

**Metropolitan Transportation Commission  
Programming and Allocations Committee**

December 11, 2013

Item Number 2d

**Resolution Nos. 3738, Revised, and 4126**

**Subject:** Revisions to BART Car Replacement Funding Policy Commitment and BART Car Replacement Funding Exchange Agreement

**Background:** The BART Rail Car Replacement Project will replace BART’s existing 669 cars at a cost of approximately \$2.2 billion in year-of-expenditure dollars. MTC Resolution No. 3918 (December 2010) established a funding framework for the project and a policy-level commitment of approximately \$871 million in regional funding toward the Phase 1 Funding Plan for the project. Phase I funds the purchase of 350 new rail cars. The BART Board approved the funding framework and Phase 1 Funding Plan in BART Resolution No. 5134 in April 2010.

Resolution No. 4126 supersedes Resolution No. 3918 and revises the Phase 1 Funding Plan to reflect changes to the scope and costs for Phase 1 resulting from BART’s contract award. The funding framework for Phase 2 would be superseded by the investment plan included in the Core Capacity Challenge Grant Program, MTC Resolution No. 4123 (item 3.a.ii on the Committee’s agenda).

The Phase 1 Funding Plan, summarized in the table below, commits MTC to programming \$871 million in Federal Transit Administration (FTA) formula funds, Surface Transportation Program (STP) funds and earnings on the BART Car Replacement Funding Exchange Account for the project between FY 2006 and FY 2019. Of this, MTC has already committed roughly \$357 million through prior actions. BART would dedicate \$298 million of state High Speed Rail funds and BART local funds to the project. The revised Phase 1 Funding Plan maintains the 75% regional, 25% BART funding shares established by the funding framework for the project in Resolution No. 3918.

As in Resolution No. 3918, Resolution No. 4126 limits the regional commitment for Phase 1 to the specified amounts. Should these assumptions, including the cost of the project, change over time, the terms of this project funding framework will be re-examined and an alternate approach will be agreed to by MTC and BART that could include extending the timing of fund commitments, seeking alternate fund sources, or other actions.

**BART Car Replacement Project Phase 1 Funding Plan Summary**  
\$ millions

Source	Prior to FY15	FY15 - FY19	Total	% of Total
MTC Funding	357	514	871	75%
BART Funding	114	184	298	25%
<b>Total</b>	471	698	1,169	100%

MTC Resolution No. 3738, Revised, memorializes MTC's agreement with BART to exchange federal and local funds, and create a reserve account for the future costs of replacing BART's cars. Under the agreement, MTC programs federal funds to BART preventive maintenance, which otherwise would have been funded with BART's local funds, and BART deposits an equal amount of local funds into the account. Withdrawals from the account to help cover project expenses require prior approval by the Commission and the BART Board.

When the Commission authorized the first withdrawal from the exchange account in December 2012, staff reported that delays in BART's deposits of local funds into the account were contributing to a reduction in account earnings. Staff recommends a revision to Resolution No. 3738 to 1) establish a quarterly schedule for deposits and to specify that BART will provide additional funds to replace lost earnings caused by delays in making deposits and 2) to update the amount of federal programming subject to the exchange agreement to include the \$149 million in FTA formula funds programmed by MTC in FY2012-13 and FY2013-14.

**Issues:** None.

**Recommendation:** Refer Resolution Nos. 3738, Revised, and 4126 to the Commission for approval.

**Attachments:** MTC Resolution Nos. 3738, Revised, and 4126.

Date: December 18, 2013  
W.I.: 1512  
Referred By: PAC

ABSTRACT

Resolution No. 4126

This resolution supersedes MTC Resolution No. 3918 by revising the Funding Plan for Phase 1 of the BART Rail Car Replacement Program, which includes a policy-level commitment of approximately \$871 million in regional funding in fiscal years 2006 through 2019. The funding framework for Phase 2 of the project established by Resolution No. 3918 is superseded by the investment plan included in the Core Capacity Challenge Grant Program, MTC Resolution No. 4123.

This Resolution includes the following attachments:

A – Principles for Phase 1 Funding Plan

B – Phase 1 Funding Plan

Further discussion of the BART Rail Car Replacement Program is contained in the Programming and Allocations Summary Sheet dated December 11, 2013.

