



Metro

Los Angeles County
Metropolitan Transportation Authority

One Gateway Plaza
Los Angeles, CA 90012-2952

213.922.2000 Tel
metro.net

AUGUST 31, 2018

TO: BOARD OF DIRECTORS

**FROM: PHILLIP A. WASHINGTON
CHIEF EXECUTIVE OFFICER**

PAW

SUBJECT: REVISED LETTER OF NO PREJUDICE – WPLE SECTION 3

ISSUE

Yesterday, our agency submitted a revised Letter of No Prejudice (LONP) with the Federal Transit Administration (FTA) for certain early work activities related to the Westside Purple Line Extension (WPLE) Section 3 Project. The correspondence more narrowly tailors our original LONP request that I submitted to the FTA on September 11, 2017, which sought \$786 million for early work activities for the WPLE Section 3 Project. The letter we shared with the FTA yesterday (see Attachment A) reduces our request by \$294 million, seeking a LONP in the amount of \$492 million, which would primarily cover our tunnels contract for this project. Metro is eager to secure this LONP from the FTA without delay due to the fact that the tunnel bids we received for this project expire on October 3, 2018 and that they were well under the Engineers Estimate, permitting us to realize a savings of \$130 million.

DISCUSSION

As I shared in a Board Box on August 21, 2018, Acting Administrator for the FTA, K. Jane Williams, called me earlier this month and informed me that our WPLE Section 3 Project had been cleared by her agency to enter into the New Starts Engineering phase, a key step towards securing a Full Funding Grant Agreement (FFGA) through the Capital Investment Grant (CIG) Program. According to the Acting Administrator, this is the first major transit project that she has cleared to enter into the New Starts Engineering phase. This communication from Acting Administrator Williams was a welcome development that is a direct result of our positive working relationship with FTA professional staff at their headquarters in Washington, DC and at the FTA's Region IX offices.

As part of my shared and positive dialogue with the Acting FTA Administrator, I committed to submit a revised and more tailored LONP request for the WPLE Section 3 Project. This revised request, which we have now submitted, more

accurately reflects the lower proposed tunnels contract bid, a smaller contingency, and reduced professional services costs for this transit project to reflect approximately 12-15 months of work.

The WPLE Section 3 Project consists of approximately 2.56 miles of twin-bored tunnels and two underground stations located at Westwood/UCLA and Westwood/VA Hospital. This transit line, which is estimated to have over 40,000 boardings daily, will provide a high-capacity, high-speed, dependable alternative for commuters traveling between downtown Los Angeles and the Westside – which is among the most densely populated areas in the United States.

Consistent with Board-policy, our agency has been working with the FTA to secure federal funding for this project through the CIG Program which is the federal government's primary method of funding new rail transit projects. The multi-year funding agreement through which the CIG Program funds transit projects is achieved through a FFGA – which outlines the terms and flow of dollars (year over year) that will be committed to a transit project through the annual congressional appropriations process. We are seeking an FFGA in the amount of \$1.3 billion of New Starts funding for the WPLE Section 3 Project.

NEXT STEPS

Now that our agency has submitted a revised and more narrowly tailored LONP request for the WPLE Section 3 Project, we will focus our attention on addressing any inquiries from the FTA related to this request. Given the fact that the tunnel bids for the WPLE Section 3 Project are set to formally expire on October 3, 2018, we are eager to secure an LONP prior to this date to ensure that we do not expose our agency to higher tunnel bids. We are also concerned that any lengthy delay related to the tunnel contracts may require a new procurement process, adding months to this critical path activity.

The next step we plan to pursue after favorably addressing our revised LONP request with the FTA will be to take the necessary steps to enter into an FFGA for the WPLE Section 3 Project. This FFGA would provide New Starts funding in the amount of \$1.3 billion, which represents approximately 35% of the total project cost (\$3.7 billion).

