Metropolitan Transportation Commission
Programming and Allocations Committee

March 11, 2015 **Resolution No. 4124, Revised**

Subject: Revisions to agreement with the Contra Costa Transportation Authority (CCTA) to exchange Regional Transportation Improvement Program (RTIP) funds for county Measure funds.

Background: In 1997, MTC agreed to program an advance of federal formula highway funds to complete the Route 17/ Route 85 interchange project, in exchange for $18.5 million in local funds from the Santa Clara County Traffic Authority, which provided MTC flexibility in programming. This exchange did not increase the total amount of funds available to the region. Other exchanges have occurred with the Sonoma County Transportation Authority (SCTA) in 2006, the Transportation Authority of Marin (TAM) in 2007 and San Francisco Municipal Transportation Agency (SFMTA) in 2010.

On December 18, 2013, the Commission approved a similar exchange with the Contra Costa Transportation Authority (CCTA). The CCTA funding exchange agreement directed up to $31.0 million in Surface Transportation Program (STP) / Congestion Mitigation and Air Quality Improvement Program (CMAQ) / Regional Transportation Improvement Program (RTIP) funding to Contra Costa Measure projects such as the I-680 HOV Gap Closure, I-680/4 Interchange Complex and I-80/San Pablo Dam Road, in exchange for local Measure J funds that would otherwise be used by CCTA. The Measure J funds are to be paid to MTC within 5 years.

This agreement allows Freeway Performance Initiative (FPI) projects to move forward now, rather than waiting two years until the RTIP funding becomes available.

Staff proposes to make revisions to the initial agreement at the request of CCTA, including:

- Limiting the amount to $27 million rather than $31 million;
- Identifying the fund source provided by MTC as RTIP funding;
- Identifying the Measure project as the Interstate I-680/State Route 4 Interchange Improvements Project;
- Extending the agreement period to accommodate a delay in project implementation;
- No interest charges if all funds are paid to MTC within three years;
- Technical changes agreeable to both parties

Staff believes this exchange as revised is beneficial to both CCTA and MTC to better align funding with ready-to-go projects, allow more flexibility and streamlined project delivery. CCTA also receives a benefit of accessing funds sooner.

Issues: The CCTA Funding Exchange Agreement is conditioned upon the availability and timing of RTIP funds, which must be allocated by the California Transportation Commission (CTC).

Recommendation: Refer Resolution No. 4124, Revised, Attachments A, and Attachment B to the Commission for approval.

Attachments: MTC Resolution No. 4124, Revised, Attachment A, and Attachment B

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Date: December 18, 2013
W.I.: 1515
Referred by: PAC
Revised: 03/25/15-C

ABSTRACT

Resolution No. 4124, Revised

This resolution establishes the conditions for the exchange of Contra Costa Transportation Authority (CCTA) unrestricted Measure J funds with regional discretionary funds, such as Surface Transportation Program (STP), Congestion Mitigation and Air Quality Improvement (CMAQ) and/or Regional Transportation Improvement Program (RTIP) funds, in Contra Costa County. An agreement for the conditions of this exchange of funds between MTC and CCTA is included.

The resolution includes the following attachments:

Attachment A – Funding Exchange Agreement
Attachment B – CCTA Repayment Schedule

On March 25, 2015, Attachments A and B to the exchange agreement were revised to incorporate changes agreeable to both parties, including: limiting the amount to $27 million rather than $31 million; identifying the fund source provided by MTC as RTIP funding; identifying the Measure project as the Interstate I-680/State Route 4 Interchange Improvements Project; extending the agreement period to accommodate a delay in project implementation; and revising the repayment terms such that no interest will be charged if MTC is paid within three years.

Further discussion of this action is contained in the Programming and Allocation summary sheets dated December 11, 2013 and March 11, 2015.