Date: December 18, 2013  
W.I.: 1512  
Referred by: PAC

Re: BART Rail Car Replacement Program

METROPOLITAN TRANSPORTATION COMMISSION  
RESOLUTION NO. 4126

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

WHEREAS, the San Francisco Bay Area Rapid Transit District (BART) is a rapid transit district providing heavy rail transit service in the San Francisco Bay Area; and

WHEREAS, BART has approved Resolution No. 5134 regarding the BART Rail Car Replacement Program and therein agreed to the matters referenced in the succeeding WHEREAS and RESOLVED clauses; and

WHEREAS, BART wishes to replace 669 rail cars through its Rail Car Replacement Program (PROJECT); and

WHEREAS, BART and MTC wish to establish a funding framework and understanding for the PROJECT; and

WHEREAS, BART and MTC wish to establish a policy-level commitment of funding toward a PHASE 1 FUNDING PLAN in fiscal years 2011 through 2019 in order for BART to award a contract for the PROJECT; and

WHEREAS, MTC previously adopted MTC Resolution No. 3866, the Transit Coordination Implementation Plan; and

WHEREAS, pursuant to Resolution No. 3866, MTC may, at its discretion, withhold, restrict or re-program funds and allocations to an operator that has not made reasonable efforts to implement the requirements of Resolution No. 3866; now be it therefore,

RESOLVED, that BART and MTC have agreed to and approve the PRINCIPLES FOR PHASE 1 FUNDING PLAN set forth in Attachment A and incorporated herein; and be it further

RESOLVED, that BART and MTC have agreed to and approve the PHASE 1 FUNDING PLAN set forth in Attachment B and incorporated herein; and be it further

RESOLVED, that BART and MTC agree that MTC's commitment of funding for the PHASE 1 FUNDING PLAN for the PROJECT is limited to the total amount of MTC Funding shown in the PHASE 1 FUNDING PLAN ; and be it further

RESOLVED, that MTC agrees to program in a timely manner Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) funds as set forth in Attachment B, subject to Congressional authorization and appropriation, availability of funds, and other critical regional transit capital needs in order to meet PHASE 1 FUNDING PLAN cash flow needs and minimize financing costs; and be it further

RESOLVED, that MTC may substitute other MTC-controlled funds in place of available FTA and FHWA funds specified in the PHASE 1 FUNDING PLAN; and be it further

RESOLVED, that BART agrees to use the funds as shown in Attachment B to meet the local match requirements of federal funds for the PHASE 1 FUNDING PLAN; and be it further

RESOLVED, that BART agrees to comply with all applicable local, state, and federal requirements for funds programmed by MTC; and be it further

RESOLVED, that BART and MTC agree to work with the Bay Area Partnership to ensure that the PROJECT funding plan will be developed and programmed in agreement with the region's overall approach to the Transit Capital Priorities program; and be it further

RESOLVED, that BART acknowledges that it has received regional funds from MTC to extend the life of some of its current fleet of rail cars so that they will remain in service while the replacement cars are being procured and delivered, and agrees to maintain its current fleet of rail

cars so that they will remain in service while the replacement cars are being procured and delivered; and be it further

RESOLVED, that BART agrees that it will not request regional funds from MTC for a rehabilitation of its current fleet of railcars; and be it further

RESOLVED, that MTC may withhold amending annual PHASE 1 FUNDING PLAN funds in the Transportation Improvement Program if the Commission finds that BART is not in compliance with MTC Resolution No. 3866; and be it further

RESOLVED, that BART and MTC will work with the FTA to ensure the federal funds are available to the PROJECT; and be it further

RESOLVED, that this resolution supersedes MTC Resolution No. 3918.

METROPOLITAN TRANSPORTATION COMMISSION

---

Amy Rein Worth, Chair

This resolution was entered into  
by the Metropolitan Transportation  
Commission at a regular meeting of  
the Commission held in Oakland,  
California, on December 18, 2013.

Date: December 18, 2013  
W.I.: 1512  
Referred by: PAC

Attachment A  
Resolution No. 4126  
Page 1 of 2

## **PRINCIPLES FOR PHASE 1 FUNDING PLAN BART CAR REPLACEMENT PROGRAM**

### **1. Project Definition**

The BART Car Replacement Program (PROJECT) consists of replacing 669 A, B, C1 and C2 cars at an estimated cost of \$2.2 billion (in escalated dollars). The procurement of additional capacity expansion cars as well as cars for the Warm Springs and Berryessa extensions is outside of the scope of these Principles.

The PHASE 1 FUNDING PLAN specified in this resolution will address the costs of replacing approximately the first 350 cars at an estimated cost of \$1.2 billion (in escalated dollars).

The PHASE 2 FUNDING PLAN will address the costs of replacing approximately the remaining 319 cars at an estimated cost of \$1.0 billion (in escalated dollars). The PHASE 2 FUNDING PLAN is included in the investment plan established by the Core Capacity Challenge Grant Program, MTC Resolution No. 4123.

