



METROPOLITAN
TRANSPORTATION
COMMISSION

Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700
TEL 510.817.5700
TDD/TTY 510.817.5769
FAX 510.817.5848
E-MAIL info@mtc.ca.gov
WEB www.mtc.ca.gov

Memorandum

TO: Programming & Allocations Committee

DATE: April 7, 2010

FR: Executive Director

RE: Approval of Resolution No. 3948 – Funding Agreement for Payment of MTC Transfers

Staff recommends approval of Resolution No. 3948 approving a funding agreement between MTC and BATA that will authorize payment from BATA of approximately \$505 million as full payment for all MTC transit capital transfers for the next 50 years.

MTC Transfers

State law requires BATA to transfer funds to MTC for various transit capital purposes. Those purposes include:

| | |
|---|---|
| <u>AB 664</u> (S&H Code§30884) | 16% of base toll revenue on the San Francisco-Oakland Bay Bridge (SFOBB), San Mateo, and Dumbarton Bridges to be used for transit capital purposes. |
| <u>RM 1 90% Rail</u> (S&H Code §30914a(4)) | 21% of “Base Toll” revenue collected on SFOBB to be used 70% East / 30% West Bay rail projects. |
| <u>2% Toll Revenues</u> (S&H Code §30913(b)) | Up to 2% of revenue generated from base toll collection for ferry capital project and other capital projects for bridge improvements. |

The transfers are calculated each year by BATA and transferred annually to MTC. Guided by the policy resolutions noted below, the transferred funds are used for the following purposes:

- AB664: AB664 funds have generally been used as local match for Federal Transit Administration formula funds, as guided by the Transit Capital Priorities process and MTC Resolution No. 2004. With the proposed transfer, staff would continue to use the funds for this purpose; however, the time period and annual amount would be subject to additional discussion with the transit operators.
- RM1 90% Rail Reserves: MTC Resolution No. 3434 identifies \$265 million in project priorities for future Regional Measure 1 (RM1) rail funds. The table on the following page summarizes the approved funding commitments, including allocations. At the time of adoption of Resolution 3434 in 2001, it was clear that the cash flow needs of the project sponsors could not be met through annual transfers and, as such, it was assumed that these commitments would be met through a BATA debt issuance secured by the roughly \$10 million in expected future annual revenues.

Table 1. Summary of RM1 90% Rail Reserve Commitments

| Projects | Resolution 3434 Commitments (millions) | Allocations To- Date (millions) | Expected Year of Funding Need |
|--|---|--|--|
| Transbay Transit Center | \$ 53 | \$ 5 | 2013 - 2014 |
| BART/Oakland Airport Connector | 31 | \$ 31 | 2011 - 2014 |
| Tri-Valley Access Improvements to/from BART | 16 | | 2013 |
| East Contra Costa BART Extension (e- BART) | 52 | | 2011 - 2014 |
| BART to Warm Springs | 113 | | 2012 - 2014 |
| Total RM 1 Funding Commitments | \$ 265 | \$ 36 | |

- 2% Toll Revenues: One-third of the 2% Toll revenues are dedicated to ferry capital projects and two-thirds of the revenue was previously directed to BATA capital projects for bridge improvements. MTC Resolution No.3288 provides the policy guidance for these funds. There is no policy governing the future distribution of the non-ferry capital 2% Toll Revenue funds. Similar to the AB664 funds, there will need to be additional discussion on the time period and annual funding amounts for the 2% Toll Revenues.

There have been funding concerns with the existing annual transfer process from both BATA and MTC perspectives. BATA is required to “subordinate” these transfers to all bondholder obligations which, theoretically, will intercept these funds if they are ever needed to meet bondholder obligations. This places somewhat of a cloud on MTC’s ability both to plan and program the use of these funds. Further, the annual cap on the transfers makes it difficult for MTC to plan and execute support for large capital projects.

Fortunately, MTC and BATA have had some relevant experience overcoming funding hurdles to meet project purposes. MTC used a combination of resources including a pledge of 90% Rail Reserve funds to secure a financing issued by a Joint Powers Authority of MTC and BART to help complete the BART/SFO extension. In addition, BATA advanced \$60 million to MTC and assumed the loan of 90% rail funds due from BART for the SFO project. The bonds issued for the BART/SFO extension have been repaid and BART has \$37 million remaining to be paid of the \$60 million advance.

