

**Board Report**

File #: 2020-0874, **File Type:** Contract**Agenda Number:** 32.

REVISED
CONSTRUCTION COMMITTEE
FEBRUARY 18, 2021**SUBJECT: I-5 NORTH CAPACITY ENHANCEMENTS FROM SR- 118 TO SR-134; SEGMENT 3****ACTION: APPROVE RECOMMENDATION****RECOMMENDATION**

CONSIDER amending the Life-of-Project (LOP) budget with a loan/advance to the California Department of Transportation (Caltrans) in an amount not to exceed \$73,200,000 for Segment 3 of I-5 North Capacity Enhancements Project between SR-134 and SR-118 (Project) to fill the funding gap between the approved amended LOP of \$880,903,000 and the \$954,103,000 anticipated cost to close the Project consistent with the provisions of the Board-adopted Measure R and Measure M Unified Cost Management Policy (Attachment A).

ISSUE

In a letter dated May 12, 2020 (Attachment B), Caltrans requested that the Los Angeles County Metropolitan Transportation Authority (Metro) program \$73.2 million in supplemental funding for Segment 3 (Empire Avenue) to complete construction and close out of this segment, as well as the City of Burbank's construction impact mitigation needs. This amount is needed due to the delays resulting from relocation of utilities and other work not accounted for in design, different site conditions, hazardous material encountered, additional work requested by the corridor communities, and design changes.

The I-5 North Capacity Enhancement Project between State Route 134 and State Route 118 was originally programmed at \$950,595,000 per Funding Agreement Number MOU.P0008355A effective as of September 20, 2009. Upon acceptance of the lowest bid for construction of Segment 3, the LOP budget was adjusted down and \$55,699,000 difference between the Engineer's estimate and the winning bid was removed from Segment 3. This amount, along with \$50,181,000 withdrawn from other segments of I-5 North projects (for a total of \$105,880,000) was programmed to the I-5 South and I-405 Sepulveda Pass construction projects in December 2012 with the Board's approval. Later, \$404,000 was returned to the I-5 Segment 3 in State IIP Funds (Interregional Improvement Program) and \$9,299,000 was returned to Segment 2 (\$1,174,000 in Federal CMAQ Funds Congestion Mitigation and Air Quality Improvement Program and \$8,125,000 in Federal AARA -RSTP Funds (American Recovery and Reinvestment Act - Regional Surface Transportation Program)).

Additionally, \$8,566,000 in the State Regional Improvement Program (RIP) Funds in Segment 3 were transferred to Segment 4 for the final construction claim settlement needs.

The current LOP budget for all 4 segments of the I-5 North HOV lanes project is \$880,903,000 in which Segment 3 is budgeted at \$397,009,000 due to the \$63,861,000 adjustments from the originally programmed \$460,870,000 budget.

The LOP budget of Segment 3 needs to be increased by up to \$73.2 mil. to close this segment in 2021.

BACKGROUND

The purpose of the I-5 North construction project was to add one HOV lane in each direction between SR-134 and SR-118. The Project was initiated by Caltrans in four segments. Segments 1 and 2 between North of Buena Vista Street/Winona Avenue Undercrossing and SR-118 are completed. Segment 4 between Magnolia Boulevard and SR-134 is in the plant establishment period which started in March 2020 and will end in June 2021. The Segment 3 construction contract was awarded on November 29, 2012 with the scheduled completion date of September 27, 2017. This segment is still in construction, approximately 84% complete, and expected to open to traffic by December 2021. The plant establishment period for this segment will be completed by January 2023. Caltrans designed and is managing construction of the Project. Metro is a funding partner.

DISCUSSION

The contractor has submitted claims up to the opening of the Empire Avenue interchange in the amount of \$40.242 million. The City of Burbank has submitted a request for \$15.3 million worth of roadway repair/mitigation work on local streets that the city believes is the result of the freeway construction activities. Additional funds are needed to start the negotiation of the claims with the contractor, meet the City's needs, and close the project.

The existing LOP budget includes funding for the contractor's work within the original/amended contracts. However, the LOP budget needs to be amended to provide additional funds for the claims settlement, potential risk exposures in the remaining construction period, and the repair request by the City of Burbank.

Under the current State-shared Funds in the Project, Caltrans recommends pursuing an amendment to the 2020 IIP Funds and request \$700,000, the IIP Funds proportional share in the project, from the California Transportation Commission to cover a portion of the project's \$73.2 million shortfall.

Prior to January 2021, Caltrans had informed Metro that \$40 million of the \$73.2 mil. shortfall was needed in January 2021 to negotiate and settle the contractor's claims. Caltrans later entered into settlement negotiations with the contractor and the preliminary negotiations led to substantial reduction in the amount of the settlement. However, the settlement agreement may not be executed until the funds are confirmed. Additionally, the contractor has asked for 90% of the final settlement amount to be paid in April 2021.

