Los Angeles County
Metropolitan Transportation
Authority
One Gateway Plaza
3rd Floor Board Room
Los Angeles, CA

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 This amount, along with $50,181,000 withdrawn from other segments of I-5 North projects (for a total of $105,880,000) was programmed to the I-5 South and I-405 Sepulveda Pass construction projects in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:

    - a detailed accounting plan showing how in-kind contributions will be quantified and credited back to the San Fernando Valley subregion;
    - a minimum payment amount per payment installment; and
    - 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
    - work with Caltrans to draft and execute the necessary funding /reimbursement agreements;
    - actively participate in the final settlement discussions between Caltrans and the contractor to assist in feasible and reasonable closure of the project.
    - 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.
    - 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).

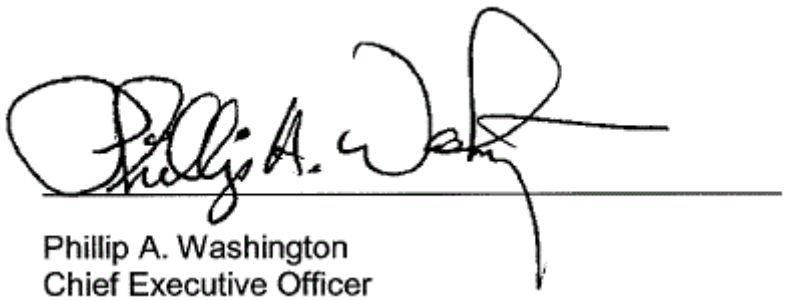
ATTACHMENTS:

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)

Prepared by: Victor Gau, Director of Engineering, Highway Program - (213) 922-3031
Craig Hoshijima, DEO, Countywide Planning & Development - (213) 418-3384
Abdollah Ansari, Senior Executive Officer, Highway Program - (213) 922-4781
Bryan Pennington, Deputy Chief Program Management Officer - (213) 922-7449

Reviewed by: James de la Loza, Chief Planning Officer - (213) 922-2920
Richard F. Clarke, Chief Program Management Officer - (213) 922-7557



Phillip A. Washington
Chief Executive Officer

ATTACHMENT A

I-5 NORTH CAPACITY ENHANCEMENTS FROM SR- 118 TO SR-134; SEGMENT 3

Measure R and Measure M Unified Cost Management Policy Analysis

Introduction

The Measure R and Measure M Unified Cost Management Policy (the Policy) was adopted by the Metro Board of Directors in June 2018. The precursor Measure R cost management policy was adopted in March 2011. The intent of the Policy is to inform the Metro Board of Directors regarding cost increases to Measure R- and Measure M-funded projects and the strategies available to close a funding gap. The I-5 North Capacity Enhancements Project between SR-134 and SR-118 (the Project) is subject to this policy analysis.

The life of project (LOP) budget for the Project, based on the current funding agreement with Caltrans and approved by the Board, is $880,903,000. The Project is subject to the Policy analysis now due to a proposed $73,200,000 increase to the LOP budget. Funding for the cost increase is needed through FY 2026. This analysis recommends trade-offs required by the Policy to identify cost reductions or the funds necessary to meet the cost increase.

Although Metro is identifying local funds to address the Project cost increase, Metro's funding is considered as "front-funding" and or a loan in anticipation of a future repayment and reimbursement for the cost increase by the State and Caltrans.

Measure R and Measure M Unified Cost Management Policy Summary

The adopted Policy stipulates the following.

If a project cost increase occurs, the Metro Board of Directors must approve a plan of action to address the issue prior to taking any action necessary to permit the project to move to the next milestone. Increases will be measured against subsequent actions on cost estimates taken by the Metro Board of Directors, including the determination of the budget. Shortfalls will first be addressed at the project level prior to evaluation for any additional resources using these methods in this order as appropriate:

1) Scope reductions;
2) New local agency funding resources;
3) Value Engineering;
4) Other cost reductions within the same transit or highway corridor;
5) Other cost reductions within the same subregion; and finally,
6) Countywide transit or highway cost reductions or other funds will be sought using pre-established priorities.

