



Board Report

File #: 2016-0365, File Type: Contract

Agenda Number: 23

CONSTRUCTION COMMITTEE MAY 19, 2016

SUBJECT: RED LINE SEGMENT 2 CLOSE-OUT AND REDLINE SEGMENT 3 CLOSE-OUT

ACTION: INCREASE THE LIFE OF PROJECT BUDGETS

RECOMMENDATION

APPROVE:

- A. INCREASING the Life of Project budget for Project 809081, Red Line Segment 2 Close-out in the amount of \$635,000 increasing the previous authorization amount of \$31,847,1000 to \$32,482,100;
- B. AMENDING the FY16 budget to add \$635,000 to Project 809081, Red Line Segment 2 Close-out;
- C. INCREASING the Life of Project 809082, **Red Line Segment 3 Close-out** in the amount of \$211,670, increasing the previous authorization amount of \$4,195,900 to \$4,407,570; and
- D. AMENDING the FY16 budget to add \$211,670 to Project 809082, Red Line Segment 3 Close-out.

RATIIONALE

In 1994, Martin Gerlinger filed a qui tam lawsuit alleging violations of the federal and California False Claims Acts by Parsons-Dillingham arising out of its contract with Metro for construction management services regarding the Metro Red Line. Mr. Gerlinger was formerly an employee of Parsons-Dillingham. Subsequent to Mr. Gerlinger's filing of his lawsuit, Metro received proceeds from credits and settlements with Parsons-Dillingham in the total amount of approximately \$3.8 million. Mr. Gerlinger claims that, as the relator in the qui tam action, he is statutorily entitled to a share of those proceeds received by Metro. Metro and Mr. Gerlinger have agreed that Mr. Gerlinger is entitled to a \$846,670 share of the \$3.8 million. The litigation arising out of the construction management contract is on appeal, but regardless of the outcome of the appeals, the \$3.8 million credits and settlement amounts would remain unaffected, and thus Mr. Gerlinger would still be entitled to his \$846,670 relator's share. The agreement regarding Mr. Gerlinger's share was reached after the current LOPs and FY 2016 budgets were established. The Life of Project Budgets for Project 809081, Red Line Segment 2 Close-Out and Project 809082, Red Line Segment 3 Close-Out therefore need to be

increased to fund this payment.

FINANCIAL IMPACT

Increase the FY16 budget as follows:

1. Adding \$635,000 to Cost Center 8510, under Project 809081, Red Line Segment 2 Close-out, account 50919 - settlement; and
2. Adding \$211,670 to Cost Center 8510, under Project 809082, Red Line Segment 3 Close-out, account 50919 - settlement;

These increases will be funded with Proposition A 35%.

This action will increase the Life of Project budget for Project 809081 from \$31,847,100 to \$32,482,100 and the Life of Project budget for Project 809082 from \$4,195,900 to \$4,407,570. Since this is a multi-year project, the Executive Director Engineering and Construction will be responsible for monitoring the Life of Project budget and General Counsel will be responsible for budgeting the expense in future years.

IMPACT ON BUS AND RAIL OPERATING AND CAPITAL BUDGET

The funding for this action will come from Proposition A 35%. No other sources of funds were considered because this fund is the appropriate fund for rail close-out project.

The funding for this Life of Project increase is available for rail operating and capital projects.

This activity will not impact ongoing operating costs.

ALTERNATIVES CONSIDERED

The Board can choose not to increase the Life of Project budget for Project 809081, Red Line Segment 2 Close-out and/or Project 809082, Red Line Segment 3 Close-out. This is not recommended. If this payment is not made, Mr. Gerlinger will pursue further litigation to seek a court order against Metro for a significantly greater relator's share.


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