Date: December 18, 2013
W.I.: 1515
Referred by: PAC

RE: Agreement to Exchange Contra Costa Transportation Authority Measure J funds with MTC Regional Discretionary Funds

Metropolitan Transportation Commission
Resolution No. 4124

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

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

WHEREAS, the Contra Costa Transportation Authority (CCTA) is the transportation authority responsible for administering and delivering Contra Costa County's Measure J program and projects including the I-680 HOV Gap Closure, I-680/4 Interchange Complex and I-80/San Pablo Dam Road project hereinafter referred to as the "Projects"; and

WHEREAS, CCTA has requested the assistance of MTC to expedite the delivery of Measure J projects by providing regional discretionary funds, such as Surface Transportation Program (STP), Congestion Mitigation and Air Quality Improvement (CMAQ) and/or Regional Transportation Improvement Program (RTIP) funds, hereinafter referred to as "STP/CMAQ/RTIP funds" available in the near term in exchange for unrestricted CCTA Measure J funds, hereinafter referred to as "Measure funds" available in future years; and

WHEREAS, CCTA has agreed to repay MTC for the STP/CMAQ/RTIP funds requested pursuant to the terms set forth in an agreement between MTC and CCTA; and

WHEREAS, the agreement is substantially in the form 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 the advancement and exchange of STP/CMAQ/RTIP funds with CCTA Measure funds for the purposes and within the maximum amount established, and subject to the conditions, set forth in Attachment A; and, be it further

RESOLVED, that Attachment B sets forth the agreed-upon funding amounts for the exchange, and that the Executive Director may amend Attachment B within the limits set forth in Attachment A; and, be it further

RESOLVED, that the repaid Measure funds shall be placed into an exchange account for the programming of projects at the discretion of the Commission; and, be it further

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

RESOLVED, that upon execution of Attachment A by the signatory agencies, MTC staff shall implement the exchange of the STP/CMAQ/RTIP funds with CCTA Measure funds.

METROPOLITAN TRANSPORTATION COMMISSION

Amy Rein Worth

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.: 1515
Referred by: PAC
Revised: 03/25/15-C

MTC Resolution No. 4124
Attachment A

Agreement for the exchange of Contra Costa Transportation Authority (CCTA) Measure funds with regional discretionary funds, for Measure J projects in Contra Costa County.

Agreement between the Metropolitan Transportation Commission and the Contra Costa Transportation Authority for the exchange of regional discretionary funds, such as Regional Transportation Improvement Program (RTIP) funds, for Measure funds

This AGREEMENT is entered into on the _____ day of _____, 2015, by and between the CONTRA COSTA TRANSPORTATION AUTHORITY, ("AUTHORITY"), created under California Public Utility Code 180000 et seq. and the METROPOLITAN TRANSPORTATION COMMISSION ("MTC"), a regional transportation agency created under California Government Code Sections 66500 et seq.

Recitals

(1) AUTHORITY is the sponsoring agency for the Interstate I-680/State Route 4 Interchange Improvements Project identified in the Measure J Expenditure Plan for Contra Costa County, approved by voters on November 2, 2004 ("PROJECT").

(2) PROJECT will be implemented over several years to relieve traffic congestion in Contra Costa County.

(3) AUTHORITY has requested the assistance of MTC to expedite delivery of the PROJECT by providing $27.0 million in Regional Transportation Improvement Program (RTIP) funds ("RTIP FUNDS") for PROJECT in fiscal year 2015-16 in exchange for Contra Costa Measure J or C funds ("MEASURE FUNDS").

(4) AUTHORITY makes programming recommendations to MTC related to RTIP FUNDS that normally would be available in fiscal years 2017-18 and 2018-19 of the State Transportation Improvement Program (STIP).

(5) AUTHORITY recommended and received the programming of $27.0 million in RTIP FUNDS for PROJECT in the 2014 STIP, adopted by the California Transportation Commission (CTC) on March 20, 2014.

(6) MTC, the transportation planning, coordinating and financing agency for the nine-county San Francisco Bay Area, is eligible to program and assign RTIP FUNDS, and has discretionary funding authority of the $27.0 million in RTIP FUNDS approved by the CTC for PROJECT.

(7) AUTHORITY agrees to provide $27.0 million in unrestricted MEASURE FUNDS as specified in this Agreement and Attachment A, attached hereto and incorporated herein by reference.