ATTACHMENT

Attachment A – August 30, 2018 Metro correspondence to FTA regarding revised LONP request for WPLE Section 3 Project



Metro

Los Angeles County
Metropolitan Transportation Authority

One Gateway Plaza,
Los Angeles, CA 90012-2952

Phillip A. Washington
Chief Executive Officer
213.922.7555 Tel
213.922.7447 Fax
washingtonp@metro.net

August 30, 2018

Mr. Ed Carranza
Acting Regional Administrator, Region IX
Federal Transit Administration
San Francisco Federal Building
90 7th Street
Suite 15-300
San Francisco, CA 94105

Re: Revised Request for Letter of No Prejudice for Westside Purple Line Extension Section 3

Dear Mr. Carranza:

I am writing on behalf of the Los Angeles County Metropolitan Transportation Authority (Metro) to submit a revised and tailored request for a Letter of No Prejudice (LONP) from the Federal Transit Administration (FTA) for certain critical early work activities on Metro's Westside Purple Line Extension Section 3 Project (Section 3 Project). This letter significantly reduces the dollar amount of LONP authority sought in our original September 11, 2017 request (from \$786M to \$492M) and provides updated information regarding the substantial budget and schedule benefits that will result from the issuance of the LONP.

The primary work to be covered by this LONP is the Section 3 Project Tunnels Contract, and timely receipt of the requested LONP will allow Metro to take advantage of very favorable price bids. For this reason, Metro respectfully requests that FTA issue this Section 3 Project LONP on or before September 30, 2018, prior to the expiration of the Tunnels Contract price proposals on October 3, 2018.

Background

The Section 3 Project is the third and final section of Westside Purple Line Extension Project (Westside Project), which is a nine-mile double track heavy rail project that will extend from the current Metro Purple Line terminus at the Wilshire/Western Station to a new western terminus at the Veterans (VA) Hospital in Westwood. The Section 3 Project consists of the design and construction of approximately 2.56 miles of double track heavy rail subway from the future Section 2 terminus at the Century City Constellation Station, with two new stations: an intermediate station at Westwood/UCLA and a terminus station at Westwood/VA Hospital, which is located on Veterans Administration property south of Wilshire Boulevard. The UCLA and VA

Stations are two of the most critical stations on the Westside Project, and are expected to make significant contributions to the high ridership on the project.

Construction of the Section 3 Project will begin west of the Westwood/VA Hospital Station and proceed generally east via twin bore tunnels, crossing the I-405 and extending east and north, primarily underneath Wilshire Boulevard, to the Westwood/UCLA Station and then proceed generally east to the Century City Constellation Station. See Map in Exhibit 1.

The current estimated capital cost of the Section 3 Project is \$3.66 billion. Metro will fund over 60% of the project cost with local funds and will seek \$1.30 billion in Federal Capital Investment Grant (CIG) funds. Metro also intends to request a Full Funding Grant Agreement (FFGA) for the Section 3 Project later this year.

In light of the significant environmental, congestion relief, and economic benefits of completing all three segments of the Westside Project, there has been substantial and increasing interest in developing and implementing a plan for the acceleration of the Section 3 Project. In addition, completion of the entire Westside Project in advance of the 2028 Olympic and Paralympic Games will obviously be of great benefit in assuring that Los Angeles is able to provide a world-class transportation infrastructure in support of the games.

To address these critical public benefits, Metro began in early 2016 to develop a strategy to accelerate the Section 3 Project. One key component of this strategy was to separate the tunnel work into an early procurement, to be followed by a subsequent procurement of the stations, trackwork, and systems work. As shown in the Near Term Activities Schedule in Exhibit 2, Metro is requesting this LONP in order to be able to proceed with the award of the tunnels construction contract prior to price proposals expiring on October 3, 2018. As detailed below, Metro believes that implementation of the strategy reflected in that schedule will allow for completion of the Section 3 Project on an accelerated basis and at a lower cost.

In terms of its overall procurement plan for the Section 3 Project, the following three main construction contract packages were issued: (1) a design-build contract for tunneling, including the access shaft; (2) a design-bid-build contract for advanced utility relocations (AUR) at Westwood/UCLA; (3) and a design-build contract for the stations, trackwork, and systems. The tunnels contract is included within this LONP request; the AUR work will be covered by general pre-award authority as described below and is currently under construction; and the stations, trackwork, and systems contract will be covered by the Section 3 FFGA.

