



## Board Report

File #: 2022-0445, File Type: Policy

Agenda Number: 6.

### PLANNING AND PROGRAMMING COMMITTEE AUGUST 17, 2022

**SUBJECT: MEASURE M 3% LOCAL CONTRIBUTION GUIDELINES REVISIONS**

**ACTION: APPROVE RECOMMENDATIONS**

#### **RECOMMENDATION**

APPROVE the release of the draft revised Measure M 3% Local Contribution Guidelines (Attachment A).

#### **ISSUE**

In April 2022 the Board approved Motion 35 (Attachment B), authored by Directors Hahn, Garcetti, Butts, and Dutra titled 3% Contribution, which in part directed Staff to revise the Measure M Guidelines, Section VIII. - 3% Local Contribution to Major Transit Projects. Staff reported back to the Construction Committee in June 2022 on the response to the motion (2022-0331) and committed to requesting Board approval to release for public review revised Guidelines in August 2022.

#### **BACKGROUND**

The Measure M Ordinance (Ordinance) requires that local jurisdictions pay three percent (3%) of the total project cost of new major rail projects. In advance of Metro notifying jurisdictions of their local contribution obligations for several rail capital projects, the Board requested that Staff revise the Guidelines to be consistent with the Ordinance, confirm several aspects of the calculation, and clarify and provide additional flexibility on sources available to jurisdictions to satisfy the 3% contribution. This action is required because making draft Guidelines revisions available for public comment is consistent with Metro's past practice (e.g. 2021-0008) and may generate constructive input from jurisdictions and other stakeholders to be affected by the proposed changes.

#### **DISCUSSION**

Staff has revised the Guidelines in response to direction from Motion 35. The revisions reflect a change in the cost allocation approach, the exclusion from the total project cost of the First/Last Mile (FLM) expenses incurred by jurisdictions, and the availability of FLM credit in situations when Metro is withholding local return funds in alignment with the Board direction in Motion 35. Staff can implement the direction from Motion 35 immediately, with the Guidelines revisions formalizing the changes in the approach to the 3% local contribution.

## **DETERMINATION OF SAFETY IMPACT**

The proposed approval will not have any adverse safety impacts on employees or patrons.

## **FINANCIAL IMPACT**

### Impact to Budget

Approving the recommendations will have no impact on the FY 2022-23 Budget.

## **EQUITY PLATFORM**

Per the equity assessment of the Guidelines revisions in June 2022 (2022-0331), the 3% local contribution is one of the financial resources supporting Metro's major rail transit projects program in the Measure M Expenditure Plan. These projects will benefit communities by adding new high-quality reliable transit service, many of which will increase mobility, connectivity, and access to opportunities for the historically underserved and transit-dependent communities. Metro will continue to conduct outreach and provide technical assistance on the 3% contribution requirement to affected jurisdictions as we proceed with project planning. Staff will also analyze how each project might impact equity and Equity Focused Communities. These analyses will be included in future Board items (e.g. notifying the Board of the 3% contribution amount by jurisdiction based on 30% design) on a project-by-project basis.

## **IMPLEMENTATION OF STRATEGIC PLAN GOALS**

The Project supports the following strategic plan goals identified in Vision 2028: Goal 1: Provide high-quality mobility options that enable people to spend less time traveling, Goal 3: Enhance communities and lives through mobility and access to opportunity and Goal 5: Provide responsive, accountable, and trustworthy governance within the Metro organization.

## **ALTERNATIVES CONSIDERED**

The Board could elect not to approve the public release of the revised Guidelines. This is not recommended as the proposed revisions resulted from Board direction and will ensure consistency between Metro's published guidance and the Measure M Ordinance.

