

**Board Report**

File #: 2024-0926, **File Type:** Budget**Agenda Number:** 17.

**CONSTRUCTION COMMITTEE
OCTOBER 23, 2024****SUBJECT: REGIONAL CONNECTOR PROJECT CLOSE-OUT****ACTION: APPROVE RECOMMENDATION****RECOMMENDATION**

INCREASE the Life-of-Project (LOP) budget for the Regional Connector Transit Corridor Project (Project) by \$39,000,000 from \$1,755,840,570 to \$1,794,840,570 to fully resolve claims and complete the close out the Project.

ISSUE

The Project is a 1.9-mile underground light rail transit subway in Downtown Los Angeles connecting the A, E, and L Lines of Metro's light rail transit system. The Project was placed into Revenue Service on June 23, 2023, after over a decade of planning, design, construction, testing, and start-up. The Board Report requests a LOP budget increase to address a series of unresolved request for changes (RFCs). This LOP budget increase encompasses a settlement of a comprehensive claim submitted by the design/build Contractor, Regional Connector Constructors (RCC), which fully resolves all outstanding changes, and closes out the Project.

BACKGROUND

The Regional Connector FFGA (Fully Funded Grant Agreement) was originally executed in February 2014 with a budget of \$1,402,932,490, a Revenue Service Date of May 29, 2021, and a maximum Federal Section 5309 New Starts Financial Contribution of \$669,900,000.

As reported to the Board previously, from the outset, the Project experienced budgetary pressures due to a variety of causes. These include minimal initial contingency funding for significant project risks, insufficient funding for the professional, agency, and services, increased costs due to differing site conditions related to utility relocation, cost increases from repeated litigation-related impacts and delays, cost increases due to longer than anticipated durations for plan and permit approvals, and the resultant schedule impacts and mitigation expenses from all these factors.

By virtue of deliberate and measured budget increases authorized by the Board in November 2015 and January 2017, the Project budget was right-sized to meet the scope and risks identified. Budget and schedule performance since the January 2017 budget and schedule re-baseline action was

largely ahead of or consistent with planned values through early 2020. From there, a slight but consistent project under-performance on schedule through 2021 occurred.

DISCUSSION

The Project included complexity due to the integration of different control system elements from the existing transit lines covering three generations of technological improvements. The near 100% tunnel alignment was constructed through one of the oldest and most congested areas in Downtown Los Angeles, specifically through the heart of the Financial and Arts Districts.

Accordingly, impediments presented themselves during the execution of the work. Among the challenges were mitigating traffic management demands, supporting and maintaining third-party power and wet utilities under downtown streets, and interfacing with Metro's operation of three busy light rail lines for access to power and controls - while minimizing impacts to revenue service.

Ultimately many of the issues described above translated into requests for contract change orders that were, due to points of disagreement, deferred for resolution until the Project was put into revenue service. This resulted in several dozen contract changes that remained unreconciled even after many months of focused negotiation between the contractor and Metro executives.

These remaining Request For Changes (RFCs) were consolidated into a claim submitted by the contractor totaling over \$160 Million. The claims were all reviewed anew by Metro and RCC staff and consultants with the intent of reaching agreement between the two parties. This closing negotiation effort had run its course after 13-months of negotiations subsequent to the initiation of revenue service. With the Project heading towards a structured mediation process with a third-party mediator, the project team was able to come to a mutual agreement and the parties have consented to a total closing settlement of \$55 million, a suspension of further negotiations, and a declaration that all changes are thus resolved and closed.

Due to the settlement amount, the project must increase the LOP budget to make final payment and properly close out the Project. Because the Project has existing contingency, the net increase to the LOP budget is only \$39 million.

