project Study Report (PSR) by December 2004. Caltrans shall operate, manage, maintain and replace the TOS elements installed within its right-of-way.

SECTION 3 – OPERATING PROGRAM GUIDANCE

BACKGROUND

Regional Measure 2 (RM 2) will provide operating support for a number of transit services. These projects are identified in Section 30914(d) of the California S&HC.

On October 13, 2004, the Federal Highway Administration with concurrence of the Federal Transit Administration approved the use of toll revenues from the four non-federalized Bay Area bridges for funding transit operations through the RM2 program. This decision allows MTC to begin allocating operating funds to the projects that were approved as part of RM2.

RM2 funds for operating assistance will be made available annually in accordance with the policies and procedures defined in this section.

ALLOCATION PROCESS

Prior to the beginning of each fiscal year MTC will adopt a project specific budget for RM 2 operating funds. It is against this budget, subject to meeting eligibility requirements and fund availability, that project sponsors should request operating allocations.

In S&HC 30914.5(b), MTC is directed to execute an operating agreement with sponsors seeking RM2 funding covering operating assistance for transit services. These agreements are to be executed through a process of project sponsor governing board certification followed by Commission allocation action. The annual funding agreement will consist of approval by both project sponsors and MTC of the terms outlined in the sponsor Implementing Agency Resolution and Operating Assistance Proposal (OAP). The Implementing Agency Resolution should provide evidence of a full funding plan, adherence to performance measures, local agreement to conditions, local certification of absence of legal impediments and local indemnification of the Commission and adherence to the planned activity as outlined in the OAP.

Environmental Documentation

Pursuant to California Environmental Quality Act (CEQA) Public Resources Code §21000, et seq., all applicants are required to indicate that an environmental document has been filed with the County Clerk for each project in their annual application. Please refer to Public Resources Code and Title 14 of the California Code of Regulations for more information. At the time of service initiation, an applicant may submit a request for RM2 funding to cover the costs of the environmental assessment for the RM2 route. Applicants are urged to refer to the statutory and regulatory sections cited when preparing the environmental assessment documents. Applicants should consult their environmental officer for guidance in completion of this requirement. An application for operating funds solely to maintain existing transit services normally will be a Class I categorical exemption under CEQA, and requires only a Notice of Exemption. Applicants should check with their environmental officer for further assistance.

Allocation Applications
An allocation request will be considered complete and ready for consideration by the Commission when all of the component elements to the request are submitted and approved for forwarding to the Commission by MTC staff. Each request must be submitted using the most current forms available on the MTC website. Most operating project sponsors will prepare their requests as part of an application for Transportation Development Act funds submitted to MTC annually. For project sponsors that do not receive those funds, applications for operating assistance should be submitted sixty days prior to the expected allocation date and should include the following material:

1. Cover letter detailing the allocation request;
2. Implementing Agency Resolution; *
3. Operating Assistance Proposal;
4. Opinion of Legal Counsel; *
5. Environmental documentation;
6. Certifications and assurances; and
7. Fiscal audit.

* Project sponsors have the option of consolidating the 'Implementing Agency Resolution' and the 'Opinion of Legal Counsel.'

Appendix B details the formats for the Implementing Agency Resolution, Operating Assistance Proposal, the Opinion of Legal Counsel, and the Certifications and Assurances. RM2 operating project sponsors not eligible for Transportation Development Act funding should contact MTC for the most recent Operating Assistance Proposal.

Staff will review the operating assistance request to ensure that the project request meets eligibility per S&H code 30914(d), compliance with financial audit requirements, satisfaction of established performance measures, and other requirements outlined in this policies and procedures manual.

ELIGIBILITY

Reimbursable Activities
Transit services eligible to receive operating assistance under RM2 are those projects identified under Section 30914(d) of the S&HC. These projects and services have been determined to reduce congestion or to make improvements to travel in the toll bridge corridors. Due to other federal, state and regional requirements, full eligibility for the receipt of RM2 funding is not determined until approval of the funding allocation by the Commission.