As for the roadway repair work requested by the City of Burbank, Caltrans wishes to defer this work until the locations are properly inspected by Caltrans and the damages are confirmed to be related to the freeway construction activities. The \$15.3 million value of this work will be adjusted as necessary and will need to be covered after validation of the work.

Due to the urgency of this funding and potential for more claims as a result of no or delayed action, staff recommends a loan/advance to Caltrans in the amount not to exceed \$73.2 mil. to close the project contingent upon identification of the source(es) and availability of funds. The financial obligations of both Caltrans and Metro will be further assessed during the final Project audits to determine if any payback to Metro by Caltrans would be warranted. Final Project audits and reimbursements to Metro by Caltrans, if any, shall be completed within 10 years from the date of payment to Caltrans approved by this Board action.

January 2021 Board Motion

The Board approved a motion in January 2021 outlining further actions necessary in conjunction with the approval of the increase in the Project LOP, identification of additional sources of funds for reimbursement to Metro, discussion of the intent of this Board report with and securing the approval of the San Fernando Valley Council of Governments (SFVCOG), and further discussions with Caltrans and the City of Burbank to facilitate timely repairs of the City streets.

As of the date of this report, in compliance with the requirements of the Motion,

- The Term Sheet outlining the advance/repayment agreement has been prepared for execution by Metro CEO and Caltrans District 7 Director.
- Staff presented the details of the Project and the recommended path forward to the SFVCOG on February 12. The SGVCOG supported the staff's recommendation and approved a motion that, among other related items, requested:
 - o a detailed accounting plan showing how in-kind contributions will be quantified and credited back to the San Fernando Valley subregion;
 - o a minimum payment amount per payment installment; and
 - o a semi-annual repayment reporting and accounting, including a summary of Statewide resources actively pursued by Caltrans for repayment of the loan/advance, to the Metro Board and the SFVCOG until the loan repayment is complete.
- A meeting was scheduled for February 22 by Senator Portantino and Supervisor Barger with staff from Caltrans, City of Burbank and Metro to discuss the roadway mitigation work requested by the City of Burbank. Follow up meetings will be conducted with Caltrans, City of Burbank and staff from Senator Portantino, Supervisor Barger, and Director Najarian's offices to address the City of Burbank's request for repairs.

Potential sources of funds identified:

Measure R and Prop C Funds from the Project to front-fund the shortfall (\$73.2 million) is recommended, as described in further detail in Attachment A. This funding can only be spent on the Project until it is completed and is subject to reimbursement by the State and will be part of a loan/advance agreement. The key terms of the loan/advance, as agreed to in concept by Caltrans, are included in the Term Sheet (Attachment C). The use of Measure R and Prop C from the Project is recommended as these are subregional funds allocated pursuant to the Measure R and Measure M Unified Cost Management Policy. The planned repayment from Caltrans will replenish the Measure R and Prop C, and these funds will be eligible to be spent on the Project. Upon completion of the Project, any remaining balance of these funds can be spent for other eligible purposes in the San Fernando Valley.

Metro will seek and Caltrans will agree to provide reimbursement and or repayment of the front-funded costs or loan from any and all eligible State funding sources, which may include future IIP, funds eligible for the State Highway Operation and Protection Program (SHOPP), State appropriation, and surplus State and federal funding on other Metro-funded highway projects. In-kind services reducing Metro's financial obligations in covering the costs of the State highway improvement projects will also be counted toward reimbursements to Metro, subject to review by the Board.

There are other potential funding sources that can be used for the loan/advance, including local funds programmed on other I-5 corridor projects, and Prop C and State and federal formula grants that are not already programmed for the Project. These fund sources are not recommended, as available local and subregional funds are to be considered first, in accordance with the Measure R and Measure M Unified Cost Management Policy.

DETERMINATION OF SAFETY IMPACT

There are no impacts to public safety by approving this action. Public safety may be compromised by potentially incomplete project.

FINANCIAL IMPACT

The overall corridor LOP budget set at the start of the I-5 North Capacity Enhancements per the FUNDING AGREEMENT NO. MOU.P0008355/8501 A/A9 was \$880,903,000 and included \$195,995,000 in Federal Funds (ARRA RSTP, RSTP, SAFETEA-LU and CMAQ), \$358,355,000 in State Funds (TCRP, RIP, CMIA, IPP and SLPP), and \$326,553,000 in local Measure R (20%) and Prop C (25%) funds. Metro's contribution to this project was limited to \$326,553,000 in Measure R Highway 20% and Prop C 25% funds.

Of the total LOP budget, \$815,065,711 is spent to date; of this amount \$ 258,428,119.41 was funded with Measure R (20%) and Prop C (25%) funds.

Current Metro funding of \$14 million is included in the FY21 budget in Cost Center 0442 (Highway Subsidies), I-5 North Corridor Projects 460332 and 460334, Account 54001 (Subsidies to Others).