### **2. Background and Prior Actions**

MTC Resolution No. 3918 established a funding framework for the BART Rail Car Replacement Program (Phases I and II) and a policy-level commitment of approximately \$780 million in funding toward the Phase 1 Funding Plan for the project in fiscal years 2011 through 2019. Together with regional funds programmed prior to FY 2011, the regional commitment totals \$871 million.

This resolution supersedes MTC Resolution No. 3918 by revising the Phase 1 Funding Plan to reflect changes to the scope and costs for Phase 1 resulting from BART's award of a contract for the rail cars, as specified above under Project Definition. The funding framework for Phase 2 of the project established by Resolution No. 3918 is superseded by the investment plan included in the Core Capacity Challenge Grant Program, MTC Resolution No. 4123.

Transportation 2035 and Plan Bay Area, the region's most recent long-range plans that were adopted in April 2009 and July 2013, respectively, include projected funding to meet BART's capital replacement and rehabilitation needs over the planning period, including the costs of the PROJECT.

### **3. Regional Share of Phase 1 Project Costs**

Consistent with the region's long-range plans and Resolution No. 3918, MTC will provide approximately \$871 million, or about 75%, of the \$1.2 billion PHASE 1 FUNDING PLAN costs.

This includes projected FTA Section 5307, FTA Section 5337, FHWA STP (or successor programs) and/or other anticipated funding sources included in Plan Bay Area, as well as the funds that have been programmed to the PROJECT prior to the adoption of Plan Bay Area and projected earnings on the BART Car Replacement Funding Exchange Account.

Assumptions for Regional Share:

- The total cost of the PHASE 1 FUNDING PLAN is \$1.2 billion and includes replacement of 350 cars.
- The PHASE 1 FUNDING PLAN assumes that any FTA or STP programming not needed for direct project expenditures in the year of programming will be exchanged for BART funds, which will be deposited in the BART Car Replacement Funding Exchange Account.
- The PHASE 1 FUNDING PLAN assumes that a combination of earnings credited to the BART Car Replacement Funding Exchange Account and, if earnings are insufficient, additional programming of STP or other funding sources will provide \$50 million for the PHASE 1 FUNDING PLAN.
- The PHASE 1 FUNDING PLAN assumes that state High Speed Rail Connectivity funds and other local BART funds will be available to BART to meet their \$298 million contribution.
- Major transit capital rehabilitation and replacement needs in the Region can be met as anticipated in Plan Bay Area, including 100% of the cost of replacing revenue vehicles and approximately 76% of the cost of replacing and rehabilitating Fixed Guideway and other Score 16 assets.
- The Region will receive \$20.9 billion in Committed Revenues, including FTA formula funds and AB664 bridge tolls, between FY 2013 and FY 2040 as anticipated in Plan Bay Area.
- The Region's Score 16 transit capital replacement and rehabilitation needs between FY 2013 and FY 2040 will not exceed \$32.7 billion as anticipated in Plan Bay Area.

Should these assumptions, including the cost of the PROJECT, change substantively over time, the terms of this PHASE 1 FUNDING PLAN will be re-examined and an alternate approach will be agreed to by MTC and BART that could include extending the timing of fund commitments, seeking alternate fund sources, or other actions.

**4. BART Share of Project Costs**

Consistent with Plan Bay Area and Resolution No. 3918, BART will cover approximately \$298 million, or about 25%, of the \$1.2 billion PHASE 1 FUNDING PLAN costs. This includes High Speed Rail funds and BART operating revenues dedicated to the PROJECT through FY 2019. If necessary, BART will either direct future BART-controlled revenue, such as State Transit Assistance Revenue-Based funds, after meeting revenue sharing and coordination expenses, or raise additional funds through General Obligation bonds, parcel taxes, fare increases or other means to help fund its share of PROJECT costs and/or fixed guideway needs. If necessary, BART can meet this commitment, in whole or in part, by funding a larger share of its fixed guideway capital needs, and reducing the need for regional investments in BART's fixed guideway needs below the level currently projected in Plan Bay Area.

Date: December 18, 2013  
W.I.: 1512  
Referred by: PAC

Attachment B  
Resolution No. 4126  
Page 1 of 1

## PHASE 1 FUNDING PLAN FOR BART CAR REPLACEMENT PROGRAM

\$000

Funding Source	Prior to FY15	FY15 - FY19	Total
<b>MTC Funding</b>			
FTA Formula Programs	266,545	463,455	730,000
FHWA Regional Discretionary Programs*	90,726	50,274	141,000
Subtotal MTC Funding	357,271	513,729	871,000
BART Funding	113,969	184,031	298,000
Total Funding	471,241	697,759	1,169,000

\* Funding from FHWA Regional Discretionary Programs includes BART funds deposited and earnings credited to the BART Car Replacement Funding Exchange Account.