Operating costs included in the operating expense object classes of the uniform system of accounts, exclusive of depreciation and amortization expenses and direct costs for providing charter service, are eligible for RM2 operating assistance. Eligible expenses for operating follow the eligibility criteria for Transportation Development Act funds.

Service initiation costs for RM2 routes – including preparation of environmental clearance – are an eligible expense.

No operator or transit service claimant shall be eligible to receive moneys during the fiscal year from RM2 operating assistance for operating costs that exceed its actual operating cost for the service identified in S&HC 30914(d) or subsequently amended through an action by the MTC Commission (including payment for disposition of claims arising out of the operator's liability) in the fiscal year less the sum of the following amounts:

1. The actual amount of fare revenues received during the fiscal year.
2. The amount of other operating subsidies directed at the service during the fiscal year.

For those cases where the RM2 service is a portion of an operator's service, the methodology used to derive the costs and revenues for the route must be specified at the time of allocation. Any change in the methodology must be approved by MTC staff in advance and may require a revision to the allocation.

The period of eligibility for operating expenses is for the fiscal year for which the allocation is made. The term fiscal year has reference to the year commencing July 1 and ending June 30 of the following year.

Notwithstanding the provisions listed above for transit operating, for purposes of TransLink® and Water Transit Authority administrative expenses, the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) have determined that planning activities are eligible for reimbursement from toll revenues. Allocation for planning activities will be in accordance with federal guidance and may need to be reviewed by federal agencies in advance of the allocation to confirm that the planned activities are Title 23 eligible.

Consistency with Plans

In addition to the eligibility requirements outlined above, applicants must demonstrate consistency with regional plans and federal planning requirements including but not limited to:

- MTC Regional Transportation Plan: For operations projects, applicants should provide the necessary project reference or information to verify that their project is compatible with the RTP.
- Applicant's Short Range Transit Plan (SRTP) or Countywide Plan: For operations projects, applicants should reference how the project is reflected in their Short Range Transit Plan or County-wide Five Year Plan. All transit operators that receive operating assistance shall prepare a Short Range Transit Plan, or planning/budget document equivalent for their system, including reference to the planned use of RM2 bridge tolls as part of their overall operations. Failure to complete an SRTP could delay an allocation or make a project sponsor ineligible for RM2 operating assistance.
- Air Quality Conformity: An applicant's project must be consistent with the TIP for which MTC has completed an air quality conformity assessment.

DISBURSEMENT OF FUNDS

After approval by the Commission, allocations of RM2 operating funds will be disbursed in accordance with the terms and conditions established in the allocation instructions by MTC. Generally, allocation instructions will direct payments to be made monthly in advance, subject to quarterly adjustments to reflect actual expenses against monthly invoices. Sponsors are required to submit the final fiscal year invoice by July 30th. All disbursements are subject to the availability

of bridge toll revenues and determination of eligible expenses. Specific invoicing procedures will be provided to the sponsor.

Disbursement of RM2 operating assistance may be delayed, cancelled, or adjusted based on MTC audit findings of ineligible expenses. Delinquency of report submittals or failure to comply with other RM2 operating assistance conditions could be grounds for withholding disbursement of funding or rescinding allocations.

MONITORING REQUIREMENTS

Annual Update of Operating Assistance Plan

Streets and Highway Code 30914.5(b) requires that MTC enter into an agreement with all recipients of RM2 operating assistance that shall include, at a minimum, a fully funded operating plan that conforms to and is consistent with the adopted performance measures. The agreement shall also include a schedule of projected fare revenue and any other operating revenues needed to demonstrate that the service is viable in the near-term and is expected to meet the adopted performance measures. These agreements are to be executed through a process of project sponsor governing board certification followed by Commission allocation action as discussed above in Allocation Process.

Applicants for RM2 operating assistance will use the Operating Assistance Plan (OAP) to demonstrate a fully funded operating plan that is consistent with MTC adopted performance measures. The submittal shall be due May 1st for July allocations, or on a rolling basis thereafter, and be updated to reflect audited actual expense data as well as adjusted current year financial and operating data statistics, as appropriate.