Description of Activities to be Covered by the LONP

Metro is requesting this LONP to cover the following activities: (1) final design and construction of the subway tunnel for the Section 3 Project, including procurement of the design-build

contractor for the tunnel work; and (2) professional services associated with the tunnel work. These activities are more specifically described below.

1. Tunnels Procurement: Metro has successfully used a negotiated procurement methodology, referred to as Lowest Price Technically Acceptable (LPTA), to select a contractor for the Section 3 Tunnels design-build work. Metro received price proposals on March 23, 2018, and issued the Notice of Intent to Award to the successful proposer on June 13, 2018 in the amount of \$410,002,000. Notably, this winning price was approximately \$130,000,000 below Metro's engineer's estimate. For this procurement, all bids will remain valid until October 3, 2018; on that date the bids expire and Metro loses the benefit of the favorable winning low bid.

2. Professional Services: Metro will, directly and through its consultants, perform the professional services that are necessary and appropriate in connection with the tunnels contract, including engineering management support services, project management, and legal services and permitting, etc. The solicitation for Construction Management Support Services was issued on April 12, 2017, and contract award was made on October 26, 2017. The amount of LONP authority for professional services has been reduced to cover approximately 12-15 months of work.

In addition to the above activities to be covered by the proposed LONP, Metro intends to proceed during the same early work period with AUR work and real estate acquisitions, relying on the general pre-award authority FTA provides for these activities. See *Federal Transit Administration Fiscal Year 2017 Apportionments, Allocations, Program Information and Interim Guidance*. 82 Fed. Reg. 6692 *et seq.* (January 19, 2017).

Budget for LONP Activities

The overall budget for the LONP activities is as follows:

Tunnels Design-Build Contract (Construction) -- \$392,112,000
Professional Services (Final Design) -- \$17,890,000
Professional Services (Agency & Consultant Support Services) -- \$36,942,450
Contingency -- \$44,694,445
TOTAL LONP AUTHORIZATION REQUESTED -- \$491,638,895

A Baseline Cost Estimate by SCC code for the proposed LONP activities is provided in Exhibit 3.

Benefits for Advancing Identified Activities

The primary cost benefit of securing the LONP on a timely basis is simple and quite significant: Metro will be able to award the Tunnels Contract for the highly advantageous price of \$410M, which as noted is approximately \$130M less than the engineer's estimate. These savings are

substantial, and can be quite valuable to Metro in enhancing the overall financial plan for the project and providing a financial resource for any future unanticipated events.

In terms of schedule benefits, receipt of the LONP and the resulting Tunnels Contract award will allow Metro to proceed on schedule with the subsequent stations and systems contract, and as a result achieve the overall project schedule and completion benefits that were anticipated through the implementation of Metro's plan to utilize two design-build contracts for the Section 3 Project. This in turn should make it feasible for Metro to complete the Section 3 Project before 2028, and thus not only achieve the significant transportation and congestion relief benefits of the overall Westside Project at the earliest practical date, but also assure that the Westside Project is operational in time to meet the needs of the 2028 Olympic and Paralympic Games.

In addition to the cost savings and schedule benefits, advancing the project completion date will mean that Metro and the public will realize, at an earlier date, the environmental, congestion relief, and economic benefits that will result from the Westside Project. For example, on an annual basis, the Westside Project will result in an annual reduction of over 30 million vehicle miles traveled (VMT), and a decrease of almost 12,000 tons of emissions of carbon dioxide (Source: Metro new starts templates). Also, the Westside Project is estimated to provide 64,000 jobs, and that job creation is most fully realized at completion of all three sections. See Final Environmental Impact Statement at 4-389.

Consequences of Failing to Approve LONP Request

Impact on Budget: The consequences of failing to approve the LONP request on the Section 3 Project budget are straightforward and dramatic: in the absence of an agreement by the selected bidder to extend its bid (which is totally in its discretion), the Tunnels Contract bids will expire and Metro will forfeit the very advantageous winning bid. If Metro were to re-procure the Tunnels work as a separate package, Metro would likely receive higher bids, not only because of the multiple months of escalation, but also because the bidders would then be aware of the engineer's estimate and the prior bid amount.

