

**OAKLAND CITY COUNCIL**

**RESOLUTION NO. \_\_\_\_\_ C.M.S.**

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**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AND SUBMIT A FUNDING ALLOCATION REQUEST FOR THE CONSTRUCTION PHASE OF THE MARTIN LUTHER KING JR. WAY STREETScape IMPROVEMENTS PROJECT COMPONENT OF THE NEIGHBORHOOD AND RAILROAD SAFETY IMPROVEMENTS NEAR THE PORT OF OAKLAND WITH THE METROPOLITAN TRANSPORTATION COMMISSION FOR REGIONAL MEASURE 3 GOODS MOVEMENT AND MITIGATION PROGRAMMATIC CATERGORY FUNDS IN THE AMOUNT OF TWENTY-NINE MILLION, SIX HUNDRED AND SIXTEEN THOUSAND, AND FIVE DOLLARS (\$29,616,005) ; AND MAKING CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS**

**WHEREAS**, SB 595 (Chapter 650, Statutes 2017), commonly referred as Regional Measure 3, identified projects eligible to receive funding under the Regional Measure 3 Expenditure Plan; and

**WHEREAS**, the Metropolitan Transportation Commission (MTC) is responsible for funding projects eligible for Regional Measure 3 funds, pursuant to Streets and Highways Code Section 30914.7(a) and (c); and

**WHEREAS**, MTC has established a process whereby eligible transportation project sponsors may submit allocation requests for Regional Measure 3 funding; and

**WHEREAS**, allocation requests to MTC must be submitted consistent with procedures and conditions as outlined in Regional Measure 3 Policies and Procedures (MTC Resolution No. 4404; and

**WHEREAS**, the City of Oakland is an eligible sponsor of transportation project(s) in the Regional Measure 3 Expenditure Plan; and

**WHEREAS**, the Neighborhood and Railroad Safety Improvement Projects Near the Port of Oakland is eligible for consideration in the Regional Measure 3 Expenditure Plan, as identified in California Streets and Highways Code Section 30914.7(a); and

**WHEREAS**, the Neighborhood and Railroad Safety Improvement Projects Near the Port of Oakland consists of two City project components. The first project component is the Martin Luther King Jr. Way Streetscape Improvements (1006954) and the second project component is the Embarcadero West Rail Safety and Access Improvements (1007091); and

**WHEREAS**, the Martin Luther King Jr. Way Streetscape Improvements project is exempt under CEQA Public Resources Code Sections 21080.25(b) (Pedestrian and Bicycle), 15301(c) (Existing Facilities, Highways and Streets), 15302(c) (Replacement or Reconstruction), 15303(d) (Small Structures), and 15304(h) (minor alterations to land); and

**WHEREAS**, the Embarcadero West Rail Safety and Access Improvements project is exempt under CEQA Public Resources Code Sections Public Resources Code Section 21080.25(b)(1) (Pedestrian and bicycle facilities, including new facilities); Public Resources Code Section 21080.20 (bicycle, pedestrian, and transit facilities); CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan or Zoning); CEQA Guidelines Section 15301(c) (Existing Facilities, Highways and Streets); CEQA Guidelines Section 15302 (Replacement or Reconstruction); CEQA Guidelines Section 15303 (Small Structures), CEQA Guidelines Section 15304(h) (minor alterations to land); and/or CEQA Guidelines Section 15061(b)(3) (No Significant Effect on the Environment); and

**WHEREAS**, both projects were analyzed in previous environmental review documents under CEQA including: the West Oakland Specific Plan Environmental Impact Report (“EIR”) (2014); the Land Use and Transportation Element of the General Plan EIR (1998); the Oakland Master Bicycle Plan EIR (2007); the updated Let’s Bike Oakland Bicycle Plan Addendum (2019); and the Oakland Waterfront Ballpark District at Howard Terminal EIR (2022); and under Public Resources Code section 21166 and CEQA Guidelines Sections 15162, 15163 and 15164, no new significant information or possibility for impacts exist that were not already studied by the aforementioned documents; and