The OAP required information is included in Appendix B or in the most current Transportation Development Act funding application. RM2 operating project sponsors not eligible for Transportation Development Act funding should contact MTC for the most recent OAP.

Performance Measures

Prior to allocation of revenue for transit operating assistance under subdivision (d) of Section 30914 of the S&HC, the MTC shall adopt performance measures related to farebox recovery, ridership, and other performance measures as needed. The performance measures are included in Appendix C, Part 5. Any request to change approved performance measures, or the recording and reporting of those measures, must be approved in advance and in writing by MTC staff.

The performance measures, as developed in concert with the affected transit operators and the Advisory Council and as approved by the Commission, will effect allocations starting in FY 2006-07. The applicable year for calculating performance measures will be two years in arrears of a requested allocation year. In other words, for FY 2006-07 operating allocations, the Commission will base compliance with the performance measures on FY 2004-05 operating performance.

An independent auditor in the fiscal audit, as discussed below shall verify the certification of compliance with adopted performance measures. Failure to report and meet performance measures established by MTC may be grounds for delays or adjustment to future allocations.

Fiscal Audit
As established in S&H Code 30914.5(c), prior to annual allocation of transit operating assistance by the MTC, the MTC shall conduct an independent audit that contains audited financial information, including an opinion on the status and costs of the project and its compliance with the approved performance measures. At a minimum, the fiscal audit will provide the auditor's professional opinion as to whether RM2 operating assistance was spent on eligible costs and performance measures status.

All fiscal and accounting records and other supporting papers shall be retained for a minimum of four years following the close of the fiscal year of expenditure.

Cooperation with MTC and MTC's Consultants
Recipients of RM2 operating assistance funds agree to work cooperatively with MTC staff and MTC consultants to provide operating statistics that will be used to monitor the effectiveness of the RM2 operating program and consistency with MTC adopted performance measures. This includes but is not limited to assisting in the collection of survey data, on-board vehicle counts, and making available relevant ridership and costs information. It is important to note that, in most cases, these performance measures will be route-specific and therefore require isolation of the operating cost, passenger boardings, and fare revenue for the route or line for which RM 2 operating assistance is secured.

Regional Coordination/Participation in MTC Programs
Recipients of RM2 operating assistance agree to participate in regional programs aimed at enhancing transit information and customer service. At a minimum, recipients agree to 1) provide their schedule and real-time transit information/data to 511, maintain the data so that it is updated in a timely and accurate manner, and market 511 as the way to learn about the transit service; and 2) offer TransLink® services and market TransLink® as the fare medium to pay for the transit service, as applicable based on transit operator implementation of TransLink®. Recipients also agree to participate in the Integrated Fare Structure and Transit Connectivity studies, as authorized under S&H codes 30914(c). Further, transit operators receiving RM2 operating assistance agree to make reasonable efforts to implement any recommendations resulting from these studies, as appropriate.

Appendix A – Capital Allocation Request Forms

Part 1: RM2 Implementing Agency Resolution of Project Compliance

Resolution No.

Implementing Agency:

Project Title:

WHEREAS, SB 916 (Chapter 715, Statutes 2004), commonly referred as Regional Measure 2, identified projects eligible to receive funding under the Regional Traffic Relief Plan; and

WHEREAS, the Metropolitan Transportation Commission (MTC) is responsible for funding projects eligible for Regional Measure 2 funds, pursuant to Streets and Highways Code Section 30914(c) and (d); and

WHEREAS, MTC has established a process whereby eligible transportation project sponsors may submit allocation requests for Regional Measure 2 funding; and

WHEREAS, allocations to MTC must be submitted consistent with procedures and conditions as outlined in Regional Measure 2 Policy and Procedures; and

WHEREAS, (agency name) is an eligible sponsor of transportation project(s) in Regional Measure 2, Regional Traffic Relief Plan funds; and