## **NEXT STEPS**

Metro will release the Draft Revised Measure M Guidelines Section VIII - 3% Local Contribution to Major Transit Projects, if approved by the Board, for a 60-day public review period beginning August 26, 2022. Metro will circulate the draft revisions to Councils of Governments (COGs) and notify the public via The Source or other appropriate outreach methods. The Guidelines will be posted on the Metro website, and there will be a place at the same location for people to submit comments. Following public input and comment, the final revised Guidelines will be presented to the Board in January 2023 for adoption.

**ATTACHMENTS**

Attachment A - 3% Measure M Guidelines Draft Revisions

Attachment B - Motion 35

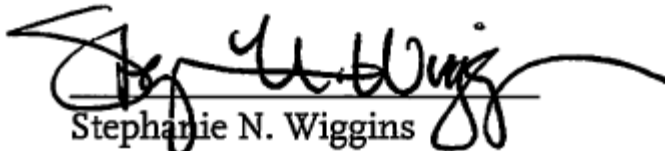
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**REVISED MEASURE M GUIDELINES, SECTION VIII. 3% LOCAL CONTRIBUTION TO MAJOR TRANSIT PROJECTS**

*The following shall replace Section VIII. in its entirety.*

**INTRODUCTION**

The Measure M Ordinance includes a provision for 3% local contribution to major rail transit capital projects. The rationale for the contribution is that local communities with a rail station receive a direct benefit due to the increased access to high-quality transit service that is above and beyond the project's benefit to the County as a whole. Countywide, the 3% local funding contribution represents more than \$1 billion in funding to support the project delivery identified in the Expenditure Plan. The 3% local funding contribution is a critical element of a full funding plan for these rail transit projects. The Ordinance includes provisions that allow development of a mutual agreement between a jurisdiction and Metro, and a default payment mechanism if such an agreement cannot be reached. The agreements shall be in accordance with these guidelines.

**PROGRAM METHODOLOGY**

The Ordinance calculates the local contribution based upon the percent of project total centerline track miles to be constructed within a local jurisdiction's borders if one or more new stations are to be constructed within that jurisdiction. These guidelines reflect the nexus between mobility benefits provided to a jurisdiction based on the presence of a new station within the jurisdiction. The local contribution will be calculated by distributing 3% of the total project cost, estimated at the conclusion of thirty percent (30%) of final design, to jurisdictions based on centerline track miles per the Ordinance. For projects along a larger transit corridor with more than one operable segment, each operable segment will have its own "total project cost" for purposes of calculating the 3% local contribution for each segment. Jurisdictions will incur a 3% local contribution obligation only for operable segments that include station construction within their borders. Other arrangements agreed upon by every local jurisdiction in a project corridor with a local contribution obligation are also acceptable, provided that the total of all jurisdictions' contributions equals 3% of the estimated total project cost. A list of jurisdictions that may be affected, subject to changes determined by the environmental process, is included as Appendix A.

An agreement approved by both Metro and the governing body of the jurisdiction shall specify the total project cost as determined at the conclusion of thirty percent (30%) of final design, the amount to be paid by the local jurisdiction, and a schedule of payments. Once approved, the amount to be paid by the local jurisdiction shall not be subject to future cost increases.

#### Eligible Fund Contributions

Eligible fund sources to satisfy 3% local contribution include any funds controlled by the local agency or local agencies (e.g., General Fund, State Gas Tax Subventions, Prop. A, Prop. C and Measure R and Measure M Local Return Funds, Measure M Subregional Program Funds), or any funds awarded from non-Metro competitive grant process funding. Measure M Subregional Program Fund contributions must be accompanied by documented agreement from all jurisdictions that would otherwise be eligible for those sub-regional funds. In-kind contributions eligible to satisfy 3% local contribution include, but are not limited to, project specific right-of-way, waiver of permitting fees, local agency staff time (incurred and forecast) and other subregional investments that support a Metro transit corridor if those costs are specifically included in the project cost and contribution amount by the conclusion of thirty percent (30%) of final design.