**WHEREAS**, the Regional Measure 3 allocation request, attached hereto in the Initial Project Report and incorporated herein as though set forth at length, lists the project, purpose, schedule, budget, expenditure and cash flow plan for which City of Oakland is requesting that MTC allocate Regional Measure 3 funds; now, therefore, be it

**RESOLVED:** That the City of Oakland, and its agents shall comply with the provisions of the Metropolitan Transportation Commission’s Regional Measure 3 Policies and Procedures; and be it further

**FURTHER RESOLVED:** That the City of Oakland certifies that the project is consistent with the Regional Transportation Plan (RTP); and be it

**FURTHER RESOLVED:** That the year of funding for any design, right-of-way and/or construction phases has taken into consideration the time necessary to obtain environmental clearance and permitting approval for the project; and be it

**FURTHER RESOLVED:** That the Regional Measure 3 phase or segment is fully funded, and results in an operable and useable segment; and be it

**FURTHER RESOLVED:** That the City of Oakland approves the allocation request and updated Initial Project Report, attached to this resolution; and be it

**FURTHER RESOLVED:** That the City of Oakland approves the cash flow plan, attached to this resolution; and be it

**FURTHER RESOLVED:** That the City of Oakland has reviewed the project needs and has adequate staffing resources to deliver and complete the project within the schedule set forth in the allocation request and updated Initial Project Report, attached to this resolution; and be it

**FURTHER RESOLVED:** That the City of Oakland is an eligible sponsor of projects in the Regional Measure 3 Expenditure Plan, in accordance with California Streets and Highways Code 30914.7(a); and be it

**FURTHER RESOLVED:** That the City of Oakland is authorized to submit an application for Regional Measure 3 funds for the Martin Luther King Jr. Way Streetscape Improvements (1006954) project component of the Neighborhood and Railroad Safety Improvement Projects Near the Port of Oakland, in accordance with California Streets and Highways Code 30914.7(a); and be it

**FURTHER RESOLVED:** That the City of Oakland certifies that the projects and purposes for which Regional Measure 3 funds are being requested is in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), and with the State Environmental Impact Report Guidelines (14 California Code of Regulations Section 15000 et seq.) and if relevant the National Environmental Policy Act (NEPA), 42 USC Section 4-1 et. seq. and the applicable regulations thereunder; and be it

**FURTHER RESOLVED:** That there is no legal impediment to the City of Oakland making allocation requests for Regional Measure 3 funds; and be it

**FURTHER RESOLVED:** That there is no pending or threatened litigation which might in any way adversely affect the proposed project, or the ability of the City of Oakland to deliver such project; and be it

**FURTHER RESOLVED:** That the City of Oakland agrees to comply with the requirements of MTC's Transit Coordination Implementation Plan as set forth in MTC Resolution 3866; and be it

**FURTHER RESOLVED:** That the City of Oakland indemnifies and holds harmless MTC, the Bay Area Toll Authority (BATA), and their Commissioners, 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 the City of Oakland, its officers,

employees or agents, or subcontractors or any of them in connection with its performance of services under this allocation of Regional Measure 3 funds. The City of Oakland 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, BATA, and their Commissioners, officers, agents, and employees, or any of them, arising out of such act or omission, and to pay and satisfy any resulting judgments. In addition to any other remedy authorized by law, so much of the funding due under this allocation of Regional Measure 3 funds as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages, and be it

**FURTHER RESOLVED:** That the City of Oakland shall, if any revenues or profits from any nongovernmental use of property (or project) that those revenues or profits shall be used exclusively for the public transportation services for which the project was initially approved, either for capital improvements or maintenance and operational costs, otherwise the Metropolitan Transportation Commission is entitled to a proportionate share equal to MTC's percentage participation in the projects(s); and be it

**FURTHER RESOLVED:** That assets purchased with Regional Measure 3 funds including facilities and equipment shall be used for the public transportation uses intended, and should said facilities and equipment cease to be operated or maintained for their intended public transportation purposes for its useful life, that the Metropolitan Transportation Commission (MTC) shall be entitled to a present day value refund or credit (at MTC's option) based on MTC's share of the Fair Market Value of the said facilities and equipment at the time the public transportation uses ceased, which shall be paid back to MTC in the same proportion that Regional Measure 3 funds were originally used; and be it