WHEREAS, the (project title) is eligible for consideration in the Regional Traffic Relief Plan of Regional Measure 2, as identified in California Streets and Highways Code Section 30914(c) or (d); and

WHEREAS, the Regional Measure 2 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 2 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 2 Policy Guidance (MTC Resolution No. 3636); 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 2 phase or segment is fully funded, and results in an operable and useable segment; and be it further

RESOLVED, that (agency name) approves the 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 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 2 Regional Traffic Relief Plan, Capital Program, in accordance with California Streets and Highways Code 30914(c); and be it further

RESOLVED, that (agency name) is authorized to submit an application for Regional Measure 2 funds for (project name) in accordance with California Streets and Highways Code 30914(c); and be it further

RESOLVED, that (agency name) certifies that the projects and purposes for which RM2 funds are being requested is in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 2l000 et seq.), and with the State Environmental Impact Report Guidelines (l4 California Code of Regulations Section l5000 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 2 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) indemnifies and holds 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 RM2 funds. In addition to any other remedy authorized by law, so much of the funding due under this allocation of RM2 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 projects(s); and be it further

RESOLVED, that assets purchased with RM2 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 2 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 2 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 2 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 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 2: RM2 Sample Opinion of Legal Counsel

Project sponsors have the option of including specified terms and conditions 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 2; that the agency is authorized to perform the project for which funds are requested; that there is no legal impediment to the agency applying for the funds; 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 2 funds

This communication will serve as the requisite opinion of counsel in connection with the allocation of (Applicant) _____ for funding from Regional Measure 2 Regional Traffic Relief Plan made available pursuant to Streets and Highways Code Section 30914(c)(d) for (Project Name) _____

1. (Applicant)_____ is an eligible sponsor for the Regional Measure 2 funding.
2. (Applicant) _____ is authorized to submit an allocation request for Regional Measure 2 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 2 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: RM2 Initial Project Report (IPR) Format

Section 30914(e) of the California Streets and Highways Code requires that project sponsors with projects listed in the capital program of the Regional Traffic Relief Plan (Section 30914(c)) submit an Initial Project Report (IPR) to the Metropolitan Transportation Commission (MTC) by July 1, 2004. Furthermore, MTC requires the project sponsor to submit an updated report along with any funding allocation request. The governing board of the agency submitting the allocation request must approve the updated IPR before MTC can approve the IPR, or allocation of funds. MTC will approve the report, or updated report, in conjunction with the funding allocation.

The report shall include all information required to describe the project in detail, including identification of lead sponsor, the status of any environmental documents relevant to the project, additional funds beyond RM2 required to fully fund the project, the amount, if any, of funds expended to date, a summary of any impediments to the completion of the project, a detailed financial plan, and notification of whether Regional Measure 2 (RM2) funds will be needed within the subsequent 12 months (following fiscal year). The Initial Project Report is outlined below, with the electronic template available at 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 competed.
- **Project Budget Information**, including the total budget for the project, and any prior expenditure.
- **RM2 Funding Need Information,** including RM2 expenditure (cash flow) plan, status of any prior RM2 expenditures, and identification of any RM2 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 RM2 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 RM2 phase or component must be fully funded with committed funds, and it must be demonstrated that the RM2 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 both the RM2 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 RM2 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: RM2 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 RM2 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 RM2 funds. Part 6: RM2 Allocation Work Plan

The implementing agency must submit a detailed Work Plan covering the deliverables for which a RM2 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.

Appendix B – Operating Allocation Request Forms

Part 1: Certifications and Assurances

(Sample form is available at www.mtc.ca.gov)

Applicant certifies that, if RM-2 funding was received in the prior year, it has included the RM-2 costs and revenues in its general fiscal audit for that year. Applicant also assures that it will include the RM-2 costs and revenues in its general fiscal audit for the year in which funds are requested.

Applicant certifies to one of the following:

1) For bus operators, that it has submitted a copy of the California Highway Patrol (CHP) certification, which was issued within the last 13 months indicating compliance with California Vehicle Code §1808.1 and Public Utility Code §99251 (CHP "pull notice system and periodic reports").
2) For rail or ferry operators, it certifies that it is current on all inspections and certifications required by federal and state agencies.