Impact on Schedule: The consequences on the schedule of failing to approve the LONP are equally dramatic and harmful to the Section 3 Project. The delay caused by a re-procurement of the Tunnels Contract would cause a comparable delay in the tunnels work, the stations and systems award, and the stations and systems work. As a result, the underlying budgetary and schedule reasons for and benefits of the two design build contract approach would be essentially lost, and Metro in all likelihood would change course and develop a single package for one design-build contract for all of the Section 3 construction work. The result of this would delay the Section 3 Project for upwards of 22 months and at a projected increase of \$200 million to the project for the 3.5% per annum escalation. The magnitude of the overall delay resulting from this action would clearly jeopardize, if not preclude, Metro's chances of completing the Section 3 Project in time for the 2028 Olympic and Paralympic Games.

Impact on Scope: There are no direct consequences on the overall Section 3 scope that would result from failing to approve the LONP. In the absence of an LONP, however (as noted above), it is quite likely that Metro would change course and develop a single procurement package for one design-build contract for all of the Section 3 construction work, since the cost and schedule benefits of proceeding with the tunnels contract as early work would no longer be achievable.

Readiness Issues

Metro has conducted sufficient project development activities for the Section 3 Project to justify the issuance of an LONP for certain early work identified herein. Specifically—

1. The Locally Preferred Alternative (LPA) for the Westside Project was adopted into the fiscally constrained Long Range Transportation Plan in October 2010.
2. FTA issued a Record of Decision for the entire nine-mile project on August 9, 2012.
3. Metro has proceeded with continued advanced preliminary engineering on the Section 3 Project in order to develop more clearly defined project cost and scope.
4. Metro conducted a Procurement and Project Delivery Workshop on November 1, 2016.
5. Metro conducted a Risk Assessment on the Section 3 Project on February 28, 2017, which the FTA and the PMOC attended.
6. FTA and the PMOC conducted a Risk Review on March 20, 2018, as Part of FTA's Entry to Engineering Readiness Review.
7. Metro provided FTA with an update to its 20-year Financial Plan on April 20, 2017, which includes a commitment of the necessary levels of non-CIG funding and reflects the significant local financial resources available due to the enactment in November 2016 of the Los Angeles County Traffic Improvement Plan (Measure M). Supplemental financial information was provided on August 18, 2017, September 15, 2017 and October 10, 2017 to assist in FTA's financial capacity assessment review.
8. Metro formally requested entry into the Engineering Phase of the FTA Section 5309 CIG Program on April 28, 2017. FTA approval to enter into the Engineering phase was received on August 21, 2018.

Timing of LONP and Finalization of 130(c) Process

Metro and FTA have had discussions over the past few weeks regarding whether FTA may issue the requested LONP prior to the finalization of the environmental re-evaluation being conducted regarding certain station-related changes on the Section 3 Project (referred to as 130(c) documentation).

Metro respectfully submits that issuance of the LONP by the time requested, and before all final 130(c) documentation is completed, would be fully consistent with actions already taken by FTA in a comparable situation on the Westside Section 2 Project. In 2016, FTA entered into an FFGA for the Westside 2 Project, and allowed Metro to enter into a design-build contract for the

project, *prior* to the completion of the SEIS required by the court in *BHUSD v. FTA*. FTA took the position in Federal Court, and Judge Wu agreed, that proceeding with the federal actions and entering into these contract documents was permissible and did not prejudice the NEPA process, primarily because the documents could be revised in the future if necessary based on the environmental reviews, and because actual construction would not commence until well after the SEIS was finalized. This rationale is equally applicable to the facts presented by this LONP request. If anything, this case is easier to justify, given that the environmental document here, a 130(c), is an informal re-evaluation not normally subject to public comment (unlike the SEIS), and the federal action requested, the LONP, is simply an authorization for Metro to spend its own money and receive local match credit later, in contrast to the FFGA, which is a multi-year commitment of federal funds and an actual federal grant. Furthermore, just as with Section 2, the major construction work at issue, i.e., the Section 3 tunnels construction, will not commence until well after the 130(c) environmental review process is expected to conclude.

