



## Board Report

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**File #:** 2022-0331, **File Type:** Motion / Motion Response

**Agenda Number:** 35.

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### CONSTRUCTION COMMITTEE JUNE 16, 2022

**SUBJECT: 3% CONTRIBUTION MOTION RESPONSE**

**ACTION: RECEIVE AND FILE**

#### **RECOMMENDATION**

RECEIVE AND FILE a report on the approach to the 3% local contribution per Board Motion 35 (Attachment A).

#### **ISSUE**

This Receive and File report responds to Motion 35 authored by Directors Hahn, Garcetti, Butts, and Dutra titled 3% Contribution, which directed staff to report back on the motion to the Construction Committee in June 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. Under Measure R, the expenditure plan also assumed a 3% contribution from jurisdictions. Metro has implemented several 3% local contribution agreements under Measures R and M prior to adopting the Measure M Guidelines (Guidelines). Before staff proceeds with negotiating and entering into new 3% contribution agreements, the Board, through Motion 35, directed staff to clarify and modify elements of the 3% local contribution approach, prepare a fact sheet (Attachment B) and report back on these items to the Construction Committee.

#### **DISCUSSION**

Through Motion 35, the Board requested that Staff revise the Guidelines, confirm several aspects of the calculation, and clarify and provide additional flexibility on sources available to jurisdictions to satisfy the 3% contribution.

Staff will revise the Guidelines in response to direction from Motion 35 and a legal opinion received in November 2021. These revisions will reflect a change in the cost allocation approach, the exclusion from the total project cost the First/Last Mile (FLM) expenses incurred by jurisdictions, and the availability of FLM credit to situations when Metro is withholding local return funds in alignment with the Board direction in Motion 35. Staff has begun making these changes [Directive A] and intends to

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request Board approval of the revisions in January 2023 following the mandatory public comment period. Revising the Guidelines will follow a standard approach (e.g. 2021-0291) for revising Board approved guidelines, including internal and legal reviews and Board approval to release draft revisions for a 60-day public comment period. Staff is able to implement the direction from Motion 35 immediately, while the Guidelines revisions will formalize the changes in approach to the 3% contribution.

One of the factors required to calculate the contribution is the project cost basis. The Ordinance requires that Metro use the “total project cost determined at the conclusion of 30% design.” This cost typically includes all project elements that result in a Metro financial liability, including some improvements directed or delivered by jurisdictions. Such improvements that are included in the project scope and cost estimate at 30% design constitute some of the 3% contribution cost basis in accordance with the Guidelines. Of these locally directed elements, the current Board direction [Directive C] seeks to specifically exclude from the 3% contribution cost basis any expenses incurred by a jurisdiction toward FLM improvements. Assuming a preliminary FLM portfolio value of \$500M to \$1B, excluding these costs would result in a \$15M to \$30M funding gap for Metro. As directed, Staff will proceed with a calculation approach with a “total project cost” that does not include jurisdiction provided FLM costs and will seek from the Board additional authority as needed to address any funding gaps. This direction also necessitates a minor revision to the Board adopted FLM Guidelines, which will be brought to the Board when ready.

The Board also seeks clarification on how the 3% contribution will be distributed among jurisdictions along a project alignment [Directive D]. Per the Ordinance, the local contribution will be “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.” The Guidelines supplemented this distribution method by also requiring Metro to factor in the “station area” (a one-half mile radius around a station) contained within a jurisdiction. Per the legal opinion noted above, Metro will ensure consistency with the Ordinance by excluding station area from the allocation formula and utilizing only centerline track miles, and only for jurisdictions where a station is to be constructed (i.e., construction of station elements such as platforms, parking, passenger circulation). Since only project segments with station construction trigger a 3% contribution, jurisdictions along a corridor that do not include a station (regardless of the presence of track miles) will not be subject to the 3% contribution requirement. In addition, jurisdictions are only subject to a 3% contribution when construction is to take place within their borders for a specific Board approved project segment or phase. Future phases along a larger transit corridor will not trigger a new 3% contribution.

Finally, the Board requested clarification on sources available to jurisdictions to satisfy the 3% contribution and directed Staff to provide additional incentives for jurisdictions to implement FLM improvements. In general, Metro will consider any contributions that add value to the transit project, including those that reduce risk. Note that, per the Guidelines, in-kind contributions, including subregional investments, may count toward a project’s total 3% contribution if those “costs are specifically included in the project cost and contribution amount by the conclusion of thirty percent (30%) of final design” [Directive E]. (As noted above, FLM improvements are not required to be included in the cost estimate at 30% design.) To further incentivize FLM improvements, Motion 35 directs Metro, for jurisdictions subject to 15-year local return withholding, to credit qualifying FLM investments toward the jurisdiction’s withheld funds [Directive B]. This direction authorizes Metro to

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allow and enter into an agreement with a jurisdiction to establish the 15-years' worth of local return as the jurisdiction's total liability for the 3% contribution and then identify creditable FLM projects in accordance with the FLM Guidelines. Financially, if all eligible jurisdictions opt for the 15-year local return option, the resulting funding gap would be at least \$30M. The FLM credit provision in this motion further reduces Metro's ability to close this funding gap to the extent jurisdictions opt to utilize it.

Metro is able to implement the direction per this Motion immediately without further Board action at this time. To formalize the changes in the approach to the 3% local contribution Staff will return to the Board for approval to release draft revised Guidelines and subsequent approval of final Guidelines. In addition, future Board action may be required to address funding gaps identified above.

For each of the directives below (in capital lettered bullets) Metro plans to take steps (in lowercase bullets) to address the motion.

- A. Revise the Measure M Guidelines 3% Contribution calculation to be consistent with the Measure M Ordinance;
  - a. Staff is currently revising the Measure M Guidelines and will present the proposed changes for Board consideration when available.
- 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;
  - a. While Metro will seek a full 3% contribution from each applicable jurisdiction, where a jurisdiction is unable to meet that obligation Metro will seek an agreement establishing the 15-year Measure M withholding and any creditable FLM expenses by the jurisdiction, noting that terms of the FLM Guidelines apply.
- 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;
  - a. The "total project cost" basis for the 3% contribution will exclude the costs of FLM improvements that jurisdictions implement in accordance with Measure M, FLM, and other applicable Board approved guidelines. Staff will prepare a revision to the FLM Guidelines to reflect this direction.
- 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,
  - a. Metro confirms that per the Ordinance only jurisdictions whose borders contain a station (i.e. construction of station elements such as platforms, parking, passenger circulation) will be required to make a local contribution to the project. Jurisdictions are only subject to a 3% contribution when construction is to take place within their borders for a specific Board approved project segment or phase.
- 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.

- a. Metro reaffirms that we will consider any contributions that add value to the transit project, including in-kind subregional investments, where, per the Measure M Guidelines, those “costs are specifically included in the project cost and contribution amount by the conclusion of thirty percent (30%) of final design.”

### **EQUITY PLATFORM**

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 through the addition of 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 conduct further analysis on 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.

### **NEXT STEPS**

Staff will continue making progress on the direction included in the subject motion and will return to the Board for consideration of revisions to the Measure M Guidelines.

### **ATTACHMENTS**

Attachment A - Board Motion 35

Attachment B - 3% Local Contribution Fact Sheet

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