Applicant for RM2 funds certifies that it has current SB 602 "joint fare revenue sharing agreements" in place with transit operators in the MTC region with which its service connects, and that it has submitted valid and current copies of all such agreements to MTC.

Applicant also agrees to participate in the Integrated Fare Structure and Transit Connectivity studies authorized in SB 916 (Chapter 715, Statutes of 2004).

Applicant for funds certifies that it complies with MTC's Transit Coordination Implementation Plan (MTC Resolution No. 3055, revised) and with Public Utilities Code §99314.5(c) and §99314.7).

The applicant may be asked to certify such other assurances as MTC may deem appropriate consistent with the RM2 Policies and Procedures outlined above.

Part 2: RM2 Operating Assistance Proposal (OAP)

The Operating Assistance Proposal (OAP) includes the information outlined below. The format for sponsors to complete is available to be downloaded at www.mtc.ca.gov.

1. **Description of Proposed Service**
    a. Map of service area.
    b. Description of markets being served (both travel demand as well as inter-operator connections)
    c. Description of methodology used to estimate ridership/assign ridership
2. **Service Parameters**
    a. Service start/end times.
    b. Headways in the peak and off-peak
    c. Vehicles in service during the peak and off-peak
    d. Daily revenue vehicle hours
3. **Budget Information**
    a. Basis of expense projections, i.e., description of cost model.
    b. Basis of fare revenue projections (assumptions on fare structure, including any increases over the five years, and resulting average fare).
    c. Description of other revenues – if subsidies from other agencies are included, describe status of commitments.
    d. Five-year projections and audited past actual and adjusted current year information for operating cost and revenue. Revenue projections should disaggregate fare revenue, TDA, local sales tax, private sector contributions, and other subsidies.
4. **Operating Data and Performance Measures**
    a. Five-year projections and audited past actual and adjusted current year information for service parameters including annual ridership, weekday ridership, revenue vehicle hours, and revenue miles.
    b. Five-year projections and audited past actual and adjusted current year information for performance measures including farebox recovery ratio, passengers per revenue hour, cost per rider, subsidy per rider, and cost per revenue hour.
5. **Implementation Schedule and Status Report**
    a. Proposed start date
    b. Environmental clearance – status and schedule
    c. Vehicles/other capital – status and procurement schedule for incremental capital needed to support RM2 funded operations.
    d. If partnering with other agencies, provide letters of support from partners.
    e. Description of potential implementation issues
    f. Once operational, please provide a status report on the implementation to-date as well as any planned schedule adjustments or other service changes in the coming year.

Part 3: Sample RM2 Operating Board Resolution

Resolution No.

Implementing Agency:

Project Title:

WHEREAS, SB 916 (Chapter 715, Statutes 2004), commonly referred as Regional Measure 2, identified projects eligible to receive funding under the Regional Traffic Relief Plan; and

WHEREAS, the Metropolitan Transportation Commission (MTC) is responsible for funding projects eligible for Regional Measure 2 funds, pursuant to Streets and Highways Code Section 30914(c) and (d); and

WHEREAS, MTC has established a process whereby eligible transportation project sponsors may submit allocation requests for Regional Measure 2 funding; and

WHEREAS, allocations to MTC must be submitted consistent with procedures and conditions as outlined in Regional Measure 2 Policy and Procedures; and

WHEREAS, (agency name) is an eligible sponsor of transportation project(s) in Regional Measure 2, Regional Traffic Relief Plan funds; and

WHEREAS, the (project title) is eligible for consideration in the Regional Traffic Relief Plan of Regional Measure 2, as identified in California Streets and Highways Code Section 30914(c) or (d); and

WHEREAS, the Regional Measure 2 allocation request, attached hereto in the Operating Assistance Proposal and incorporated herein as though set forth at length, demonstrates a fully funded operating plan that is consistent with the adopted performance measures, as applicable, for which (agency name) is requesting that MTC allocate Regional Measure 2 funds; and

WHEREAS, Part 2 of the project application, attached hereto and incorporated herein as though set forth at length, includes the certification by (agency name) of assurances required for the allocation of funds by MTC; now, therefore, be it

RESOLVED, that (agency name), and its agents shall comply with the provisions of the Metropolitan Transportation Commission's Regional Measure 2 Policy Guidance (MTC Resolution No. 3636); and be it further

RESOLVED, that (agency) certifies that the project is consistent with the Regional Transportation Plan (RTP).

