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MEMORANDUM

TO: HONORABLE MAYOR &
CITY COUNCIL

FROM: John Flores
Interim City Administrator

SUBJECT: BRT Budget Shortfalls

DATE: April 8, 2015

INFORMATION

This memo, about the East Bay Bus Rapid Transit (BRT) project, is to provide information about a \$2.0 MM shortfall under the Oakland Business Sustainability Program and an additional approximate \$2.0 MM construction budget deficit, which will impact the scope of technical assistance services provided under the Business Impact Mitigation Fund and the scope of landscape and hardscape improvements made under the Major Roadway Construction contract.

STATUS

Advance mitigation activities for the \$178 MM BRT Project commenced in March 2015 with construction of off-street parking lots in the Fruitvale and Elmhurst areas. Advance Utility relocations and Fruitvale Bypass construction will begin this spring. The interagency staff team is working diligently to complete the Major Roadway construction bid package for this transformative capital improvement program. City staff anticipates bringing the requisite Business and Parking Impact Mitigations Plans to Council before the summer recess. Major Roadway construction is set to commence in fall 2015 and the start of BRT revenue service is pegged for November 2017.

BACKGROUND

In July 2012, the Oakland City Council adopted the Downtown Oakland to San Leandro Line (DOSL) as the Locally Preferred Alternative for the BRT Project. The City Council adopted AC Transit's Federal Environmental Impact Study (FEIS) and placed local Conditions of Approval on the BRT Project (C.M.S. 84016). A key condition is that AC Transit and City staffs create a fund to underwrite parking and business impact mitigation programs in addition to those minimally required by the FEIS.

In April 2014, the City Administrator and AC Transit General Manager announced an agreement in principle for a three-part Business Sustainability Program that would offer technical assistance and other direct supports to existing BRT corridor businesses. In October 2014, the AC Transit Board authorized the allocation of \$2.5 MM in BRT Project Funds to the Oakland Business Technical Assistance (TA) Project. In November 2014, the City Council allocated \$1.0 MM of General Purpose Fund (GPF) and \$1.0 MM of Community Development Block Grant (CDBG) monies to underwrite a Business Assistance and Sustainability Fund. Council directed that eligibility guidelines for this new fund be developed by the Business TA provider and brought to City Council in April 2015. Table 1 summarizes the Oakland Business Impact Mitigation funding.

Table 1: BRT—Oakland Business Impact Mitigation Fund Status as of November 18, 2014

FUND ELEMENTS	BUDGET	FUNDER	SOURCE
FEIS Mitigations			
1. Construction Mitigations (Info Center, Ombudsman, etc.)	\$2.17 MM	ACT	BRT Project
2. Off-Street Parking Lots (Fruitvale & Elmhurst)	\$1.21 MM	ACT	BRT Project
3. On-Street Parking Mitigations	\$1.32 MM	ACT	BRT Project
Subtotal	\$4.70 MM		
Business Sustainability Program (BSP)			
4. Business Technical Assistance (TA) Project	\$2.50 MM	ACT	BRT Project
5. Business Interruption Fund (Reserved)			
6. Business Assistance and Sustainability Fund	\$1.00 MM	City	CDBG
	\$1.00 MM	City	GPF
Subtotal	\$4.50 MM		
Total	\$9.20 MM		

Notes: A. The BSP also includes access to existing City grant and loan programs. B. The BRT Infill Capital Program is under development and thus far includes a \$2.5 MM grant to repair sidewalk damage caused by City trees and to install pedestrian lighting in priority areas.

ISSUES

Currently, the Oakland Business TA Project has a \$2.0 MM funding shortfall that AC Transit attributes to restrictions on BRT Project funding from the Federal Transit Administration (FTA). AC Transit staff has determined that parts of the Oakland Business TA Project, delineated in both the October 22, 2014 AC Transit Board and November 18, 2014 City Council reports, are ineligible for BRT Project funding.

Pursuant to discussions with the Federal Region IX office, AC Transit has informed City staff that FTA restrictions limit any BRT Project-funded business technical assistance program to helping businesses define the direct physical impacts of BRT Project construction on their exterior facilities and to implementing corresponding eligible mitigations. After applying the FTA restrictions, AC Transit staff estimates that only \$500,000 of the approved \$2.5 MM Oakland Business TA Project scope is eligible for BRT Project funding.

AC Transit staff points to the fact that other municipalities have relied partially on their discretionary monies rather than FTA funds to underwrite their direct business assistance programs but has not provided any specific or definitive references to FTA regulations that limit the types of business technical assistance services allowed under federally-funded business impact mitigation programs. Thus, City staff has not determined if its proposed business assistance scope is allowed by FTA funding guidelines. The City was informed that PolicyLink intends to initiate an independent inquiry with the FTA and City staff eagerly awaits the outcome of those discussions.

In an effort to expedite the start of Business TA services, the interagency staff team explored the option of swapping \$1.0 MM of City Business Assistance and Sustainability funds for \$1.0 MM of AC Transit Business TA Project funds. However, City staff abandoned that track when AC Transit made clear that it would restrict the use of its \$1.0 MM to constructing a narrowly defined set of exterior site improvements for impacted businesses (relocate driveways, signage, etc.), and would implement said improvements at its own discretion under the Major Roadway construction contract.

A primary purpose of the Oakland Business TA Project is to prepare businesses for temporary construction impacts. The start of Oakland Business TA Project services should precede Major Roadway construction in each impacted Council district by six months or more. AC Transit is dedicated to commencing Major Roadway work in fall 2015, making it imperative that the Oakland Business TA Project launch no later than May 1, 2015. City staff is, therefore, proceeding to implement the Council-approved \$500,000 Oakland Business TA Project startup contract with Oakland Business Development Corporation (OBDC) using CDBG funds.

In order to close an additional approximate \$2.0 MM Major Roadway construction budget gap revealed late last year, AC Transit staff is asking the City to concede to “bare bones” median landscaping that consists of sparse tree plantings and mulch and is valued at \$800,000, in lieu of the long-promised \$2.8 MM median landscape and hardscape beautification program. AC Transit staff has not requested that their Board allocate new monies to make up for any part of the total \$4.0 MM BRT Project shortfall.

In addition to beginning Oakland Business TA Project implementation with City funds by May 1, 2015, staff will also meet with the appointed City Council representatives on the BRT Policy Steering Committee (Councilmembers Gallo and Kaplan), the newly-appointed interim AC Transit General Manager and appropriate Board Members to determine how AC Transit will meet its long standing commitments to allocate a total of \$2.5 MM to the Oakland Business Sustainability Program and to deliver a Major Roadway Project with aesthetically pleasing landscaped medians.

I will keep Council apprised of progress and outcomes of the two aforementioned efforts.

Respectfully submitted,

_____/s/
John Flores
Interim City Administrator

References:

- AC Transit Board Report #14-155A dated October 22, 2014
- AC Transit Board Minutes for October 22, 2014, Item #14-155A
- Council Agenda Report #S-24 dated October 15, 2014
- City Council Minutes for November 18, 2014, Item #S-24
- Oakland City Council Resolutions #85282-86 C.M.S.

For questions regarding the BRT Project please contact Christine Calabrese, BRT Program Manager in the Oakland Public Works Department, 510-238-4754, ccalabrese@oaklandnet.com