MTC Transfer Value

The value of the transfers has been established utilizing the existing financing model that was developed to manage the toll bridge financing program. The basis for using the existing model to determine the value transfer is as follows:

- The BATA financial model that has been evaluated and rated by three credit rating agencies for 10 years.
- Traffic growth projections are based on rated modeling assumptions.
 - No growth through 2011
 - Average of .33% annual growth following 2011

- No change in calculating transfer amounts.
- Independent verification of model results, values and discounted values by Public Financial Management (PFM), BATA’s financial advisor.
- 50 year length of transfer prepayment consistent with BATA debt portfolio.
- The proposed discount factor will be equivalent to the net rate on the next BATA taxable transaction and will also be consistent with the market spread of similar highly rated, subordinate financings.

The most recent BATA senior lien taxable bond issue traded at 2.0% over 30 year U.S. Treasury bonds. The next BATA issuance is expected to be subordinate lien taxable bonds, therefore, we expect the spread over treasuries to increase slightly. In the current market the recommended level would produce a discount rate of 4.38%. If MTC agrees to the discount methodology, staff recommends that BATA agree to transfer such amounts with a minimum transfer guarantee of \$505 million. The overall value is consistent with other components of the BATA financing model and should represent a reasonable valuation of the proposed funding program.

Risks / Advantages

While the value of the transfers is fairly easy to calculate, there are benefits and risks for both BATA and MTC in this transaction.

| | <u>Benefits</u> | <u>Risks</u> |
|-------------|---|---|
| BATA | <ul style="list-style-type: none"> ▪ Completes fund transfers ▪ More bondholder cashflow protection | <ul style="list-style-type: none"> ▪ Traffic may decrease ▪ Setting of appropriate discount rate ▪ Lowers immediate project funds ▪ Risk of future market access |
| MTC | <ul style="list-style-type: none"> ▪ Maintains Resolution No. 3434 commitment ▪ Potential to leverage and earn interest on funds ▪ Allows “trust” structure for project funding ▪ Allows MTC full control of project funding and schedule | <ul style="list-style-type: none"> ▪ Traffic growth limited to current proforma ▪ Setting of appropriate discount rate ▪ No future BATA funding under current toll structure |

An independent risk to this transaction is the introduction of SB 1245 (Simition) which, among other impacts, would invalidate the \$2.50 toll for carpools on the State-owned bridges that is due to take effect on July 1, 2010. We are working with the author’s office on amendments to the bill. In the meantime, BATA will escrow the funds potentially affected by SB 1245 until the issue is resolved.

April 7, 2010

Page 4 of 4

Funding Agreement

Based on proforma models and the recommended discount, the current estimated value of the total transfer is \$505 million. The annual Regional Measure 2 transit operating transfers would be unaffected by this transaction. In addition, the AB 1171 commitments to highway and transit capital projects will continue to be funded directly by BATA, up to a total amount of \$570 million. The breakdown of the lump sum transfer is as follows:

| <u>Source</u> | <u>Annual (2011) (millions)</u> | <u>50 Years Nominal (millions)</u> | <u>Present Value* (millions)</u> |
|------------------------|---|--|--|
| AB664 | \$ 12 | \$ 632 | \$ 247 |
| RM 1 90% Rail | 10 | 504 | 199 |
| 2% Transfer | <u>3</u> | <u>154</u> | <u>59</u> |
| Total | <u>\$ 25</u> | <u>\$ 1,290</u> | <u>\$ 505</u> |
| Net of Carpool Revenue | <u>\$ 22</u> | <u>\$ 1,150</u> | <u>\$ 450</u> |

* Preliminary – subject to change

Subject to Board approval and completion of the agreement, the final calculation of the transfer amount will be made after the close of the 2010 fiscal year. Once final traffic counts and associated calculations are completed, funds will be transferred over to MTC. The discount factor utilized in the calculations will be based on the pricing of the initial 2010 BATA taxable subordinate lien financing. The transfers will be broken into two installments with an initial installment of \$450 million. The second installment of approximately \$55 million, adjusted for any increase resulting from the BATA financing results, will be made after issues related to SB 1245 are resolved. Once the funds are transferred to MTC and recorded in the individual special revenue accounts they will be available for any authorized or committed purpose, and MTC waives any future claim on transit capital transfers from BATA through 2060.

Staff recommends approval of Resolution No. 3948 and requests the resolution be forwarded to the Commission for approval.

