

Date: May 24, 2006
W.I.: 1512
Referred By: PAC
Revised: 11/15/06-ED
09/26/07-C
12/15/10-C

ABSTRACT

Resolution No. 3738, Revised

This resolution approves the principles, process, and schedule for exchanging federal, state, and local funds and the criteria for reserving these funds for BART's A, B, C1, and C2 cars until the cars are eligible for replacement, beginning in 2013, and the funds are needed by BART.

This resolution was revised through administrative action by the Executive Director on November 15, 2006 to include the final version of the agreement between MTC and BART. The revisions specify that the amount of local funds BART agrees to deposit into the Account is equal to 100% of the federal reimbursement less any BART principal previously withheld for retention in the Account, delete a reference to early termination of the agreement, and made a few other terminology changes.

This resolution was revised by the Commission on September 26, 2007 to make a minor correction in Attachment B to the amount programmed in FY 2006-07, and to include in Attachment B a reference to \$45 million in Third Cycle STP funds that were programmed to the BART Car Replacement project by the Commission in MTC Resolution 3723, Revised.

This resolution was revised by the Commission on December 15, 2010 to incorporate references to FTA funds programmed to the BART Car Replacement Project in conjunction with MTC Resolution 3918.

Further discussion of the BART car fund exchange and reserve account is contained in the "Executive Director" memorandum and the Programming and Allocations Summary Sheet dated May 10, 2006, and the Programming and Allocations Summary Sheets dated September 12, 2007 and November 10, 2010.

Date: May 24, 2006
W.I.: 1512
Referred By: PAC

RE: BART Car Replacement Funding Exchange and Reserve Account

METROPOLITAN TRANSPORTATION COMMISSION
RESOLUTION NO. 3738

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

WHEREAS, MTC has adopted a 25-year regional transportation plan (RTP), entitled the Transportation 2030 Plan, (MTC Resolution No. 3681, approved February 23, 2005); and

WHEREAS, the Transportation 2030 Plan identifies a funding shortfall of \$1.3 billion over the next twenty-five years for high priority transit capital projects; and

WHEREAS, the Bay Area Rapid Transit District's (BART) fleet replacement program, which is scheduled to begin in 2013, comprises a significant portion of the region's high priority transit capital shortfall; and

WHEREAS, MTC and BART staff have been in discussions over the development of a program to fund the BART A, B, C1, and C2 car replacement program, hereinafter called "Project", set to begin in 2013, by exchanging federal, state, and local funds for BART local funds and establishing a reserve for such funds, and propose that MTC and BART enter into an agreement articulating the principles for accomplishing such fund exchanges and establishing a reserve capital funding account for the Project; and

WHEREAS, MTC as the regional planning agency has facilitated discussions about financing the Project, including exchanging regional funds and reserving funds for this purpose in coordination with members of the Bay Area Partnership and have afforded opportunity for comment; and

WHEREAS, MTC and BART have specified the terms and conditions of the Project in an agreement which is set forth in Attachment A to this Resolution, attached hereto and incorporated herein as though set forth at length; now, therefore be it

RESOLVED, that MTC approves Attachment A; and, be it further

RESOLVED, that Attachment B, Programmed Amounts, attached hereto and incorporated herein as though set forth at length, sets forth the agreed-upon funding amounts for the fund exchange, which may be amended from time to time by amendment to this Resolution; and, be it further

RESOLVED, that the Executive Director is authorized to execute Attachment A on behalf of MTC, and to make non-substantive changes or minor amendments as deemed appropriate subject to review by MTC's Office of General Counsel for form; and, be it further

RESOLVED, that upon execution of Attachment A by the signatory agencies, MTC staff shall commence implementing the fund exchange and establishing the BART Car Replacement Restricted Account.

METROPOLITAN TRANSPORTATION COMMISSION



Jon Rubin, Chair

The above resolution was entered into by the Metropolitan Transportation Commission at a regular meeting of the Commission held in Oakland, California on May 24, 2006.

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Attachment A
Resolution No. 3738, Revised

AGREEMENT
between THE METROPOLITAN TRANSPORTATION COMMISSION
and the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
For BART CAR REPLACEMENT FUNDING EXCHANGE

AGREEMENT
between THE METROPOLITAN TRANSPORTATION COMMISSION
and the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
For BART CAR REPLACEMENT FUNDING EXCHANGE

This Agreement is entered into this 24th day of May 2006 by and between the Metropolitan Transportation Commission (hereinafter "MTC") and the San Francisco Bay Area Rapid Transit District (hereinafter "BART").