Date: May 24, 2006  
W.I.: 1512  
Referred By: PAC  
Revised: 11/15/06-ED 09/26/07-C  
12/15/10-C 11/28/12-C  
12/18/13-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.

This resolution was revised by the Commission on November 28, 2012 to amend Attachment B to update the amount of federal programming subject to the Funding Exchange Agreement, and to authorize the withdrawal of up to \$15.5 million from the Funding Exchange Account under specified conditions.

This resolution was revised by the Commission on December 18, 2013 to revise the language of Attachment A regarding BART's deposits of local funds into the Funding Exchange Account,

ABSTRACT

MTC Resolution No. 3738, Revised

Page 2 of 2

and to amend Attachment B to update the amount of federal programming subject to the Funding Exchange Agreement.

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, November 10, 2010, November 14, 2012 and December 11, 2013.

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.

**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, Revised, 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, Table 1 of MTC Resolution No. 3738, Revised, 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, Revised.
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, Revised, 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 2013-14, 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 and expenses have been incurred for the federally funded project specified in Attachment B, Table 1, of MTC Resolution No. 3738, Revised. BART agrees to make four (4) approximately equal deposits of local funds into the ACCOUNT in amounts equal to approximately twenty-five percent (25%) of the amount of the federal grant for the project specified in Attachment B, Table 1, of Resolution No. 3738, Revised, by September 30, December 31, March 31 and June 30 of each fiscal year. BART agrees to deposit local funds into the ACCOUNT in an amount equal to the total amount of federal funds programmed to the project specified in Attachment B, Table 1, of MTC Resolution No. 3738, Revised by June 30 of the fiscal year following the fiscal year in which the

federal funds were programmed by MTC. If FTA awards BART's grant after September 30 in any fiscal year, BART agrees to make the first quarterly deposit within one quarter of the date of the grant award. If BART is still accruing project expenses subject to this agreement in the month of June of any fiscal year, BART may request in writing an extension to make the final quarterly payment by July 31 of that year. If other circumstances beyond BART's control prevent BART from making a deposit by the required date, BART may request in writing an extension. If BART fails to make the deposits of local funds into the ACCOUNT as described above, BART shall deposit into the ACCOUNT additional local funds equal to the estimated amount of lost earnings for the ACCOUNT resulting from BART's delay in depositing local funds into the ACCOUNT, as estimated by MTC. For purposes of calculating the estimated lost earnings, the actual earnings rate for the ACCOUNT as listed in the most recent monthly Investment Report to the MTC Administration Committee shall be converted to a daily rate and multiplied by the local funds deposit amount and the number of days the deposits were delayed.

- B. 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. Amounts approved for withdrawal from the ACCOUNT by the MTC Commission are specified in Attachment B, Table 2, of MTC Resolution No. 3738, Revised. 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

---

Grace Crunican, General Manager

Date: May 24, 2006  
W.I.: 1512  
Referred By: PAC  
Revised: 11/15/06-ED 09/26/07-C  
12/15/10-C 11/28/12-C  
12/18/13-C

Attachment B  
Resolution No. 3738, Revised  
Page 1 of 2

ATTACHMENT B  
TABLE 1. PROGRAMMED FEDERAL FUNDING AMOUNTS SUBJECT TO  
BART CAR REPLACEMENT FUNDING EXCHANGE AGREEMENT

Ready-to-go Project Title	Transportation Improvement Program	Fund Source	Amount	Fiscal Year Programming
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	\$25,940,067	FY 2010-11
Preventive Maintenance	REG050020	FTA Sections 5307 & 5309 FG	\$23,979,594	FY 2011-12
Preventive Maintenance	REG050020	FTA Sections 5307 & 5337	\$72,000,000	FY 2012-13
Preventive Maintenance	REG050020	FTA Sections 5307 & 5337	\$77,000,000	FY 2013-14

ATTACHMENT B  
TABLE 2. AUTHORIZED WITHDRAWALS FROM BART CAR  
REPLACEMENT FUNDING EXCHANGE ACCOUNT

Withdrawal No.	Fiscal Year	MTC Approval Date	Authorized Amount	Conditions
01	2012-13	November 28, 2012	\$15,500,000	Funds to be withdrawn from the ACCOUNT are to be expended for PROJECT costs only.