RESOLVED, that (agency name) approves the updated Operating Assistance Proposal, attached to this resolution; and be it further

RESOLVED, that (agency name) approves the certification of assurances, attached to this resolution; and be it further

RESOLVED, that (agency name) is an eligible sponsor of projects in the Regional Measure 2 Regional Traffic Relief Plan, Capital Program, in accordance with California Streets and Highways Code 30914(d); and be it further

RESOLVED, that (agency name) is authorized to submit an application for Regional Measure 2 funds for (project name) in accordance with California Streets and Highways Code 30914(d); and be it further

RESOLVED, that (agency name) certifies that the projects and purposes for which RM2 funds are being requested are in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 2l000 et seq.), and with the State Environmental Impact Report Guidelines (l4 California Code of Regulations Section l5000 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 2 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) indemnifies and holds 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 RM2 funds. In addition to any other remedy authorized by law, so much of the funding due under this allocation of RM2 funds as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages.

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 (agency name) authorizes its (Executive Director, General Manager, or his/her designee) to execute and submit an allocation request for operating or planning costs for (Fiscal Year) with MTC for Regional Measure 2 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 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 4: RM2 Sample Opinion of Legal Counsel

Project sponsors have the option of including specified terms and conditions within the Resolution of Local Support as included in Part 3. 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 2; that the agency is authorized to perform the project for which funds are requested; that there is no legal impediment to the agency applying for the funds; 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 2 funds

This communication will serve as the requisite opinion of counsel in connection with the allocation of (Applicant) _____ for funding from Regional Measure 2 Regional Traffic Relief Plan made available pursuant to Streets and Highways Code Section 30914(c)(d) for (Project Name) _____

4. (Applicant)_____ is an eligible sponsor for the Regional Measure 2 funding.
5. (Applicant) _____ is authorized to submit an allocation request for Regional Measure 2 funding for (project) _____
6. 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 2 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 5: RM2 Performance Measures for Operating Projects

1. The objective in establishing performance measures is to ensure that the Regional Measure 2 (RM2) operating dollars are directed to productive services within the corridors identified in the legislation, or as redirected by the Commission after a public hearing process.

2. Two performance measures will be used to assess cost recovery and ridership change in accordance with California Streets and Highway Code (S&HC) 30914.5(a), which requires that MTC shall adopt performance measures related to farebox recovery ratio and ridership: 1) farebox recovery and 2) change in passengers per revenue vehicle hour. Farebox recovery ratio and change in passengers per hour performance measures are established in items 4 and 5.

3. Recognizing that the market demands as well as policy goals for the operating projects in S&HC 30914(d) are not uniform, several thresholds for farebox recovery are established and outlined in item 4.

4. An operating segment must meet or exceed the farebox recovery ratio conforming to its particular mode and service type as defined in the table below. Peak service is defined as service that does not continue at least hourly between the morning and afternoon commute periods. All day service is generally defined as service that is provided at least hourly between the hours of 6 a.m. and 7 p.m. Long-haul bus services (> 25 miles) will be deemed "all day" if service is provided as least every two hours during the midday. Owl service is service that has been developed with the specific goal of closing a temporal gap in the transit network.

   For purposes of establishing compliance with the performance measures, the farebox recovery ratio for the audit year or the average farebox recovery ratio for a three-year period will be used, whichever is more favorable.