RECITALS

1. MTC has adopted a 25-year regional transportation plan (RTP), entitled the Transportation 2030 Plan, (MTC Resolution No. 3681, approved February 23, 2005) that identifies a funding shortfall of \$1.3 billion over the next twenty-five (25) years for transit capital rehabilitation projects. BART's fleet replacement program consisting of construction for the A, B, C1 and C2 fleet replacement, hereinafter referred to as "PROJECT," comprises a significant portion of the region's transit capital shortfall.
2. MTC, through discussions with the Bay Area Partnership, has agreed to set aside regional funds that are dedicated to transit capital rehabilitation projects for PROJECT. The amount of Surface Transportation Program or Federal Transit Administration funds hereinafter referred to as "FEDERAL FUNDS" directed to the PROJECT will be established through separate programming actions by MTC.
3. MTC is responsible for programming FEDERAL FUNDS.
4. The PROJECT is scheduled to begin in 2013, requiring that a restricted account, hereinafter referred to as the "ACCOUNT", be established to set aside funding for this future need.
5. MTC and BART desire to establish a funding exchange program under which MTC will program FEDERAL FUNDS to ready-to-go BART projects and BART will deposit an equal amount of local funds into the ACCOUNT for PROJECT; and
6. The BART Board of Directors has approved the funding exchange program, as well as authorized the General Manager to execute a funding agreement for the BART Car Replacement Funding Exchange, specifying the terms and conditions under which MTC is to provide FEDERAL FUNDS to BART, in exchange for BART's deposit of local unrestricted funds into the ACCOUNT for future use to cover expenses for PROJECT; and
7. Pursuant to MTC Resolution No. 3738, a copy of which is attached hereto and incorporated herein as Attachment A, MTC approved the funding exchange program, as well as this Agreement specifying the terms and conditions under which MTC is to provide FEDERAL FUNDS to BART, in exchange for BART's deposit of local unrestricted funds into the ACCOUNT for future use to cover expenses for PROJECT.

Now, therefore, MTC and BART hereto agree as follows:

ARTICLE I
MTC RESPONSIBILITIES

1. MTC agrees to program federal funds to eligible BART projects that are ready to be delivered within the year of MTC's programming action, as set forth in Attachment B of MTC Resolution No. 3738, Programmed Amounts, which details the specific agreed to federal fund sources and funding amounts. The programmed amounts and corresponding year of programming may be amended from time to time by MTC, as set forth in Resolution No. 3738.
2. MTC agrees to establish and manage the ACCOUNT to receive deposits of BART local funds, which will be held in reserve for PROJECT. Procedures for administration of the ACCOUNT are detailed in Article III, Paragraph 4 below.

ARTICLE II
BART RESPONSIBILITIES

1. In exchange for MTC programming funds for BART projects as set out in Article I, Paragraph 1 above, BART agrees to concurrently set aside an equal amount of its local funds for PROJECT. BART agrees that the local funds will be unencumbered funds from fare revenues or an equivalent source that does not have spending restrictions.
2. BART agrees to deposit its local funds into the ACCOUNT consistent with the requirements set forth in Article III, Paragraph 1.

ARTICLE III
MUTUAL AGREEMENT

The parties agree:

1. MTC agrees to approve BART federal grant applications consistent with Attachment B of MTC Resolution No. 3738, as it may be amended from time to time. Approval by MTC shall be evidenced by the execution of the federal grant.
 - A. For FY 2005-06, MTC shall approve BART's federal grant within two (2) business days after MTC receives notification from FTA that it has approved BART's grant and BART has deposited local funds in the amount of 50% of the funding amount shown for FY 2005-06 in Attachment B of Resolution No. 3738, whichever comes later. BART agrees to notify MTC in advance of depositing said funds. Following MTC's grant approval, BART shall request reimbursement from the federal agency within two (2) business days. BART agrees to deposit the remaining balance of local funds into the ACCOUNT so that the amount therein equals the federal reimbursement within five (5) business days after reimbursement of the federal funds has been made. If BART does not receive federal reimbursement within five (5) business days of submitting its request for reimbursement, it shall promptly notify MTC. Within one (1) business day of receiving such notice, MTC agrees to return BART's local funds deposited in the ACCOUNT. Interest, minus any fees, will be retained in the ACCOUNT. At no time will the balance therein be less

than the minimum amount necessary to maintain the ACCOUNT. Accordingly, should interest, minus fees, be insufficient to meet the minimum amount, MTC may withhold the necessary portion of the principal of the deposit for retention in the ACCOUNT. Thereafter, when federal reimbursement funds are received, BART agrees to deposit local funds into the ACCOUNT in an amount equal to 100% of the federal reimbursement, less any BART principal previously withheld for retention in the Account, within five (5) business days after it receives the grant monies.

- B. For FY 2006-07, and any subsequent years, MTC agrees to approve BART's federal grant as soon as reasonably possible if BART is current on all prior year transfers of local funds to ACCOUNT as outlined in Article 2, Paragraph 2. BART agrees to request reimbursement from the federal agency as soon as reasonably possible after the grant has been executed. Within five (5) business days after reimbursement of the federal funds has been made, BART agrees to deposit local funds into the ACCOUNT in an amount equal to the amount of the federal reimbursement up to the amount shown in Attachment B of Resolution No. 3738.
- C. If BART receives any FEDERAL FUNDS in advance of depositing local funds and thereafter fails to transfer local funds to the ACCOUNT, MTC may reprogram money from BART's annual FTA programming apportionment, or other funding sources, as appropriate.