(8) AUTHORITY and MTC desire to proceed with the funding agreement immediately, as nothing in this Agreement adversely affects MTC's responsibility to program regional discretionary funds to other programmed projects in the Bay Area.

(9) AUTHORITY and MTC mutually desire to specify the terms and conditions under which MTC is to provide RTIP FUNDS to AUTHORITY, in exchange for AUTHORITY's assignment of MEASURE FUNDS to be repaid to MTC.

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

Section I

MTC AGREES:

(1) To perform such actions and to deliver such documents as are necessary to complete the delivery of RTIP FUNDS to AUTHORITY in accordance with this Agreement.

(2) Upon execution of this Agreement, to ensure the programming of a maximum total of $27.0 million of MTC-apportioned RTIP FUNDS including apportionment and obligation authority to AUTHORITY for implementation of PROJECT, contingent upon the availability of federal apportionment, Obligation Authority, allocation capacity and required approvals by CTC.

Section II

AUTHORITY AGREES:

(1) To indemnify, defend and hold harmless MTC, its Commissioners, directors, officers, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of AUTHORITY, its officers, employees or agents, or subcontractors or any of them in connection with its performance of PROJECT under this Agreement.

(2) To make payments of MEASURE FUNDS to MTC as outlined in the payment schedule of Appendix A, expressly subject to Section III(4) and to the AUTHORITY'S continued authorization to collect and expend the sales tax proceeds provided by MEASURE C and MEASURE J.

(3) To seek allocation/obligation, extensions, and/or reprogramming of entire amount of the RTIP FUNDS by June 30, 2017.

(4) To request inclusion in agreements with other partners, provisions that RTIP FUNDS subject to this agreement are to be used first and project savings will first be realized from other funds sources.

(5) To pay interest at the simple annual rate of two (2) percent on the unpaid balance remaining after June 30, 2020 and before June 30, 2022 as listed in the payment schedule of Appendix A.

(6) To pay interest at the simple annual rate of five (5) percent for any unpaid balance, including interest, greater than the amounts listed on the repayment schedule outlined in Appendix A, including any balance remaining, after June 30, 2022.

(7) To meet all federal, state and regional project funding delivery requirements associated with RTIP FUNDS.

Section III

IT IS MUTUALLY AGREED:

(1) The term of this Agreement shall commence on _____, 2015. This Agreement shall terminate upon the satisfaction of AUTHORITY's obligation to pay MTC with MEASURE FUNDS including applicable interest, as outlined in Section II of this Agreement. Notwithstanding the above, AUTHORITY may terminate this Agreement by written notice to MTC, if without a request from the AUTHORITY to reprogram RTIP FUNDS or extend allocation date, the CTC does not maintain the RTIP FUNDS included in this agreement in fiscal year 2016-17 or earlier in the State Transportation Improvement Program (STIP) or AUTHORITY has not received an obligation and/or allocation of the RTIP FUNDS by June 30, 2017 and no arrangement for availability of these funds after June 30, 2017 has been made by MTC to the satisfaction of AUTHORITY. AUTHORITY may also terminate this Agreement if PROJECT becomes unfunded at any time prior to CTC allocation of funds due to cost increases or loss of other funds. If the Agreement is terminated by AUTHORITY, MTC will reprogram the $27 million in RTIP funds to other projects.

(2) Nothing in this Agreement shall preclude AUTHORITY from making payments, including interest payments in advance of the schedule or in excess of the annual amounts outlined in Appendix A, thus reducing the balance remaining. There shall be no pre-payment penalty for any such advance or excess payments.

(3) MTC reserves the right to withhold from AUTHORITY future regional discretionary funds otherwise going to AUTHORITY, after consultation with AUTHORITY, if AUTHORITY fails to meet its obligation to make payments to MTC with MEASURE FUNDS including interest, as specified in this Agreement.