Scope Reductions

The Project cost increase is attributable to delays from relocation of utilities and other related work not accounted for in the design, different site conditions, hazardous material encountered, additional work demanded by the affected communities, and design changes. Any attempt to identify and negotiate agreeable reductions to the scope may result in further delays and potential additional costs. Because of this, we recommend moving to the next step.

New Local Agency Funding Resources

Local funding resources (i.e., specific to the affected corridor or subregion) are considered in the next step as opposed to countywide or regional sources so as not to impact the funding of other Metro Board-approved projects and programs or subregions in the County.

The Project is eligible for Measure R funding and is allocated $271,500,000 of funding in the Measure R sales tax ordinance Expenditure Plan under the project entitled “I-5 Capacity Enhancement from SR-134 to SR-170.” The Project was funded with other local and State funds prior to the adoption of Measure R and $253,500,000 has yet to be expended. However, in January 2016 (Board report #2015-1763) the Board approved $223,500,000 to be reprogrammed to the third decade of the Long Range Transportation Plan using Proposition C 25% funds instead of Measure R 20%. This was done to alleviate the need for additional Proposition C 25% debt financing and instead use Measure R 20% cash (i.e., use the Project’s Measure R 20% now and replace it with Proposition C 25% in the third decade). There is $30,000,000 of remaining Measure R 20% and $223,500,000 of Proposition C 25% that has not yet been spent on the Project and could be used for the cost increase. However, as the Proposition C 25% is programmed by Board action in the third decade of the LRTP, any use of these funds now even as an advance may cause Metro to incur additional debt financing costs. The table below from #2015-1763 shows the funding split of the reprogrammed Measure R, referred to as “replacement project credits.”

STAFF RECOMMENDATION - FUNDING OF REPLACEMENT PROJECT CREDITS IN 3RD DECADE			
(millions)	D	E	F=D+E
Project	Proposition C 25% Replacement Project Cred	Measure R 20% Replacement Project Credits	Total Replacement Projec Credits
I-5 North Capacity Enhancement	$223.5	$30.0	$253.5
I-5 South Capacity Enhancement	$86.4	$108.4*	$194.8
I-5 South Carmenita Interchange	$40.1	$92.9	$133
I-5/SR-14 Capacity Enhancement	$0	$88.8	$88.8
Total	$350.0	$320.1	$670.1

The Project is located in the San Fernando Valley subregion (as defined in the Policy, as amended), and traverses the cities of Los Angeles and Burbank. Local funding resources from both the subregion and cities could be considered for the cost increase.

Funding Within the Corridor
The Project shares the corridor with the "Interstate 5 Capacity Enhancement from I-605 to Orange County Line" and "I-5 Carmenita Road Interchange Improvement" projects that are also included in the Measure R Expenditure Plan. Per the #2015-1763 Board action (see previous table), the projects have unused Measure R funds of $108,400,000 and $92,900,000, respectfully. The I-5 Carmenita project has completed construction. Any surplus funding from I-5 Carmenita may be needed to fund the remaining necessary expenditures of the projects.

State and Federal Funding (Discretionary)
Additional State or federal discretionary funding (where Metro would compete for the funding) is not probable, given the Project has experienced a cost increase and is already well into construction.

<u>Value Engineering</u>
The Project cost increase is attributable to delays from relocation of utilities and other related work not accounted for in the design, different site conditions, hazardous material encountered, additional work demanded by the affected communities, and design changes. Any attempt to identify and negotiate agreeable value engineering may result in further delays and potential additional costs. As a result, we recommend moving to the next step.

Other Cost Reductions within the Same Transit or Highway Corridor, or within the Same Sub-region

The Project is on the same highway corridor as the I-5 South and I-5 Carmenita projects. The I-5 South project is still under construction and it is currently not known if there will be any future cost reductions or savings. The I-5 Carmentia project is completed and has unused Proposition C 25% and Measure R 20% funds of $133,000,000.

Countywide Cost Reductions and/or Other Funds

If new local agency resources are not allocated to the Project cost increase, regional or countywide funding could be considered. These funds are programmed for other uses in Metro's financial forecast, during the timeframe when funds are needed for the Project cost increase, and additional debt financing would be needed to provide sufficient cash flow for the Project cost increase. The primary eligible source of countywide funding is Proposition C 25%.