#### Betterments

Betterments are defined consistent with existing policy adopted by the Metro Board on Supplemental Modifications to Transit Projects (October 2013). A “betterment” is defined “as an upgrade of an existing city or utility’s facility or the property of a Third Party, be it a public or private entity, that will upgrade the service capacity, capability, appearance, efficiency or function of such a facility or property of a third party.” Once the 30% design project scope and cost have been determined as the basis of the 3% contribution calculation, subsequent betterments cannot be included in that calculation, nor counted toward a jurisdiction’s eligible contribution. However, they may be included in the project scope if carried at the jurisdiction’s expense.

#### Active Transportation and First/Last Mile Investments

These guidelines reflect provisions adopted by the Board that allow for local jurisdictions, through an agreement with Metro, to meet all or a portion of their 3% local contribution obligation through first/last mile (FLM) investments. All local FLM improvements must be consistent with station area plans that will be developed by Metro in coordination with the affected jurisdiction(s). The criteria for local FLM investments for FLM contributions are being developed by Metro, specifically to carry out

integration of FLM within transit capital projects. FLM improvements consistent with this section will not be considered “betterments” for the purposes of these Guidelines and are eligible to satisfy local contribution obligations in lieu of Metro withholding up to 15 years of Measure M Local Return.

#### Local Contribution Limits

The 3% local contribution will only be calculated against the overall project scope and cost determined at the conclusion of thirty percent (30%) of final design and will not include costs for FLM improvements delivered by entities other than Metro. Local agencies cannot count other transportation investments that are not included in the project scope and cost estimate after the conclusion of thirty percent (30%) of final design. Metro staff will provide written notice to the affected jurisdiction(s) and a report to the Metro Board after the completion of thirty percent (30%) of final design.

Contributions for calculations assigned to the County of Los Angeles are to be determined by the County.

#### Opt-Out Option

Metro will withhold up to 15 years of Measure M Local Return Funds from local agencies that fail to reach a timely agreement with Metro on their 3% contribution prior to the award of any contract authorizing construction of the project within the borders of that jurisdiction. Local return funds from Proposition A, Proposition C, and Measure R are not subject to withholding. In some cases, principally in smaller cities, the default withholding of 15 years of local return from Measure M Local Return Funds will be less than a full 3% contribution. In these cases, Metro may establish in an agreement with the city either amount as the 3% contribution. The cities that fulfill the 3% contribution requirement through the Local Return withholding mechanism, including offsets for approved FLM improvements, will suffer no further impact.

#### AUDIT REQUIREMENTS

Use of Measure M funds will be subject to audit and oversight, and all other applicable state and local laws.

#### REPORTING REQUIREMENTS

Metro will provide annual reports to the Measure M Independent Taxpayer Oversight Committee describing how uses of the Measure M Funds are contributing to accomplishing the program objectives.

REVISIONS TO PROGRAM GUIDELINES

These program guidelines may be revised by the Metro Board of Directors.



# Metro

## Board Report

Los Angeles County  
Metropolitan Transportation  
Authority  
One Gateway Plaza  
3rd Floor Board Room  
Los Angeles, CA

**File #:** 2022-0258, **File Type:** Motion / Motion Response

**Agenda Number:** 35.

### CONSTRUCTION COMMITTEE APRIL 21, 2022

#### Motion by:

**DIRECTORS HAHN, GARCETTI, BUTTS, AND DUTRA**

#### **3% Contribution Motion**

The Measure M ordinance requires local jurisdictions to pay three percent (3%) of the total project cost of a major Measure M rail project. According to Section 7.f of the Measure M ordinance, each jurisdiction's obligation is calculated "based upon the percent of project total centerline track miles to be constructed within that jurisdiction's borders if one or more stations are to be constructed within the borders of said jurisdiction." This requirement is generally referred to as the "3% Contribution."

Clarifications are necessary to ensure that local jurisdictions fully understand their 3% Contribution calculation and that Metro fully incentivizes local jurisdictions to make First-Last Mile improvements that will benefit Metro projects and increase transit ridership, consistent with Board policy.