After achieving the start of revenue service in June of 2023, the project has worked to complete all open items and receiving final approvals for all work within the City of Los Angeles right of way. After completion of station construction, the project team has identified additional safety enhancements, such as bollards, with Metro SSLE (Safety, Security, and Law Enforcement) and Operations that will be included before formal close of the project. With the increase in LOP budget, the project team will be able to close out all remaining financial items with the contractor and install the remaining safety enhancements. After the completion of the last remaining construction punch list items, the contractor, RCC will have completed all work, and Metro can officially close the contract.

DETERMINATION OF SAFETY IMPACT

This proposed action has a positive impact on safety by funding the additional safety enhancements noted above.

FINANCIAL IMPACT

Funds required for the LOP increase were included in the Adopted FY2024 Budget and have been accrued pending approval of this action.

Impact to Budget

The source of funds for the LOP increase is TDA Article 4. These funds are eligible for Bus and Rail Operations.

Multi-year Impact

The sources of funds for the Project are capital-eligible funds identified in the recommended Funding Plan as shown in Attachment A. With respect to the \$39,000,000 increase, Attachment B shows the Measure R and Measure M Unified Cost Management Policy (the Policy) analysis and funding strategy required for cost increases to Measure R and Measure M Projects.

To comply with the Policy, Metro staff has evaluated potential offsetting cost reductions, including scope reductions, and value engineering, and has determined these are not feasible. .

EQUITY PLATFORM

The Regional Connector Project provides regional benefits to transit riders, including those commuting from Equity Focus Communities by connecting the three rail lines and reducing the need for transfers. In addition, all three stations (100%) are within or adjacent to Equity Focus Communities. By providing the new three stations, workers, students, and residents from and outside of Downtown now have additional transportation options and better transit connectivity throughout the county.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

The recommendation supports strategic plan goal #1) to provide high-quality mobility options that enable people to spend less time traveling and #5) to provide responsive, accountable, and trustworthy governance within the Metro organization.

ALTERNATIVES CONSIDERED

The alternative would be to not approve the LOP Budget increase. Staff does not recommend this alternative because the project would proceed down an extended, costly, uncertain, and protracted formal dispute resolution process.

NEXT STEPS

Upon approval by the Board, staff will close the design/build contract. Closing-out the balance of the Project will follow.

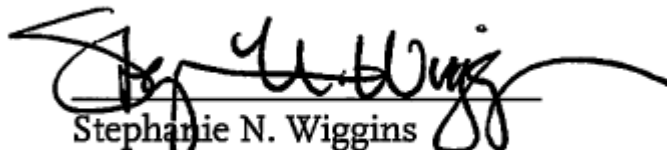
ATTACHMENTS

Attachment A - Funding/Expenditure Plan

Attachment B - Measure R and Measure M Unified Cost Management Policy Analysis

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REGIONAL CONNECTOR TRANSIT CORRIDOR PROJECT
ATTACHMENT A
FUNDING/EXPENDITURE PLAN
(Dollars in Millions)

Capital Project 860228	Prior	FY24	FY25	FY26	Total	% of Total
Uses of Funds						
Construction	1,189.41	66.40	23.58	0.00	1,279.39	71.3%
Right-of-Way	60.98	0.07	0.35	0.00	61.40	3.4%
Vehicles	15.19	0.00	1.09	0.00	16.28	0.9%
Prof. Services	387.05	11.59	10.90	1.75	411.28	22.9%
Project Contingency	0.00	0.00	0.00	0.00	0.00	0.0%
Subtotal Project	1,652.62	78.05	35.91	1.75	1,768.34	98.5%
Environmental/Planning	25.08	0.02	1.40	0.00	26.50	1.5%
Total Project Cost	1,677.70	78.07	37.32	1.75	1,794.84	100.0%
Sources of Funds						
Federal 5309 New Starts	669.90				669.90	37.3%
Federal 5309 New Starts American Rescue Plan Act	59.23				59.23	3.3%
Federal - CMAQ	64.00				64.00	3.6%
Federal - STBG	1.41				1.41	0.1%
Federal - Other	11.05				11.05	0.6%
General Fund - Metro	157.29	78.07			235.36	13.1%
Lease Revenues	20.61				20.61	1.1%
Local Agency Contribution	41.98				41.98	2.3%
Measure R - TIFIA Loan	160.00				160.00	8.9%
Transportation Development Act (TDA) - Article 4			37.32	1.75	39.07	2.2%
State Capital Project Loans - Others**	242.19				242.19	13.5%
State Proposition 1A HSRB	114.87				114.87	6.4%
State Proposition 1B PTMISEA	135.16				135.16	7.5%
Total Project Funding	1,677.70	78.07	37.32	1.75	1,794.84	100.0%