Since this is a multi-year contract/project, the Project Manager, Cost Center Manager and the Senior Executive Officer, Program Management - Highway Program will be responsible for budgeting costs in future fiscal years.

Impact to Budget

The source of the supplemental funds is Measure R Highway Capital (20%) and Prop C Transit-Related Streets and Highways (25%) funds, which are not eligible for Metro bus and rail operations or capital projects. The supplemental funds will be repaid to Metro from State and other sources pursuant to the Term Sheet.

Attachment A provides a detailed discussion of the Policy. In summary, the Policy was developed in recognition that some projects would need additional funding and the Policy provides a consistent and equitable process to assure that any financial impacts are limited to the subregion where the project is located and not have a region-wide impact. The Policy defines a cascading list of actions that can be taken. Because the Project is so far along, actions such as value engineering or changes in scope are no longer feasible. Additional funding is the only option. Attachment A identifies unexpended Measure R 20% and Prop C 25% from the Project as the funding sources available and recommended, subject to reimbursement and repayment by the State.

Metro will continue to coordinate with Caltrans to determine cost exposure, responsibilities, and contributions.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

Approval of staff recommendation would allow for the timely compensation to the contractor. The I-5 HOV lanes project is consistent with the following Metro Vision 2028 Goals and Objectives:

Goal 1: Providing high-quality mobility options that enable people to spend less time traveling by widening the freeway, providing additional capacity, and including HOV lanes to encourage carpooling and improve transit efficiency;

Goals 4 and 5: Transforming LA County through regional collaboration with Caltrans and the corridor cities by contributing funds and providing resources to assist Caltrans in completion of these projects.

ALTERNATIVES CONSIDERED

Alternative A: The Board may choose to unconditionally contribute up to \$73.2 million to Segment 3 and the Project instead of approving the staff's recommendation for a loan/advance payment to Caltrans with the conditions presented in this report.

Alternative B: The Board may choose not to approve the additional funds needed to close Segment 3 and the Project. This disapproval would result in further project delay and cost increase and is not recommended.

NEXT STEPS

Upon Board approval of the staff recommendation for a loan/advance to Caltrans as supplemental project funding,

- Caltrans will request the programming of \$700,000 in the State Interregional Improvement Program (IIP) from the California Transportation Commission (CTC).;
- Staff will
 - o work with Caltrans to draft and execute the necessary funding /reimbursement agreements;
 - o actively participate in the final settlement discussions between Caltrans and the contractor to assist in feasible and reasonable closure of the project.
 - o report back to the Board on significant events affecting the loan, including the form of the loan agreement, principal repayments, the proposed use of other State funding or in-kind services as a repayment source, and any disputes or defaults.
 - o coordinate with the Los Angeles County State legislative delegation to identify potential funding from State-controlled funding sources not currently available to Metro to fulfill Caltrans' reimbursement obligation.

Caltrans and the contractor started final settlement negotiations in December 2020. The final agreed upon amount will be presented to the Board in February 2021 along with a contract change order to approve payment.

In the event the Board approves payment to Caltrans under Alternative A under "ALTERNATIVES CONSIDERED", staff will make the necessary arrangements for such payment in accordance with Metro's standard procedures for supplemental funding.

In reference to the items in the SFVCOG's motion related to the loan/advance and repayment by Caltrans, staff will prepare semi-annual and as-needed reports on the status of the advance/loan, any installments made by Caltrans, the outstanding balance, and other key pertinent information and provide such reports to the SFVCOG and the Metro Board. Reports will also include updates on pursuit of other sources of funds and the results of such efforts for early repayment of the loan/advance.

The item in the SFVCOG's motion related to capturing the value of the in-kind services by Caltrans provided to the countywide projects through various Metro programs and procedures and crediting the value of those services to the SFV is memorialized in the Measures R and M Unified Cost Management Policy attached to this Board report in the "Recommendation" section (page 5, second paragraph).

ATTACHMENTS:

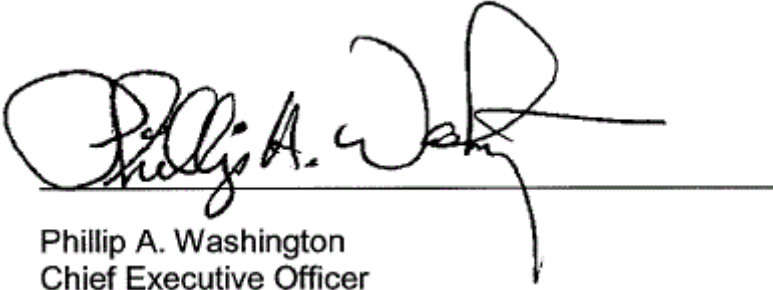
Attachment A - I-5 N HOV Measures R & M Unified Cost Management Policy

Attachment B - January 2021 Board Report for the I-5 North Capacity

Enhancements from SR-118 to SR-134, Segment 3 (Item 35)

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