First, the Measure M Guidelines (Board File 2017-0280) differ from the Measure M ordinance on how Metro calculates the 3% Contribution. While the Measure M ordinance applies the 3% Contribution only to local jurisdictions where a new station is to be constructed, the Measure M Guidelines extend this obligation to all local jurisdictions within a half-mile of a new station. To ensure clarity, Metro should revise the Measure M Guidelines to be consistent with the Measure M ordinance.

Additionally, not all jurisdictions are presently incentivized to make First-Last Mile investments. Existing Metro Board policy (Board Files 2016-0451 and 2020-0365) seeks to incentivize local jurisdictions to make First-Last Mile investments by allowing the value of those investments to count toward all of a jurisdiction's 3% Contribution obligation. However, as detailed below, this incentive is currently not available to all jurisdictions.

In cases where a jurisdiction's 3% Contribution exceeds 15 years of their Measure M Local Return, per the Measure M ordinance Metro may withhold their Measure M Local Return for up to 15 years. To preserve these jurisdictions' incentive to deliver First-Last Mile investments, Metro should allow withheld funds to satisfy the 3% contribution via an agreement with the jurisdiction such that the value of First-Last Mile investments delivered by that jurisdiction count against their up-to 15-year Measure M Local Return withholding, so long as those investments are consistent with established Metro procedures (such as the First-Last Mile Guidelines). This will ensure First-Last Mile incentives are fully available to all jurisdictions.



Further, to ensure that local jurisdictions are not over-charged for their 3% Contribution, the Board should clarify that a transit corridor's "total project cost" (calculated at 30% design to determine a jurisdiction's 3% Contribution) should refer only to the transit project and related elements delivered by Metro itself. First-Last Mile improvements delivered by local jurisdictions should not be included in the "total project cost" from which Metro calculates a jurisdiction's 3% Contribution.

Finally, the Measure M Guidelines provide that a transit corridor's total 3% Contribution may be met through in-kind contributions or "other arrangements agreed upon by every local jurisdiction in a project corridor." The Board should reaffirm that subregional investments that support a Metro transit corridor should be eligible to count toward a project's total 3% Contribution under this provision.

Following determination of the "total project cost" at 30% design, the manner in which a local jurisdiction shall fulfill its 3% obligation should be generally understood by the time a Metro project reaches construction contract award, pending final agreement between Metro and that jurisdiction.

**SUBJECT: 3% CONTRIBUTION MOTION**

**RECOMMENDATION**

APPROVE Motion by Directors Hahn, Garcetti, Butts, and Dutra that the Board direct the CEO to update the Measure M Guidelines and First-Last Mile Guidelines in accordance with the following:

- A. Revise the Measure M Guidelines 3% Contribution calculation to be consistent with the Measure M ordinance;
- B. In cases where Metro withholds 15 years of Measure M Local Return, clarify that Metro will allow withheld funds to satisfy the 3% contribution via an agreement with the jurisdiction, that jurisdictions may spend withheld funds on First-Last Mile investments, and that those expenses shall be eligible to credit toward a jurisdiction's 15-year total Measure M Local Return obligation in accordance with established Metro procedures, such as the First-Last Mile Guidelines and Measure M Guidelines;
- C. Confirm that the cost of First-Last Mile improvements delivered by local jurisdictions shall not be included in the "total project cost" from which Metro calculates the 3% Contribution;
- D. Consistent with precedent from the Purple Line Extension, confirm that jurisdictions along segments of a larger transit corridor will incur a 3% Contribution obligation only for project segments that include station construction within their jurisdiction; and,
- E. Reaffirm that in-kind contributions and subregional investments that support a Metro transit corridor may count toward a project's total 3% Contribution under existing provisions of the Measure M Guidelines.

WE FURTHER MOVE that the Board direct the CEO to report back on all the above to the Construction Committee in June 2022.