State and Federal Funding (Formula)

Metro receives quasi-formula funding from the State through the Regional Improvement Program (RIP) and Local Partnership Program (LPP). This is considered regional funding as it can be applied countywide to both transit and highway spending. There is currently no capacity in the RIP or LPP through FY 2025. The RIP has been allocated to projects submitted in Metro's 2020 RTIP and the next cycle of the LPP is planned to be used on the $801 million Division 20 project. Metro also receives an allocation of funds from the “Highway Infrastructure Program,” which is a federal formula grant created in 2018 for uses that include the construction of highways, bridges, tunnels, transit capital, and ITS; operational improvements; highway and transit safety improvements; and pedestrian and bicycle projects, among others. Funding from this grant will be programmed in the pending 2021 Short Range Transportation Plan.

Recommendation

Metro staff recommends the use of $30,000,000 of unused Measure R 20% and $43,200,000 of Proposition C 25% replacement credits from the Project as an advance to the State to address the $73,200,000 Project cost increase.

Metro staff will seek reimbursement of the recommended Measure R 20% and Proposition C 25% funding from the State and Caltrans, which will be part of a future loan agreement with the State. Subject to the ultimate form of reimbursement from the State, Metro will ensure subregional equity to the San Fernando Valley in the credit of Measure R 20% and Proposition C 25% funds used to support the loan to the State. Any direct monetary State reimbursements and or loan repayments will first credit the advanced Proposition C 25% to mitigate the amount of Metro debt financing. Metro will seek reimbursement from the State for any borrowing costs that Metro incurs. Metro will designate the loan to Caltrans as a receivable and monitor the amount of principal outstanding and interest payable. All payments received will be deposited into the Proposition C 25% and Measure R 20% funds and increase the amount credited and available to the Project in the San Fernando Valley subregion, until the amount

advanced to Caltrans is repaid. Any State loan repayments secured through the State's programming of new State funding to other projects in Los Angeles County, within or outside the San Fernando Valley, that effectively offsets other planned or programmed regional funds to those projects will also be managed by Metro to credit the Measure R 20% and Proposition C 25% funds used from the San Fernando Valley subregion including any cost of debt financing incurred.

Metro will also manage any repayments by way of in-kind services on projects in Los Angeles County, within or outside of the San Fernando Valley, by ensuring that the agreed upon amount of those services, which effectively offset other planned or programmed regional funds to those projects, are credited to the San Fernando Valley.

The following table shows the remaining allocation of unused funding, or replacement project credits, for the Measure R I-5 corridor projects if the Board approves this Policy recommendation. The funding for the I-5/SR-14 project is shown as zero as this was previously designated "surplus" per the Measure R ordinance and reprogrammed for other eligible uses in the North County subregion.

STAFF RECOMMENDATION – REVISED FUNDING OF REPLACEMENT PROJECT CREDITS (after funding of November 2020 cost increase)			
(millions)	D	E	F=D+E
Project	Proposition C 25% Replacement Project Credits	Measure R 20% Replacement Project Credits	Total Replacement Project Credits
I-5 North Capacity Enhancement	$180.3	$0.0	$180.3
I-5 South Capacity Enhancement	$86.4	$108.4	$194.8
I-5 South Carmenita Interchange	$40.1	$92.9	$133.0
I-5/SR-14 Capacity Enhancement	$0.0	$0.0	$0.0
Total	$306.8	$201.3	$508.1

Los Angeles County
Metropolitan Transportation
Authority
One Gateway Plaza
3rd Floor Board Room
Los Angeles, CA

File #: 2020-0724, **File Type:** Contract **Agenda Number:** 35.

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

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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.

