

**Board Report**

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**REVISION 2**  
**CONSTRUCTION COMMITTEE**  
**JANUARY 21, 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 This amount, along with \$50,181,000 withdrawn from other segments of I-5 North projects (for a total of \$105,880,000) was programmed to the I-5 South and I-405 Sepulveda Pass construction projects in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)).

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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.

Caltrans has informed Metro that:

- Only \$40 million of the \$73.2 mil. shortfall is needed in January 2021 to negotiate and settle the contractor's claims.
- Caltrans wishes to defer the roadway repair work requested by the City of Burbank 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.

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- The remaining \$17.9 mil. will be needed over the next 12 months to close Segment 3.

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.

***Potential sources of funds identified:***

Measure R and Prop C Funds from ~~Measure R I-5 corridor projects~~ the Project to front-fund the shortfall (\$73.2 million) is recommended, as described in further detail in Attachment A. This funding is subject to reimbursement by the State and may 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 ~~I-5 corridor projects~~ Project is recommended as these are subregional funds allocated pursuant to the Measure R and Measure M Unified Cost Management Policy.

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.

**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

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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 ~~both the Project and I-5 Carmenita 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).; and
- Staff will work with Caltrans to draft and execute the necessary agreements, loan/advance, for the financial contributions to the project; and
- Staff will actively participate in settlement negotiations between Caltrans and the contractor to assist in feasible and reasonable closure of the project.
- Staff will 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.

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.

## **ATTACHMENTS:**

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

Attachment B - I-5 Corridor Funding Needs Caltrans Request Letter dated May 12, 2020

Attachment C- Term Sheet

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