** Includes Repayment of Capital Project Loans (Fund 3562), Prop A/C/R Administration

ATTACHMENT B

Regional Connector Project

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 July 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 Regional Connector Transit Corridor Project (Project) is subject to this policy analysis.

The life of project (LOP) budget for the Project was last approved by the Board in January 2017 at \$1,755,840,570. The Project is subject to the Policy analysis now due to a proposed \$39,000,000 (2.22%) increase to the LOP budget. Funding for the cost increase is needed in FY 2025 and may be needed through FY 2026. This analysis recommends trade-offs required by the Policy to identify the funds necessary to meet the cost increase.

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. 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.

The policy was amended in January 2015 to establish Regional Facility Areas at Ports, airports and Union Station; and states that any:

“...capital project cost increases to Measure R funded projects within the boundaries of these facilities are exempt from the corridor and subregional cost reductions. Cost increases regarding these projects will be addressed from the regional programs share.”

The Regional Connector Project does not fall within a Regional Facility Area.

Scope Reductions

The project has already been completed. Therefore, scope reductions are no longer an option. 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 \$160,000,000 of Measure R funding that is identified in the Measure R sales tax ordinance Expenditure Plan for the Regional Connector project. Since the Project is capped at \$160,000,000 of Measure R, no further Measure R funds can be allocated to this project.

Additionally, this Project is not eligible for Measure M funding, as it is not identified on the Measure M sales tax ordinance Expenditure Plan.

Local Agency Contributions

The City of Los Angeles has contributed \$41,984,000 to the Project as a 3% local agency contribution. Local cities are generally not responsible for cost increases to the projects and are not considered as a source of funding for the cost increase.

Measure R, Proposition A, and Proposition C provide “local return” funding to Los Angeles. However, prior Board actions relating to the Twenty-Eight by '28 Initiative and funding for the cost increase to Gold Line Foothill Extension to Pomona did not support use of local return, and it is presumed these funds would not be available for the cost increase to the Project.

State and Federal Funding (Discretionary)

Metro was awarded \$669.9 million in federal funding through the New Starts program for the Project. The March 2021 federal American Rescue Plan Act provided an additional \$59,228,414 in New Starts grants. No additional New Starts funding is available to fund the Project cost increase.

The project is also supported by the State Capital Project Loans totaling \$242.19 million, along with \$114.87 million from the State High-Speed Rail bonds.

Additional State or federal discretionary funding (where Metro would compete for the funding) is not probable, given the Project is in the close out phase and the design/build contract scope is already completed.

Value Engineering

The project has been completed and the proposed cost increase is to fund additional costs to close out the remaining financial items with the contractor and reach a settlement. After close out, Metro will then officially close the contract with the

contractor. Therefore, value engineering is no longer an option, and we recommend moving to the next step.

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

Since the funding for the Project LOP increase is needed for FY 2025, it would be administratively challenging to secure a technical solution and Board approval to reallocate funds from other capital projects for the Project's cost increase. Potential capital projects along the Project corridor for fund transfers include the Eastside Extension Phase 2 and the A (Gold) Line Extension to Montclair, both of which have already had their scope and funding approved by the Metro Board. While it is possible to explore cost reductions in other projects within the corridor or subregion to cover the cost increase, staff has not identified any projects that could be reduced to provide the necessary funding within the timeframe needed to fund the Project.