- 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 descried 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

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

Prepared by: Victor Gau, Director of Engineering, Highway Program - (213) 922-3031
Craig Hoshijima, DEO, Countywide Planning & Development - (213) 418-3384
Abdollah Ansari, Senior Executive Officer, Highway Program - (213) 922-4781
Bryan Pennington, Deputy Chief Program Management Officer - (213) 922-7449

Reviewed by: James de la Loza, Chief Planning Officer - (213) 922-2920
Richard F. Clarke, Chief Program Management Officer - (213) 922-7557

Phillip A. Washington
Chief Executive Officer

REVISED
ATTACHMENT A

I-5 NORTH CAPACITY ENHANCEMENTS FROM SR- 118 TO SR-134; SEGMENT 3

Measure R and Measure M Unified Cost Management Policy Analysis

Introduction

The Measure R and Measure M Unified Cost Management Policy (the Policy) was adopted by the Metro Board of Directors in June 2018. The precursor Measure R cost management policy was adopted in March 2011. The intent of the Policy is to inform the Metro Board of Directors regarding cost increases to Measure R- and Measure M-funded projects and the strategies available to close a funding gap. The I-5 North Capacity Enhancements Project between SR-134 and SR-118 (the Project) is subject to this policy analysis.

The life of project (LOP) budget for the Project, based on the current funding agreement with Caltrans and approved by the Board, is $880,903,000. The Project is subject to the Policy analysis now due to a proposed $73,200,000 increase to the LOP budget. Funding for the cost increase is needed through FY 2026. This analysis recommends trade-offs required by the Policy to identify cost reductions or the funds necessary to meet the cost increase.

Although Metro is identifying local funds to address the Project cost increase, Metro's funding is considered as "front-funding" and or a loan in anticipation of a future repayment and reimbursement for the cost increase by the State and Caltrans.

Measure R and Measure M Unified Cost Management Policy Summary

The adopted Policy stipulates the following.

If a project cost increase occurs, the Metro Board of Directors must approve a plan of action to address the issue prior to taking any action necessary to permit the project to move to the next milestone. Increases will be measured against subsequent actions on cost estimates taken by the Metro Board of Directors, including the determination of the budget. Shortfalls will first be addressed at the project level prior to evaluation for any additional resources using these methods in this order as appropriate:

1) Scope reductions;
2) New local agency funding resources;
3) Value Engineering;
4) Other cost reductions within the same transit or highway corridor;
5) Other cost reductions within the same subregion; and finally,
6) Countywide transit or highway cost reductions or other funds will be sought using pre-established priorities.

Scope Reductions

The Project cost increase is attributable to delays from relocation of utilities and other related work not accounted for in the design, different site conditions, hazardous material encountered, additional work demanded by the affected communities, and design changes. Any attempt to identify and negotiate agreeable reductions to the scope may result in further delays and potential additional costs. Because of this, we recommend moving to the next step.

New Local Agency Funding Resources

Local funding resources (i.e., specific to the affected corridor or subregion) are considered in the next step as opposed to countywide or regional sources so as not to impact the funding of other Metro Board-approved projects and programs or subregions in the County.

The Project is eligible for Measure R funding and is allocated $271,500,000 of funding in the Measure R sales tax ordinance Expenditure Plan under the project entitled “I-5 Capacity Enhancement from SR-134 to SR-170.” The Project was funded with other local and State funds prior to the adoption of Measure R and $253,500,000 has yet to be expended. However, in January 2016 (Board report #2015-1763) the Board approved $223,500,000 to be reprogrammed to the third decade of the Long Range Transportation Plan using Proposition C 25% funds instead of Measure R 20%. This was done to alleviate the need for additional Proposition C 25% debt financing and instead use Measure R 20% cash (i.e., use the Project’s Measure R 20% now and replace it with Proposition C 25% in the third decade). There is $30,000,000 of remaining Measure R 20% and $223,500,000 of Proposition C 25% that has not yet been spent on the Project and could be used for the cost increase. However, as the Proposition C 25% is programmed by Board action in the third decade of the LRTP, any use of these funds now even as an advance may cause Metro to incur additional debt financing costs. The table below from #2015-1763 shows the funding split of the reprogrammed Measure R, referred to as “replacement project credits.”