Steve Heminger

SH:BM:cj

Date: April 28, 2010
W.I.: 1514
Referred by: PAC

ABSTRACT

MTC Resolution No. 3948

The annual operating budget of the Bay Area Toll Authority provides for fund transfers to MTC for transportation and transit projects. This resolution authorizes MTC to enter into a Funding Agreement that would require the Bay Area Toll Authority to make a payment to MTC equal to the estimated present value of specified fund transfers for the next 50 years and relieve BATA from making those fund transfers for that 50 year period.

Discussion of this action is contained in the Executive Director's accompanying memorandum dated April 7, 2010.

Date: April 28, 2010
W.I.: 1514
Referred by: PAC

Re: Funding Agreement between BATA and the Metropolitan Transportation Commission (MTC) for payment to MTC equal to the estimated present value of specified fund transfers for the next 50 years

METROPOLITAN TRANSPORTATION COMMISSION
RESOLUTION NO. 3948

WHEREAS, the Bay Area Toll Authority (“the Authority”) is required by the Streets and Highways Code to transfer funds to the Metropolitan Transportation Commission (“MTC”) for the purposes and on the terms and conditions described in the recitals to the draft Funding Agreement between the Authority and MTC presented to this meeting (the “Funding Agreement”);

WHEREAS, all of the projects to be funded under the Funding Agreement are or will be determined by MTC to be essential to the regional transportation system planned by MTC pursuant to state law;

WHEREAS, the projected fund transfers described in the Funding Agreement as AB 664 Net Toll Revenue Reserve Transfers, Two Percent Transit Reserves Transfers, and Rail Extension Reserves Transfers will be inadequate to timely fund all of the projects contemplated by MTC unless prepayment by the Authority pursuant to the Funding Agreement occurs;

WHEREAS, MTC hereby determines that substantial benefits will arise and risks avoided from the acceptance of such prepayment and foregoing of future transfers by enabling the funding of transportation projects;

WHEREAS, the Authority may be willing to issue subordinated toll bridge revenue bonds and prepay Fund Transfers to MTC on the condition that MTC, as consideration for the promise of such funding from the Authority, allocate to the Authority all revenues from, and relieves the Authority of responsibility for making, AB 664 Net Toll Revenue Reserve Transfers, Two Percent Transit Reserves Transfers, and Rail Extension Reserves Transfers for 50 years as contemplated by the Funding Agreement; now, therefore, be it

RESOLVED, that MTC finds that the foregoing recitals are true and correct; and be it further

RESOLVED, that MTC requests that the Authority enter into and perform the Funding Agreement in furtherance of the Authority’s statutory obligation to participate in support of MTC; and be it further

RESOLVED, that it will be beneficial and help MTC to fulfill its responsibilities if MTC enters into the Funding Agreement and MTC hereby approves the Funding Agreement and

hereby authorizes the allocation of funds pursuant thereto and authorizes and directs its Executive Director to execute and deliver the Funding Agreement for and on behalf of MTC in substantially the form submitted to this meeting with such changes therein as such officer shall approve (such approval to be evidenced by the execution thereof); and be it further

RESOLVED, that all certificates, documents, approvals, consents, directions, instructions, notices, orders, requests, representations, indemnifications and other actions permitted or required by the Funding Agreement may be given or taken by the Executive Director or the Chief Financial Officer (each, an “Authorized Representative”), without further authorization or direction by MTC, and each Authorized Representative is hereby authorized and directed to give any such certificate, document, approval, consent, direction, instruction, notice, order, request, indemnification or other action and to take any such action at any time in the future that such Authorized Representative, with the advice of General Counsel to MTC, may deem necessary or desirable to further the purposes of this Resolution and to carry out, consummate and perform the duties and exercise the rights of MTC under the Funding Agreement; and be it further

RESOLVED, that all actions heretofore taken by the members of the governing board of MTC, committees of the governing board of MTC, and officers and agents of MTC with respect to the execution and delivery of the Funding Agreement are hereby ratified, confirmed and approved.

METROPOLITAN TRANSPORTATION COMMISSION

Scott Haggerty, Chair

The above resolution was entered into by the Metropolitan Transportation Commission at a regular meeting of the Commission held in Oakland, California on April 28, 2010.

Date: April 28, 2010
W.I.: 1514
Referred by: PAC

Attachment A
MTC Resolution No. 3948

FUNDING AGREEMENT
Between BAY AREA TOLL AUTHORITY
and METROPOLITAN TRANSPORTATION COMMISSION
for PAYMENT TO MTC EQUAL TO THE ESTIMATED PRESENT VALUE OF SPECIFIED
FUND TRANSFERS FOR THE NEXT 50 YEARS

draft 3/29/10

FUNDING AGREEMENT

This Funding Agreement is entered into between the Metropolitan Transportation Commission (“MTC”) and the Bay Area Toll Authority (“the Authority”) effective on April 28, 2010.