Service Type	Ferry	Rail	Bus
Peak Service	40%	35%	30%
All Day Service	30%	25%	20%
Owl Service	N/A	N/A	10%

   Projects (8) and (9) in S&HC 30914(d) are exempt from the farebox thresholds above and instead must meet the farebox requirements established for receiving allocation for state funds (Transportation Development Act, State Transit Assistance, and AB 1107).

5. It is the expectation that all operating segments will maintain a positive change in passengers per revenue vehicle hour when a rolling average over a three-year period is applied. The first three years of service must demonstrate an increase in passengers each year. From the fourth year forward, three-year averages will be calculated and compared. The previous three-year average will be compared to the most recent three-year average, with the most recent year being added and the oldest year being dropped from each average (FYs 2004, 2005 and 2006 will be compared to FYs 2005, 2006, and 2007, and so on). If productivity during the audit year is better than the most recent three-year average, then the previous three-year average will be

compared to the audit year. A negative change in an amount equal to or less than a negative change in Transportation Development Act revenues in the county of operation (or average between the origination and destination) for the same period will be allowable. The goal is to have positive ridership change between each three-year cycle, but the allowance for a negative change is to account for economic adjustments in the region and for fluctuations in regional market demand for each service.

Projects (8) and (9) in S&HC 30914(d) are exempt from the passenger per revenue vehicle hour changes and instead must meet the performance measure requirements established for receiving allocation for state funds (Transportation Development Act, State Transit Assistance, and AB 1107).

6. If an operating program or project cannot achieve its performance objectives described above, MTC staff will consult with the project sponsor about potential service adjustments or redeployment to increase the productivity of the route and best serve transit in the corridor. After this consultation, the sponsor will be given the opportunity to present to the Commission a corrective action plan for meeting the RM2 performance measures. Based on the corrective action plan recommendation, the Commission shall give the sponsor a time certain to achieve the performance measure or have its funding reassigned. If there are no other eligible claimants within the RM2 eligible program categorythe Commission shall hold a public hearing concerning the project. After the hearing, the Commission may vote to modify the program's scope, decrease its level of funding, or to reassign all of the funds to another or an additional project.

7. Only transit operations will be subject to the performance measure outlined in this policy. Projects (10) and (11) outlined in RM2 under S&HC 30914(d) are not subject to these performance measures as these projects do not meet the definition of transit operations.

8. Each operating project that requests RM2 operating funding will be given a two-year ramp-up period to meet the performance measures with an expectation that measures will be met in the third year of service. If an operating scope or definition is changed at the sponsor request after initial rollout of the operating project, no new ramp-up period will be granted.

9. Compliance with the performance measures must be certified as part of the annual fiscal audit prepared by the project sponsor. The compliance and, therefore eligibility for RM2 operating funds, for a given fiscal year will be based on fiscal audit two years in arrears. Therefore, the first year for which performance measures will be assessed is for FY 2008-09 operating requests; these requests will take into consideration performance in FY 2006-07.

10. For purposes of calculating farebox recovery ratio and passengers per revenue vehicle hour, project sponsors must allocate costs in accordance with the cost allocation shown below for the various service types. This cost allocation strategy must be consistent with that provided to MTC as part of the annual Operating Assistance Plan (OAP). Further, baseline data on ridership, costs, fares, and average fare must be established as part of the OAP for RM2 services that represent an incremental change to the operator's overall service plan. The operator should establish a data collection plan for assessing changes to the baseline system for purposes of calculating ridership, costs, and fare for the new RM2 incremental services.

Service Type	Cost Allocation Methodology
Peak Service	Fully Allocated Costs
All Day Service	Fully Allocated Costs

Service Type	Cost Allocation Methodology
Owl Service	Marginal Costs

11. For purposes of this policy, the farebox recovery ratio is the ratio of fares collected on the RM2-funded segment to total operating costs for that same segment. Passenger per revenue vehicle hour is defined as the total passengers (total of all adult, youth and student, senior and disabled, inter-operator paid transfer, and non-revenue boardings) divided by the revenue vehicle hours (the total number of hours that each transit vehicle is in revenue service, including layover time).