The City of Los Angeles also receives funding through the Call-For-Projects, the competitive grant program funded and managed by Metro for the benefit of LA County cities, transit operators, and State highway projects last held in 2015. At times the funding for certain projects in the Call-For-Projects is "de-obligated" if not spent within a reasonable timeframe, and this can be a funding source for other uses, subject to Board approval of the use.

As the Project is not eligible for Measure M, the Measure M transit-eligible funding program Subregional Equity Program (SEP) does not apply to the Project.

Countywide Cost Reductions and/or Other Funds

Given the nature of the Project cost increase, new grant funding sources are unlikely, and regional or countywide funding will be necessary.

Eligible countywide funding sources include Proposition A and C (allocated to the portion of the project not attributed to "new subway"), the General Fund, Transportation Development Act (TDA) funds, and Lease Revenues. The project is supported by \$235,362,170 from the General Fund. The cost increases will resolve all outstanding financial items with the contractor and complete the elements that qualify for transit-related streets and highways funding.

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. Currently, there is limited capacity in the RIP and LPP. The RIP has been allocated to projects submitted in Metro's RTIP, and the next cycle of the LPP (nominations due November 20, 2024) is planned to be used for other purposes. In addition, the Project is not likely eligible for RIP or LPP funding as the cost increase is for the Project closing settlement and the Project has experienced multiple cost increases.

The Project is also funded by the Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) through Proposition 1B, with \$135,162,779 in state funding.

Metro receives federal formula funding from the Congestion Mitigation and Air Quality (CMAQ) Improvement Program and the Surface Transportation Block Grant Program (STBG). Metro's apportionments from these programs increased in the 2021 Bipartisan Infrastructure Law (i.e., Infrastructure Investment and Jobs Act), which is a five-year authorization bill. A total of \$64,000,000 from CMAQ and \$1,411,499 from STBG have been allocated to support the Project. Currently, projects seeking CMAQ and STBG must now be nominated by Metro and submitted to SCAG for selection approximately every two years, and the Metro Board and SCAG approvals to use CMAQ and or STBG for the Project cost increase would not be possible within the timeframe funds are needed.

Recommendation

Based on consideration of each of the required steps in the Policy process, and consideration of the availability and eligibility of funds by Metro budget and financial planning staff, Metro staff recommends using \$39,000,000 from TDA Article 4 to fund the proposed \$39,000,000 LOP budget increase. There are sufficient TDA Article 4 funds available for FY 2025. The TDA Article 4 funds are eligible for Metro transit operations.

REGIONAL CONNECTOR PROJECT CLOSE-OUT: REQUESTED LOP INCREASE

Construction Committee

October 23, 2024

PROJECT UPDATE

- Project successfully opened in June 2023
- Project is finalizing all work within City jurisdiction
- Next Steps:
 - Close out current Design/Build Contract
 - Safety Enhancement Construction Contract out Fall 2024



PROJECT CLOSE-OUT

- Project has been working on closing all remaining open change orders with contractor
- Project has also been working since 2023 to settle the comprehensive claim submitted by the Contractor valued at over \$160 million. A settlement has been reached which fully resolves all outstanding issues and will allow us to close out the project.
- While utilizing existing contingency, project needs additional LOP increase to fund the settlement, close out the remaining items and fully close out the contract.

FUNDING PLAN



- Proposed funding is from State of California Transportation Development Act (TDA), Article 4 funds.
- TDA funds are eligible and available for the Project LOP increase.
- TDA funds are eligible for transit operations, but funding sources are limited as the Project may not be eligible for Prop A or C funds.

RECOMMENDATION



RECOMMENDATION to INCREASE the Life-of-Project (LOP) budget for the Regional Connector Transit Corridor Project (Project) by \$39,000,000 from \$1,755,840,570 to \$1,794,840,570 to fully resolve claims and complete the close out the Project.