STAFF RECOMMENDATION - FUNDING OF REPLACEMENT PROJECT CREDITS IN 3RD DECADE			
(millions)	D	E	F=D+E
Project	Proposition C 25% Replacement Project Cred	Measure R 20% Replacement Project Credits	Total Replacement Projec Credits
I-5 North Capacity Enhancement	$223.5	$30.0	$253.5
I-5 South Capacity Enhancement	$86.4	$108.4*	$194.8
I-5 South Carmenita Interchange	$40.1	$92.9	$133
I-5/SR-14 Capacity Enhancement	$0	$88.8	$88.8
Total	$350.0	$320.1	$670.1

The Project is located in the San Fernando Valley subregion (as defined in the Policy, as amended), and traverses the cities of Los Angeles and Burbank. Local funding resources from both the subregion and cities could be considered for the cost increase.

Funding Within the Corridor
The Project shares the corridor with the "Interstate 5 Capacity Enhancement from I-605 to Orange County Line" and "I-5 Carmenita Road Interchange Improvement" projects that are also included in the Measure R Expenditure Plan. Per the #2015-1763 Board action (see previous table), the projects have unused Measure R funds of $108,400,000 and $92,900,000, respectfully. The I-5 Carmenita project has completed construction. Any surplus funding from I-5 Carmenita may be needed to fund the remaining necessary expenditures of the projects.~~and a portion of the unexpended Measure R 20%, equal to $43,200,000, could be used for the Project cost increase. This funding could be replaced with Proposition C 25% from the Project to mitigate the loss of Measure R 20%.~~

State and Federal Funding (Discretionary)
Additional State or federal discretionary funding (where Metro would compete for the funding) is not probable, given the Project has experienced a cost increase and is already well into construction.

Value Engineering
The Project cost increase is attributable to delays from relocation of utilities and other related work not accounted for in the design, different site conditions, hazardous material encountered, additional work demanded by the affected communities, and design changes. Any attempt to identify and negotiate agreeable value engineering may result in further delays and potential additional costs. As a result, we recommend moving to the next step.

Other Cost Reductions within the Same Transit or Highway Corridor, or within the Same Sub-region

The Project is on the same highway corridor as the I-5 South and I-5 Carmenita projects. The I-5 South project is still under construction and it is currently not known if there will be any future cost reductions or savings. The I-5 Carmentia project is completed and has unused Proposition C 25% and Measure R 20% funds of $133,000,000.~~The unused funds could be considered as a funding source; however, the Project also has unused funds and these would be considered prior in accordance with the Policy.~~

Countywide Cost Reductions and/or Other Funds

If new local agency resources are not allocated to the Project cost increase, regional or countywide funding could be considered. These funds are programmed for other uses in Metro's financial forecast, during the timeframe when funds are needed for the Project cost increase, and additional debt financing would be needed to provide sufficient cash flow for the Project cost increase. The primary eligible source of countywide funding is Proposition C 25%.

State and Federal Funding (Formula)

Metro receives quasi-formula funding from the State through the Regional Improvement Program (RIP) and Local Partnership Program (LPP). This is considered regional funding as it can be applied countywide to both transit and highway spending. There is currently no capacity in the RIP or LPP through FY 2025. The RIP has been allocated to projects submitted in Metro's 2020 RTIP and the next cycle of the LPP is planned to be used on the $801 million Division 20 project. Metro also receives an allocation of funds from the “Highway Infrastructure Program,” which is a federal formula grant created in 2018 for uses that include the construction of highways, bridges, tunnels, transit capital, and ITS; operational improvements; highway and transit safety improvements; and pedestrian and bicycle projects, among others. Funding from this grant will be programmed in the pending 2021 Short Range Transportation Plan.

Recommendation

Metro staff recommends the use of $30,000,000 of unused Measure R 20% ~~from the project~~ and $43,200,000 of Proposition C 25% replacement credits from the Project~~I-5 Carmenita project of unused Measure R 20% funds~~ as an advance to the State to address the $73,200,000 Project cost increase. ~~An offsetting amount of $43,200,000 of Proposition C 25% will be programmed for the I-5 Carmenita project in the third decade of the Long Range Transportation Plan financial forecast~~.