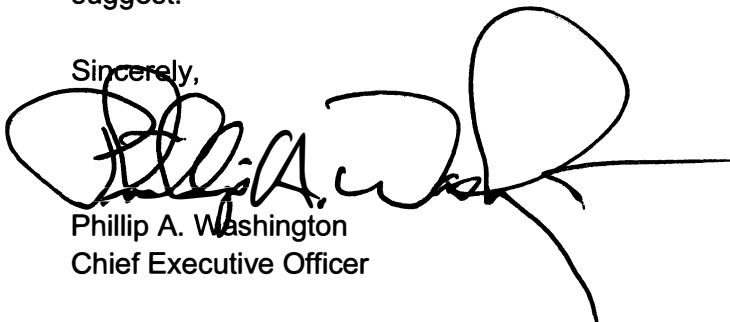
Financial Capacity to Support LONP Costs

Metro's updated 20-year Financial Plan shows that Metro has more than enough financial capacity to support the \$492 million cost of the activities to be covered by the requested LONP, as well as the financial capacity to provide non-CIG funding for the Section 3 Project in the amount of \$2.22 billion, which represents 61% of the current estimated capital cost of the Section 3 Project. The specific details of Metro's financial capacity are set forth in the Financial Plan submitted to FTA on April 20, 2017.

Conclusion

For the reasons stated in this letter, Metro believes that there are significant cost and schedule advantages in securing an LONP to advance the proposed early work activities on the Section 3 Project, and moreover believes that it is in the mutual interest of Metro, FTA and the public to secure the many significant benefits of the opening of the Westside Project at the earliest feasible time. Metro has the financial capacity to support these LONP activities, and greatly appreciates FTA's thoughtful consideration of this LONP request. Of course, Metro always remains willing to discuss the details of this request and any other options that FTA may want to suggest.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Phillip A. Washington', is written over the typed name and title.

Phillip A. Washington
Chief Executive Officer

cc: Richard Clarke
Bryan Pennington

Sameh Ghaly
Therese McMillan
Brian Boudreau
Michael McKenna
Kimberly Ong
Rick Wilson
Raffi Hamparian
Ray Tellis, FTA
Joel Washington, FTA

Exhibit 1

**Los Angeles County Metropolitan Transportation Authority
Westside Purple Line Extension Section 3 Project**

Project Vicinity Map



Exhibit 2

Los Angeles County Metropolitan Transportation Authority Westside Purple Line Extension Section 3 Project

