



**DATE:** May 27, 2021

**TO:** Transportation Authority of Marin Board of Commissioners

**FROM:** Anne Richman, Executive Director *Anne Richman*  
David Chan, Programming and Legislation Manager

**SUBJECT:** MTC Agreement for the Marin Sonoma Narrows (MSN) Project (Action), Agenda Item No. 9

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**RECOMMENDATION**

The TAM Board authorizes TAM Executive Director to execute an agreement with the Metropolitan Transportation Commission (MTC) for the programming of federal discretionary Surface Transportation Program (STP) funds to the construction phase of the MSN Project.

**BACKGROUND**

A Letter of No Prejudice (LONP) permits a project sponsor to incur costs on a project using non-Regional Measure 3 (RM3) resources, with the understanding that the costs incurred after the approval of the LONP may be eligible for reimbursement once RM3 funds are available.

On April 22, 2021, the TAM Board authorized TAM Executive Director to request an RM3 LONP from MTC for the MSN Project after learning that MTC was considering programming \$75.7 million in federal discretionary funds to the MSN Project, which would fully fund the remaining needs of the construction phase as shown in the below table:

<b>MSN Project Construction Phase</b>	<b>(in millions)</b>
SB1 SCCP	\$40.1
Measure AA	\$4.1
STIP/CRRSSA	\$1.1
Funds Secured	\$45.3
Estimated Construction Costs	\$121.0
Remaining Needs	\$75.7

In addition to approving the RM3 LONP request, the TAM Board also authorized TAM’s Executive Director to execute any necessary resolution(s) and agreement required by MTC to accept federal discretionary funds for the construction phase of the MSN Project.

On April 28, 2021, MTC approved the programming of \$75.7 million in federal discretionary STP funds for the construction phase of the MSN Project. On April 30, 2021, TAM staff submitted a RM3 LONP request to MTC for approval.

Subsequently, MTC provided TAM a draft agreement for the acceptance of \$75.7 million in federal discretionary STP funds. The federal discretionary STP funds, State Transportation Improvement Program (STIP), and TAM’s Measure AA funds were the designated non-RM3 resources facilitating the LONP request.

While the TAM Board had already authorized TAM’s Executive Director to execute any necessary agreement with MTC, the draft agreement provided by MTC to TAM for review contained a provision that may have financial consequences for TAM, and that should be recognized by the TAM Board prior to the execution of the agreement.

**DISCUSSION**

Most of the terms in the MTC agreement have been negotiated and amended to the satisfaction of both parties. Staff is particularly pleased to see a provision in the agreement that states TAM is not obligated to repay the federal discretionary STP funds if the pending litigation does not validate RM3.

However, the agreement does contain one provision that staff objected to and requested its removal. The provision states that TAM (also referred to as “Authority”) agrees:

“To provide MTC a one-time payment of one percent of any remaining unpaid balance if a final favorable resolution of the pending RM3 litigation is delayed past the end of federal fiscal year 2023. Authority shall not use RM3 funds to cover these costs.”

MTC insisted that this provision must remain in the agreement as a necessary condition for the programming of the \$75.7 million in federal discretionary STP funds to the MSN Project.

This provision in the MTC agreement is a one-time, one percent (1%) payment on any remaining unpaid balance that TAM will be obligated to pay MTC with non-RM3 funds. The provision only goes into effect if the courts uphold RM3, and only if that decision comes after June 30, 2023. The provision will not go into effect if the courts uphold RM3 prior to June 30, 2023, or if the courts overturn RM3.

Based on the amount of \$75.7 million of backfill funds, it is estimated that the maximum payment would be \$757,000.

Because the provision further states that TAM cannot use RM3 funds for the payment, TAM would be required to use other funds to pay MTC. Staff believes that this could be accomplished using local sales tax funds dedicated to the MSN project and included in the overall LONP agreement with MTC. In other words, should RM3 be upheld by the courts after June 30, 2023, TAM would be repaid from RM3 funds for the federal discretionary funds, as well as for the local and CRRSAA funds, but would then have to pay MTC up to \$757,000 from those repaid local funds. This is illustrated in the table below:

Illustrative Repayment Scenario (in \$millions):

Source	Funds Secured	Returned to TAM if RM3 Upheld	Returned to MTC if RM3 Upheld
SB1 SCCP	\$40.1	\$0	\$0
Measure AA	\$4.1	\$4.1-\$0.757=\$3.3	\$0.757
STIP/CRRSSA	\$1.1	\$1.1	\$0
RM3 Backfill Funds	\$75.7	\$0	\$75.7
Total	\$121.0	\$4.4	\$76.5

Staff is still recommending that TAM enter into the agreement with MTC, even with the undesirable provision, as overall the MSN project will see significant benefits from the agreement and the provision of backfill funds.

### **FISCAL IMPACTS**

As noted in the April 22, 2021 Board item regarding the LONP, as the various project funding elements are approved, TAM will add them to the FY21-22 budget as needed. It is worth noting that in many (but not all) cases, the project funds will be programmed directly to Caltrans as the project implementing agency, and TAM will not need to serve as a pass-through agency. Regarding the one-time payment term, TAM would adjust the agency budget after June 30, 2023 to reflect a repayment up of to \$757,000, should that term go into effect.

### **NEXT STEPS**

Upon approval from the TAM Board, TAM Executive Director will finalize and execute the MTC Agreement for programming of the \$75.7 million in federal discretionary STP funds to the MSN Project. TAM staff will keep the Board apprised of the MSN project status and funding.

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