RECITALS

1. Streets and Highways Code section 30890 requires the Authority to transfer “net transit revenues” to MTC on a regularly scheduled basis as set forth in the Authority's annual budget resolution. Streets and Highways Code section 30884 defines "net transit revenues" as 16 percent of the revenue generated each year from the collection of the base toll at its level in existence for the 2001-02 fiscal year on three bridges: the San Francisco-Oakland Bay Bridge, the San Mateo-Hayward Bridge, and the Dumbarton Bridge. No ending date for the obligation to transfer is specified. The transfers are called “AB 664 Net Toll Revenue Reserve Transfers.” The funds are allocated to capital projects that further the development of public transit pursuant to Streets and Highways Code section 30892.
2. Streets and Highways Code section 30911 provides that after the requirements of the Authority's bond indenture have been met, the Authority shall transfer to MTC on a regularly scheduled basis as set forth in its annual budget resolution, the revenues defined in Streets and Highways Code section 30913(b). The revenues defined in Streets and Highways Code section 30913(b) are “up to” 2 percent of the revenue generated each year by the collection on all bridges of the base toll at the level established by the 1988 toll increase. No minimum transfer is specified. No ending date for the obligation to transfer is specified. The transfers are called “Two Percent Transit Reserves Transfers.”
3. Streets and Highways Code section 30911 provides that after the requirements of the Authority's bond indenture have been met, the Authority shall transfer on a regularly scheduled basis as set forth in its annual budget resolution, the revenues defined in Streets and Highways Code section 30914. Streets and Highways Code section 30914(a)(4) provides for 21 percent of the revenue generated each year by the collection of the base toll at the level established by the 1988 toll increase on the San Francisco-Oakland Bay Bridge to be used exclusively for rail transit capital improvements designed to reduce vehicular traffic congestion on that bridge. Streets and Highways Code section 30919(b) provides for the division of those funds among rail extension and improvement projects by region. MTC has historically allocated such transfers. No ending date for the obligation to transfer is specified. The transfers are called “Rail Extension Reserves Transfers.”
4. MTC Resolution No. 3434, as revised, sets forth MTC’s regional transit expansion program. Resolution 3434 contemplates local, regional, state and federal funding sources for

various projects, including Rail Extension Reserves Transfers, plus MTC Resolution Nos. 2004 and 3288 which govern the AB 664 Net Toll Revenue Reserve Transfers and the Two Percent Transit Reserve Transfers (collectively called “Fund Transfers”). In adopting the aforementioned resolutions and administering the matters described therein, MTC is acting as the regional transportation agency for the Bay Area.

5. MTC was established under Government Code section 66500 *et seq.* to provide comprehensive regional transportation planning in the Bay Area. MTC’s regional transportation plan is required by law to estimate the region’s future transportation needs, include a schedule of priorities for the segments of the regional transportation system on a project basis to meet those needs, and include a financial plan for the system.

6. MTC has determined that the Fund Transfers are essential to the regional transportation system but that the current statutory schedule for Fund Transfers may be inadequate to timely fund some of the projects planned by MTC. It is the responsibility of MTC, expressed in Government Code section 66530, actively to seek to assist in the development of adequate funding sources to develop, construct and support transportation projects that it determines essential.

7. It is the intention of the Legislature, expressed in Government Code section 66521, that local agencies in the region (including the Authority) will participate in support of MTC and that financial support of the activities of MTC will be made available from local sources normally available for transportation purposes in the region (including a portion of the bridge toll revenues administered by the Authority). Streets and Highways Code section 30950.2 provides that the Authority is responsible for the administration of all toll revenues from the bridges.

8. MTC has determined that it will be beneficial and help to fulfill its responsibilities and implement the intention of the Legislature for the Authority to make a payment to MTC equal to the estimated present value of Fund Transfers for the next 50 years and relieve the Authority from making Fund Transfers for that 50 year period. MTC recognizes that the Authority must sell and issue subordinated toll bridge revenue bonds to fund a portion of such payments to MTC. MTC is authorized by Streets and Highways Code section 30919 to commit to multi-year allocations and expenditures for projects over extended time periods to maximize funding opportunities and project progress.