Metro staff will seek reimbursement of the recommended Measure R 20% and Proposition C 25% funding from the State and Caltrans, which may be part of a future loan agreement with the State. The State reimbursements and or loan repayments will first credit the advanced Proposition C 25% to mitigate the amount of Metro debt financing. Metro will seek reimbursement from the State for any borrowing costs that Metro incurs.

The following table shows the remaining allocation of unused funding, or replacement project credits, for the Measure R I-5 corridor projects if the Board approves this Policy recommendation. The funding for the I-5/SR-14 project is shown as zero as this was previously designated “surplus” per the Measure R ordinance and reprogrammed for other eligible uses in the North County subregion.

STAFF RECOMMENDATION – REVISED FUNDING OF REPLACEMENT PROJECT CREDITS (after funding of November 2020 cost increase)			
(millions)	D	E	F=D+E
Project	Proposition C 25% Replacement Project Credits	Measure R 20% Replacement Project Credits	Total Replacement Project Credits
I-5 North Capacity Enhancement	$180.3	$0.0	$180.3
I-5 South Capacity Enhancement	$86.4	$108.4	$194.8
I-5 South Carmenita Interchange	~~$83.3~~ $40.1	~~$49.7~~ $92.9	$133.0
I-5/SR-14 Capacity Enhancement	$0.0	$0.0	$0.0
Total	~~$350.0~~ $306.8	~~$158.1~~ $201.3	$508.1

DEPARTMENT OF TRANSPORTATION
DISTRICT 7
100 S. MAIN STREET, SUITE 100
LOS ANGELES, CA 90012
PHONE (213) 897-0362
FAX (213) 897-0360
TTY 711
www.dot.ca.gov

Making Conservation a California Way of Life.

May 12, 2020

Mr. Phillip A. Washington
Chief Executive Officer
Los Angeles County Metropolitan Transportation Authority (Metro)
One Gateway Plaza
Los Angeles, CA., 90012

Dear Mr. Washington:

First, I hope that this letter finds you, your family, friends and employees in good health and safely working from home as much as possible or in the field managing the important work that you do in Los Angeles County. I want to extend my appreciation to the Los Angeles County Metropolitan Transportation Authority (Metro) staff and the great partnership between the two agencies to program the Interstate 5 South and North Corridor High Occupancy Vehicle (HOV) projects. Since early 2000, we have worked together to develop, program and construct these projects made possible through funding provided by Metro, the Federal Highway Administration, and the State of California.

Caltrans has been searching for additional State funds to contribute toward the increased project costs, as described in detail below. However, due to the project funding complexities and California Transportation Commission (CTC) guidelines, the only State funds that will be available to tap into is Regional Improvement Program (RIP). The increase will need to be covered using Local Measure funds and/or County share of RIP funds, and both would require Metro's approval. The RIP funds would be a Supplemental Fund Request that would also require CTC approval.

We are requesting Metro to provide additional funds for the anticipated cost increase for the I-5 Segment 3 Empire Interchange Project to complete construction and close out, as well as the City of Burbank's unmet needs. The City of Burbank submitted a cost estimate for their unmet needs at $15.3 million, which will not be completed as part of this project or by Caltrans. The total request is $73.2 million including City of Burbank's unmet needs.

Below is a table showing the additional funds requested.

Additional funds to finish project	$9,900,000
Additional funds to settle past delay claims in 2020	$40,000,000
Escalation and Interest to settle all delay claims after 2020	$8,000,000
Total for Project	**$57,900,000**
City of Burbank Unmet Needs	$15,300,000 *
Total Request	**$73,200,000**

*Estimate based on City of Burbank request, not verified by Caltrans

The I-5 South Corridor

The I-5 South Corridor consists of six projects, including the Carmenita Interchange (IC) project, with an estimated cost of approximately $1.89 billion.

- Three of the six projects have completed construction and resolved all claims with the contractors (Segments 1, 3 and the Carmenita IC projects);
- The Segment 4 project has achieved substantial completion, but has outstanding claims with contractor;
- Segments 2 and 5 are ongoing in construction;
- Segment 2 will be the last segment to complete construction and is targeted to open in late 2021. We expect to accept the contract in late 2022 and resolve claims with the contractor thereafter.