(4) If CTC de-allocates RTIP FUNDS from PROJECT due to bid savings or other reasons, MEASURE FUNDS paid to MTC will be reduced and/or refunded to AUTHORITY in an identical amount not to exceed ten percent of the total amount of $27 million subject to this agreement, within three months from de-allocation date. Similarly, if RTIP FUNDS are not fully utilized at the end of the PROJECT, MTC will refund to AUTHORITY an identical amount of the un-utilized amount, not to exceed ten percent of the total amount of $27 million subject to this agreement, within three months after notification by the AUTHORITY following the close out of the PROJECT.

(5) This Agreement shall bind and benefit the parties hereto and their heirs, successors, and permitted assigns.

(6) MTC and AUTHORITY agree to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of the Agreement.

(7) This Agreement may not be changed, modified or rescinded except in writing, signed by all partied hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

(8) All required or permitted payments, reports, demands and notices may be sent by regular mail or electronic mail. Notices that are mailed by regular mail shall be deemed delivered two (2) business days after deposited in the mail. Notices may be personally delivered and shall be deemed delivered at the time delivered to the appropriate address set forth below. Notices delivered by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return electronic mail or other written acknowledgment of receipt); provided that, if such notice is not sent during normal business hours of the recipient, such notice shall be deemed to have been sent at the opening of business on the next business day of the recipient. Unless and until notified otherwise in writing, a PARTY shall send or deliver all such communications relating to this Agreement to the following address:

Hisham Noeimi
Contra Costa Transportation Authority
2999 Oak Road, Suite 100
Walnut Creek, CA 94597
hnoeimi@ccta.net

Ross McKeown
Metropolitan Transportation Commission
101 8th Street
Oakland, CA 94607
rmckeown@mtc.ca.gov

(9) This Agreement is the entire agreement among MTC and AUTHORITY relating to the subject matter of this Agreement. MTC and AUTHORITY acknowledge they have not relied upon any promise, representation or warranty not expressly set forth in this Agreement in executing this Agreement.

(10) Should any part of this Agreement be declared unconstitutional, invalid, or beyond the authority of MTC or AUTHORITY to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement which shall continue in full force and effect; provided that the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

(11) No waiver by either party of any default or breach of any covenant by the other party shall be implied from any omission to take action on account of such default if such default persists or is repeated and no express waiver shall affect any default other than the default specified in such waiver and then such waiver shall be operative only for the time and to the extent stated in such waiver. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. No waiver of any provision under this Agreement shall be effective unless in writing and signed by the waiving party.

(12) MTC and AUTHORITY represent and warrant that they are authorized to execute this Agreement.

(13) This Agreement may be executed in counterparts.

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

CONTRA COSTA TRANSPOTATION AUTHORITY

Kevin Romick, Chair

Randell H. Iwasaki, Executive Director

Approved as to Form:

Malathy Subramanian, Legal Counsel

METROPOLITAN TRANSPORTATION COMMISSION

Steve Heminger, Executive Director

Appendix A

Agreement for federal RTIP Funds
for CCTA Measure Projects

Payment Schedule

Exchange Fund Source	Duration:	3	Exchange Funding Years and Payment Dates				
	Rate:	0%	Initial Amount	Year 1	Year 2	Year 3	TOTAL
	INT Payback:	0	2017	2018	2019	2020	

	30-Jun-2017	*30-Jun-2018*	*30-Jun-2019*	*30-Jun-2020*	
Exchange Funds Provided by MTC					
Regional Transportation Improvement Program (RTIP)	27,000,000				27,000,000
Cumulative Total:	**27,000,000**				**27,000,000**

	30-Jun-2017	*30-Jun-2018*	*30-Jun-2019*	*30-Jun-2020*	
Exchange Funds Provided by CCTA					
CCTA Unrestricted Measure Funds - Principal	0	9,000,000	9,000,000	9,000,000	27,000,000
CCTA Unrestricted Measure Funds - Interest	0	No Payment	No Payment	No Payment	0
Total Payment:	**0**	**9,000,000**	**9,000,000**	**9,000,000**	**27,000,000**
Cumulative Total:	**0**	**9,000,000**	**18,000,000**	**27,000,000**	**27,000,000**

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