Near-Term Activity Schedule

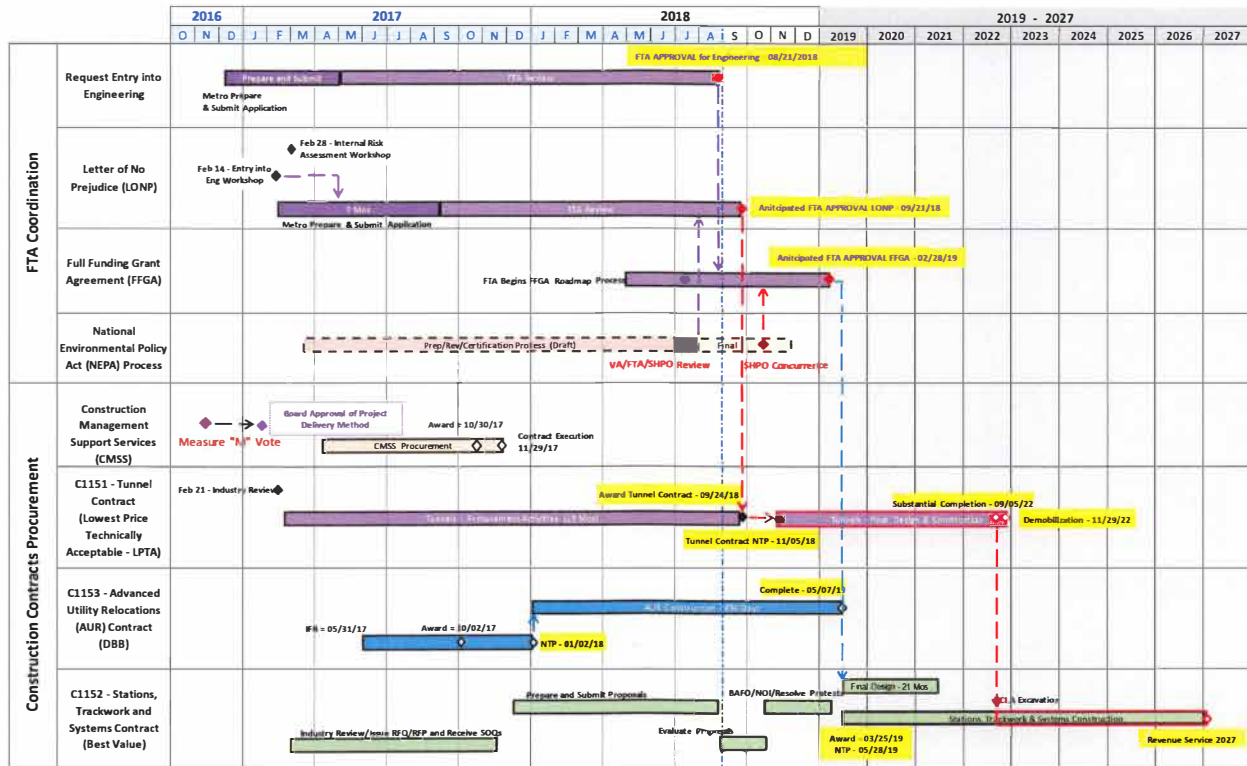


Exhibit 3

**Los Angeles County Metropolitan Transportation Authority
Westside Purple Line Extension Section 3 Project**

Baseline Cost Estimate for LONP Work

BCE by Standard Cost Category

<i>Applicable Line Items Only</i>	YOE Dollars Total
10 GUIDEWAY & TRACK ELEMENTS (2.59 miles)	285,500,000
10.06 Guideway: Underground cut & cover	30,000,000
10.07 Guideway: Underground tunnel	255,500,000
20 STATIONS, STOPS, TERMINALS, INTERMODAL (number)	5,300,000
20.03 Underground station, stop, shelter, mall, terminal, platform	5,300,000
30 SUPPORT FACILITIES: YARDS, SHOPS, ADMIN. BLDGS	0
40 SITEWORK & SPECIAL CONDITIONS	101,312,000
40.01 Demolition, Clearing, Earthwork	5,600,000
40.02 Site Utilities, Utility Relocation	6,520,000
40.03 Haz. mat'l, contam'd soil removal/mitigation, ground water treatments	2,155,000
40.04 Environmental mitigation, e.g. wetlands, historic/archeologic, parks	4,400,000
40.07 Automobile, bus, van accessways including roads, parking lots	200,000
40.08 Temporary Facilities and other indirect costs during construction	82,437,000
50 SYSTEMS	0
Construction Subtotal (10 - 50)	392,112,000
60 ROW, LAND, EXISTING IMPROVEMENTS	0
70 VEHICLES (number)	0
80 PROFESSIONAL SERVICES (applies to Cats. 10-50)	54,832,450
80.02 Engineering	27,147,320
80.03 Project Management for Design and Construction	7,200,000
80.04 Construction Administration & Management	11,970,753
80.06 Legal; Permits; Review Fees by other agencies, cities, etc.	2,788,372
80.07 Surveys, Testing, Investigation, Inspection	
80.08 Startup	5,726,005
Subtotal (10 - 80)	446,944,450
90 UNALLOCATED CONTINGENCY	44,694,445
Subtotal (10 - 90)	491,638,895
100 FINANCE CHARGES	0
TOTAL LONP AUTHORIZATION REQUESTED	491,638,895