

Revised Agenda Item No. 30

Board of Directors Meeting

**March 6, 2024
10:00 AM**

Location

**San Bernardino County Transportation Authority
First Floor Lobby Board Room
1170 W. 3rd Street, San Bernardino, CA 92410**

DISCUSSION ITEMS

Toll Operations

30. Interstate 10 Corridor Freight and Express Lanes Project - Contract 1 - Program Budget and Funding Plan Update, Amendment No. 5 to Agreement No. 17-1001736, Sole Source Amendment No. 2 to Contract 23-1002956, and Amendment No. 5 to Contract 16-1001530

That the Board, acting as the San Bernardino County Transportation Authority (SBCTA):

A. Approve Interstate 10 Corridor Freight and Express Lanes Project - Contract 1 Program Budget and Funding Updates shown within Table 1 as of February 2024, increasing the project budget by ~~\$13,533,671~~ **\$14,133,671**, from \$948,909,091 to ~~\$962,442,762~~ **\$963,042,762**.

B. Allocate \$8,085,961 in federal formula Surface Transportation Block Grant Program (STP) funds for a new total of \$168,193,023 and ~~\$3,491,530~~ **\$4,091,530** in Measure I Freeway Program funds for a new total of ~~\$92,491,530~~ **\$93,091,530** for the project.

C. Approve Amendment No. 5 to Cooperative Agreement No. 17-1001736 with California Department of Transportation (Caltrans) for the Design-Build and Right-of-Way phases, increasing the STP funding by \$8,085,961 and decreasing the Measure I funding by \$6,602,155 for a new cooperative agreement total of \$872,735,746; and authorize the Executive Director, or his designee, to execute the amendment upon approval as to form by SBCTA General Counsel.

D. Approve **Sole Source** Amendment No. 2. to **Sole Source** Contract No. 23-1002956 with Theodora Oringer, P.C., for representation regarding contractor claims and litigation, increasing the contract amount by \$14,085,743, for a new not-to-exceed contract amount of \$16,785,743, to be funded with Measure I Valley Freeway Program funds and authorize the Executive Director, or his designee, to execute the amendment upon approval as to form by SBCTA General Counsel.

E. Approve an increase for contingency to Contract No. 17-1001617 with TransCore LP in the amount of \$3,000,000 for a new not-to-exceed amount of \$43,821,607 in contract value, option and contingency.

F. Approve Amendment No. 5 to Contract No. 16-1001530 with HNTB Corporation, for Project and Construction Management (PCM) services for the Interstate 10 Corridor Freight and Express Lanes Project - Contract 1, increasing the contract amount by \$3,000,000, for a new not-to-exceed contract amount of \$77,020,890.78, extend the contract term through December 31, 2026, and authorize the Executive Director, or his designee, to execute the amendment upon approval as to form by SBCTA General Counsel and upon receipt of valid insurance certificates and Caltrans' approval of Exhibit 10-C Consultant Contract Reviewer Checklist.

This agenda item has been revised to account for additional start-up costs required by the Transportation Corridor Agencies (TCA) to account for servicing the SBCTA Customer Service Center in Rancho Cucamonga City Hall and Express Lanes business rules that are incompatible with TCA's current practices.

Minute Action

REVISED AGENDA ITEM: 30

Date: March 6, 2024

Subject:

Interstate 10 Corridor Freight and Express Lanes Project - Contract 1 - Program Budget and Funding Plan Update, Amendment No. 5 to Agreement No. 17-1001736, Sole Source Amendment No. 2 to Contract 23-1002956, and Amendment No. 5 to Contract 16-1001530

Recommendation:

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Background:

The Interstate 10 (I-10) Corridor Freight and Express Lanes Project - Contract 1 (Project); San Bernardino County Transportation Authority's (SBCTA) first Design-Build (DB) Express Lanes project, managed by a combination of in-house staff, consultants, and California

Entity: San Bernardino County Transportation Authority

Department of Transportation (Caltrans) team members, is currently under construction and requires a significant support team to fully manage. Due to the magnitude and financing of the Project, financial reporting is required to both the Federal Highway Administration (FHWA) and the US Department of Transportation (USDOT). FHWA has designated the Project as a Major Project, as the Project has an alternative delivery method employed. As such, SBCTA is required to annually update the Project's financial plan for issuance to FHWA for review and approval. In addition, monthly reporting to USDOT is required as part of the Transportation Infrastructure Finance and Innovation Act (TIFIA) loan.

To fully update and reconcile the Project costs required for the successful completion of the Project, staff recommends that the SBCTA Board of Directors (Board) review and authorize necessary contractual changes and financial adjustments discussed herein.

In January 2023, the Board approved a budget increase in the amount of \$14,012,063, for a revised programmed amount of \$943.1 million, to account for additional Caltrans and Project Construction Management (PCM) support provided by HNTB Corporation due to delays in Project construction. At that time, the time extension anticipated for construction was nine months.