**FURTHER RESOLVED:** That the City of Oakland shall post on both ends of the construction site(s) at least two signs visible to the public stating that the Project is funded with Regional Measure 3 Toll Revenues; and be it

**FURTHER RESOLVED:** That the City of Oakland authorizes its City Administrator, or his/her designee, to execute and submit an allocation request for the construction phase of the Neighborhood and Railroad Safety Improvements Near the Port of Oakland, Martin Luther King Jr. Way Streetscape Improvements (1006954) project component, with MTC for Regional Measure 3 funds in the amount of \$29,616,005, for the project, purposes and amounts included in the project application attached to this resolution; and be it

**FURTHER RESOLVED:** That the City Administrator, or their designee, is hereby delegated the authority to make non-substantive changes or minor amendments to the allocation request or IPR as he/she deems appropriate; and be it

**FURTHER RESOLVED:** That the MLK Jr. Way Streetscape Improvements project is exempt under CEQA on the basis of the following exemptions: Public Resources Code Section 21080.25(b) (Pedestrian and Bicycle), 15301(c) (Existing Facilities, Highways and Streets), 15302(c) (Replacement or Reconstruction), 15303(d) (Small Structures), and 15304(h) (minor alterations to land); and that each of the above exemptions provides a separate and independent basis for CEQA compliance; and be it

**FURTHER RESOLVED:** That the Embarcadero West Rail Safety and Access Improvements project is exempt under CEQA Public Resources Code Sections Public Resources Code Section 21080.25(b)(1) (Pedestrian and bicycle facilities, including new facilities); Public Resources Code Section 21080.20 (bicycle, pedestrian, and transit facilities); CEQA Guidelines Section 15183 (Projects Consistent with a Community Plan, General Plan or Zoning); CEQA Guidelines Section 15301(c) (Existing Facilities, Highways and Streets); CEQA Guidelines Section 15302 (Replacement or Reconstruction); CEQA Guidelines Section 15303 (Small Structures), CEQA Guidelines Section 15304(h) (minor alterations to land); and/or CEQA Guidelines Section 15061(b)(3) (No Significant Effect on the Environment); and bet it

**FURTHER RESOLVED:** That both projects were analyzed in previous environmental review documents under CEQA including: the West Oakland Specific Plan Environmental Impact Report (“EIR”) (2014); the Land Use and Transportation Element of the General Plan EIR (1998); the Oakland Master Bicycle Plan EIR (2007);the updated Let’s Bike Oakland Bicycle Plan Addendum (2019); and the Oakland Waterfront Ballpark District at Howard Terminal EIR (2022); and that under Public Resources Code section 21166 and CEQA Guidelines Sections 15162, 15163 and 15164, no new significant information or possibility for impacts exist that were not already studied by the aforementioned documents; and be it

**FURTHER RESOLVED:** That the City Administrator is hereby authorized to file a Notice of Exemption with Alameda County and the Office of Planning and Research’s State Clearing House on March 8, 2024 and the Clerk of the County of Alameda for the MLK Jr. Way Streetscape Improvements; and be it

**FURTHER RESOLVED:** That the City Administrator, or their designee, is authorized on behalf of the City of Oakland to execute and submit all documents, payment requests, and related actions consistent with the authorizations set forth in this Resolution; and be it

**FURTHER RESOLVED:** That a copy of this resolution shall be transmitted to MTC in conjunction with the filing of the City of Oakland application referenced herein; and be it

**FURTHER RESOLVED:** That a copy of this resolution will be placed on file with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROWN, FIFE, GALLO, HOUSTON, RAMACHANDRAN, UNGER, WANG, AND  
PRESIDENT JENKINS

NOES –

ABSENT –

ABSTENTION –

ATTEST: \_\_\_\_\_

ASHA REED  
City Clerk and Clerk of the Council of the  
City of Oakland, California