The current life of the project budget for the I-5 South Corridor is adequate to close out all the project segments. There will be a savings of approximately $6.8 million from this corridor in local funds, and an additional saving from the Carmenita IC Project of $4.93 million.

The I-5 North Corridor

The I-5 North Corridor consists of four projects. The estimated cost for the project is approximately $965 million.

- Two of the projects (Segment 1 & 2) have completed construction and resolved all claims with the contractor.
- Segment 4 has achieved substantial completion and targeted for contract acceptance in Winter 2020.
- Segment 3 (Empire Avenue IC Project) is ongoing in construction. The Segment 3 project has encountered many challenges from the start which has caused a few years of delay and many claims and potential claims from the contractor. Caltrans and Metro staff have been working together from the start of this project to manage the risks to minimize the delay and cost increase. Segment 3 is currently targeted to complete in Summer 2021 and accept the contract in Summer 2022. Based on the

latest risk assessment at 70% confident level, the project will need additional funds to complete, settle claims, and close out the project with the contractor. In addition, the City of Burbank has submitted a list of items of work to both Metro and Caltrans that they believe the project should address, which will need additional funds.

We appreciate Metro's continuous partnership and support for the two I-5 North and I-5 South corridors. The public can now see the benefit these projects are providing to their communities and they will soon realize more benefit as the last segment of each of the corridor is completed and the continuous HOV lanes open to traffic.

Should you need additional information for this request, please don't hesitate to call me or Greg Farr, Principal Transportation Engineer, Division of Project/Program Management, Greg is our focal point of contact on the I-5 Corridor and he can be reached at (818) 254-5439.

Sincerely,

JOHN C. BULINSKI
District Director

C: Abdollah Ansari, Senior Executive Office, Highway Program, Metro
Victor Gau, Director, Engineering – Highway Program, Metro

ATTACHMENT C

Term Sheet

I-5 North Segment 3 Construction Project

Agreement to Advance Payment and Reimbursement of Funds to Close the Project

Parties:	Los Angeles County Metropolitan Transportation Authority (LA Metro) and California Department of Transportation-District 7 (Caltrans)
Nature of the Agreement:	LA Metro to advance funds to Caltrans for the cost to complete and close the I-5 North Segment 3 project, and Caltrans to reimburse LA Metro such amount as determined by joint audit by the Parties upon completion of the project.
Amount of Advance:	Not to exceed $73.2 million in principal plus accrued interest at a rate equal to the LA Metro cost of funds.
Use of Proceeds:	The funds advanced by LA Metro shall be used by Caltrans to payoff obligations to the contractor for the claim settlement, complete roadway repair and work requested by the City of Burbank as agreed to by Caltrans, and cover other expenses to complete the I-5 North Segment 3 project.
Repayment:	Any and all periodic and/or lump sum monetary payments and non-monetary contributions by Caltrans that are solely designated for repayment of the Advance and not previously designated for a different LA Metro purpose. This may include funds otherwise eligible for the development and implementation of the State highway improvement projects, co-funding Metro-sponsored highway improvement projects from State funds not otherwise available to Metro (e.g.: SHOPP funds for the eligible components, etc.), waiver of charges to LA Metro for work that historically has been charged for by Caltrans in accordance with its policies and practices (review and approval of project documents in various phases of projects, preparation of technical studies/documents, etc.), and any other means of repayment mutually acceptable to parties.
Repayment Period:	Repayment of the full amount of the advance to Metro, including accrued interest, shall be in installments at set periods - years three, six, and ten, or more frequently as opportunities for repayment may arise. The overall repayment period may not exceed 10 years from the date(s) of disbursement of funds by LA Metro.

Resolution of Disputes: Any dispute arising out of or relating to this agreement shall be resolved by negotiation between officers of LA Metro and Caltrans who have authority to settle the dispute.

Parties commit to the terms and conditions of this agreement and execute the same on this _____ day of January 2021.

Phillip A. Washington
Chief Executive Officer
LA Metro

Tony Tavares
Director
California Department of Transportation (Caltrans)
District 7