- 2. BART will not draw down funds from the ACCOUNT to fund project expenses prior to the year 2013. Preliminary planning and engineering expenses incurred by BART for PROJECT that occur prior to the year 2013 will be funded by regional funds programmed to the project as part of the Phase 1 Funding Plan established by MTC Resolution No. 3918, and by BART through other fund sources and counted as part of the local match requirement for any federal grant monies.
- 3. If BART fails to accomplish the fleet replacement project, in whole or in part, abandons PROJECT at any stage, or fails to transfer local funds to the ACCOUNT as required by this Agreement, monies remaining in the ACCOUNT may be used at MTC's discretion to fund any transportation needs in the region.
- 4. The ACCOUNT shall be administered in accordance with the following procedures:
 - A. MTC shall be the exclusive administrator of the ACCOUNT. MTC shall follow the established investment procedures as outlined in MTC Resolution No. 3241, Revised, as may be further revised or superseded, for administering the ACCOUNT.
 - B. All interest earned on the ACCOUNT balance will be retained in the ACCOUNT and reinvested, subject to the same conditions of the deposited funds. Investment and management fees will be assessed by the bank and deducted from the account.
 - C. Withdrawal of funds from the ACCOUNT will require prior MTC Commission and BART Board approval. BART will submit a formal request for each reimbursement of

funds from the ACCOUNT that will outline specific project details, including but not limited to copies of invoices that include defined costs associated with the PROJECT. MTC may withdraw funds from the ACCOUNT without BART Board approval if MTC is withdrawing funds under those circumstances specified in Paragraph 3 of this Article III.

ARTICLE IV
GENERAL PROVISIONS

1. The term of this Agreement shall commence when jointly executed and shall terminate sixty (60) days after September 30 of the fiscal year that all monies have been drawn from the ACCOUNT.
2. Prior to the initiation of any legal proceedings, the parties of this Agreement agree to submit all claims, disputes or controversies arising out of or in relation to the interpretation, application or enforcement of this Agreement to non-binding mediation. Such mediation shall be conducted under the auspices of the American Arbitration Association or such other mediation service or mediator upon which the parties agree. The party seeking to initiate mediation shall do so by submitting a formal, written request to the other party to this Agreement. This section shall survive completion or termination of this Agreement, but under no circumstances shall either party call for mediation of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceedings to litigate such claim or dispute under the laws of the State of California.
3. BART shall retain all documents, working papers, records, accounts, and other materials relating to its performance under this Agreement for four years following the termination date of this Agreement defined in Paragraph 1 of this Article IV.
4. BART 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 (including any and all costs and expenses in connection therewith), incurred by reason of any act or omission of BART, its Directors, officers, agents, and employees, or any of them, under or in connection with any work, authority or jurisdiction delegated to BART under this Agreement, including but not limited to BART's obligation to deposit unencumbered funds that do not have spending restrictions into the ACCOUNT; and BART 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.
5. MTC shall indemnify and hold harmless BART, its Directors, officers, agents, and employees from any and all claims, demands, suits, loss, damages, injury, and/or liability, direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or omission of MTC, its Commissioners, officers, agents, and employees, or any of them, under or in connection with any work, authority or jurisdiction delegated to MTC under this Agreement; and MTC agrees at its own cost, expense and risk

to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against BART, its Directors, officers, agents, and employees, or any of them, arising out of such act or omission, and to pay and satisfy any resulting judgments.

6. This Agreement and any attachments or documents incorporated herein by inclusion of reference constitute the complete and entire understanding between MTC and BART. Amendment or termination of this MOU shall be in writing and signed by both parties.

METROPOLITAN TRANSPORTATION
COMMISSION

SAN FRANCISCO BAY AREA RAPID
TRANSIT DISTRICT

Steve Heminger, Executive Director

Thomas E. Margro, General Manager

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Attachment B
Resolution No. 3738
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ATTACHMENT B
PROGRAMMED FEDERAL FUNDING AMOUNTS

<u>Ready-to-go Project Title</u>	<u>Transportation Improvement Program</u>	<u>Fund Source</u>	<u>Amount</u>	<u>Fiscal Year Programming</u>
Preventive Maintenance	REG050020	Surface Transportation Program	\$22,680,000	FY 2005-06
Preventive Maintenance	REG050020	Surface Transportation Program	\$22,681,000	FY 2006-07
Preventive Maintenance	REG050020	Surface Transportation Program	\$22,682,000	FY 2007-08
Preventive Maintenance	REG050020	Surface Transportation Program	\$22,683,000	FY 2008-09
Preventive Maintenance	REG050020	FTA Section 5307	\$33,224,866	FY 2010-11