9. The Authority acknowledges its statutory obligation to participate in support of MTC and is willing to issue subordinated toll bridge revenue bonds and provide funds to MTC as aforesaid in exchange for the allocation to the Authority of all, and recognition that the Authority will be relieved of responsibility for making, AB 664 Net Toll Revenue Reserve Transfers, Two Percent Transit Reserves Transfers, and Rail Extension Reserves Transfers for 50 years. This change should simplify debt market and rating agency analysis of the Authority’s credit.

10. The changes made in this Funding Agreement will not reduce the Authority’s obligation to fund the Regional Traffic Relief Plan projects described in Streets and Highways Code sections 30914(c) and 30914(d).

BASED ON AND IN RELIANCE UPON THE FOREGOING RECITALS, AND FOR GOOD AND VALUABLE CONSIDERATION, RECEIPT OF WHICH ARE HEREBY ACKNOWLEDGED, MTC AND THE AUTHORITY AGREE AS FOLLOWS:

1. The Authority will pay to MTC an amount equal to the present value of the toll bridge revenues that the Authority projects would be used for AB 664 Net Toll Revenue Reserve Transfers, Two Percent Transit Reserves Transfers, and Rail Extension Reserves Transfers for 50 years from and after July 1, 2010 in the absence of this Funding Agreement, which amount shall not be less than \$505 million. An initial installment of \$450 million shall be paid on or before September 30, 2010. The total amount so payable shall be calculated by the Authority on and as of the date of payment of the initial installment and the remaining amount due shall be paid in a second installment as promptly as practicable thereafter (but not until it becomes clear that Senate Bill 1245, now pending in the California legislature, does not apply to the Authority's bridge tolls). The calculations shall assume that Two Percent Transit Reserves Transfers are at the two percent level. The discount rate to be used in so calculating present value shall be equal to 65 percent of the true interest cost on the subordinated toll bridge revenue bond issue expected to be sold by the Authority in the first half of 2010. Approximately \$15 million of those subordinated toll bridge revenue bonds are expected to be sold to provide a portion of the funds to be paid to MTC, and the balance of the funds to be paid to MTC are expected to be derived from toll bridge revenues.
2. MTC will use the funds paid to it by the Authority pursuant to paragraph 1 and the proceeds of investment of those funds only for the purposes permitted by law for the expenditure of funds constituting AB 664 Net Toll Revenue Reserve Transfers, Two Percent Transit Reserves Transfers, and Rail Extension Reserves Transfers. MTC will not use or permit the use of any proceeds of the Authority bonds or any funds of MTC, directly or indirectly, to acquire any securities or obligations that would cause the interest on the Authority's bonds intended by the Authority to be exempt from federal income taxation to become subject to federal income taxation or that would cause the Authority's bonds intended by it to qualify as Build America Bonds as described in Section 54AA of the Internal Revenue Code to fail to so qualify, and MTC will not take or permit to be taken any other action that would cause any such bond to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code or "federally guaranteed" within the meaning of Section 149(b) of the Internal Revenue Code and any applicable regulations thereunder. In the event that at any time the Authority is of the opinion that for purposes of this Section 3 it is necessary to restrict or to limit the yield on the investment of any moneys paid to MTC by the Authority hereunder or the proceeds thereof, the Authority shall so instruct MTC in writing and MTC shall take action in accordance with such instructions.
3. MTC and the Authority agree that the Authority will fulfill its entire responsibility to make AB 664 Net Toll Revenue Reserve Transfers, Two Percent Transit Reserves Transfers, and Rail Extension Reserves Transfers for 50 years from the date hereof by making the payment to MTC provided for in paragraph 1 and that the Authority will not be required or obligated to make any other Fund Transfers for 50 years from the date hereof for any reason. MTC hereby assigns to the Authority all toll bridge revenues that would have been used for AB 664 Net Toll

Revenue Reserve Transfers, Two Percent Transit Reserves Transfers, and Rail Extension Reserves Transfers for 50 years from and after July 1, 2010, and all rights to such toll bridge revenues.

4. MTC acknowledges that the Authority will incur indebtedness payable from and secured by the toll bridge revenues payable to the Authority pursuant to paragraph 3 and that the Authority will take other action in reliance upon the Authority's receipt and ownership of such toll bridge revenues and MTC's performance of this Funding Agreement, and MTC covenants and agrees that it will not interfere with, and that it will take all actions requested hereafter by the Authority to assure and confirm, the Authority's receipt and ownership of such toll bridge revenues.

IN WITNESS WHEREOF, this Funding Agreement has been executed by MTC and the Authority.

METROPOLITAN TRANSPORTATION COMMISSION

By _____

BAY AREA TOLL AUTHORITY

By _____