In March 2023, the Board approved a budget increase in the amount of \$5.8 million, for a revised programmed amount of \$948.9 million, to account for additional Program Management, Public Outreach and Project Development support as well as Transportation Corridor Agencies (TCA) startup costs. Also in March 2023, the Board approved a sole source agreement (Contract No. 23-1002956) with Theodora Oringer, P.C. (TO) with a not-to-exceed amount of \$650,000 for legal representation related to contractor claims and litigation. To prepare appropriately for mediation for Project related claims by the contractor, this agreement was amended in July 2023 to increase the contract amount by \$2,050,000 for a revised contract total of \$2,700,000. This increase was funded by a like decrease in the right-of-way budget, resulting in no impact on the total programmed amount of \$948.9 million.

This item is intended to provide a current project overview and cost update and an explanation of recommended budget refinements. Collectively, these recommended Board actions will result in a budget increase of ~~\$13,533,671~~ **\$14,133,671** to the current programmed amount of \$948.9 million. This represents an increase of approximately ~~1.4%~~ **1.5%** from the current programmed amount to a new total programmed amount of ~~\$962.4~~ **\$963.0** million as shown in Table 1.

Project construction is approximately 92% complete. Currently the Project is estimated to be complete and the express lanes open to revenue service in May/June 2024. Staff has reviewed the current Project budget and is proposing several funding updates as discussed herein.

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Table 1- Funding Plan Update (February 2024)

	Original Budget	January 2023 Update	March/July 2023 Update	March 2024 Update	Budget Increase/ (Decrease)
Program Management	\$15,625,530	\$12,625,530	\$14,325,530	\$14,465,530	\$140,000
Prelim Eng. and Environmental	\$8,828,472	\$8,828,472	\$8,828,472	\$8,828,472	\$0
Project Development	\$8,607,500	\$7,857,500	\$11,007,500	\$25,022,796	\$14,015,296
Project Construction Management	\$51,994,950	\$76,311,934	\$76,311,934	\$79,311,934	\$3,000,000
Project Construction Management Contingency	\$1,005,050	\$3,000,129	\$3,000,129	\$3,000,129	\$0
Caltrans Support (PE)	\$1,400,000	\$400,000	\$400,000	\$350,000	(\$50,000)
Caltrans Support (Right-of-Way/DB Construction)	\$17,900,000	\$21,000,000	\$23,000,000	\$23,000,000	\$0
Design Build Contract	\$672,900,000	\$675,945,146	\$685,678,938	\$710,635,368	\$24,956,430 CCOs to date
Design Build Contingency/ Supplemental Work	\$73,265,930	\$48,820,784	\$39,086,992	\$14,130,562	(\$24,956,430) CCOs to date
Toll Service Provider w/ Contingency (Capital Only)	\$20,405,596	\$20,405,596	\$20,405,596	\$21,972,971	\$1,567,375
Toll Collection System w/Contingency	\$0	\$0	\$1,000,000	\$1,000,000 \$1,600,000	\$0 \$600,000
Right of Way	\$46,000,000	\$56,500,000	\$54,300,000	\$53,300,000	(\$1,000,000)
Landscape Maintenance	\$4,200,000	\$4,200,000	\$4,200,000	\$4,200,000	\$0
Financial Costs	\$6,964,000	\$7,214,000	\$7,364,000	\$3,225,000	(\$4,139,000)
Total	\$929,097,028	\$943,109,091	\$948,909,091	\$962,442,762 \$963,042,762	\$13,533,671 \$14,133,671

Project Construction Management (PCM)

In December 2016, the Board approved Contract No. 16-1001530 with HNTB Corporation to provide PCM services for the Project. HNTB Corporation began providing the services via a Board-approved purchase order (PO) in December 2016. A total of \$2,291,043.22 was expended

San Bernardino County Transportation Authority

under that PO. HNTB Corporation started to provide the services under the Board-approved contract once SBCTA received approval from Caltrans. These services included development of the draft and final Design Build (DB) Request for Qualifications and Request for Proposals, participation in contract negotiations, and provision of PCM services through the completion of construction. The PCM contract was amended in May 2017 to include State-required compliance terms and amended again in January 2018 to include additional support and funding required to manage the additional State Highway Operations and Protection Program (SHOPP) improvements added to the Project, increasing the contract amount to \$48 million. The contract was amended for a third time in January 2021 to increase the contract value to \$57.3 million and to increase the original \$5 million contingency to \$8 million. As a result, the revised PCM budget was \$65,300,000. The PCM contract was amended most recently in January 2023 to account for the DB Contractor forecast delay in completing project construction. The contract value was increased by \$11,012,063 to \$76,311,934 and an additional \$3 million in contingency was approved for an overall PCM budget of \$79,312,063.

Amendment No. 5 accounts for additional PCM funding in a not-to-exceed amount of \$3 million to support legal activities that are anticipated to extend beyond Project completion and other related PCM support work. Amendment No. 5 also extends the PCM contract term through December 31, 2026. This increase would increase the PCM contract value, including the amount funded through the PO, by \$3 million to \$79,311,934 and the overall PCM budget to \$82,312,063.

Public Outreach

This update provides additional funding for SBCTA outreach efforts, which is a critical aspect of successful project delivery and messaging to the community. The Costin Public Outreach Group, a separate consultant team providing this effort for the Project, consistently provides timely and accurate project information to more than 250,000 daily commuters, hundreds of thousands of local residents, and numerous businesses along the 10-mile corridor. The information, provided on a regular basis using various tools, shares details of the construction project to the communities and general public, so that they may be well informed while traveling throughout the western portion of the county. The team also routinely addresses unanticipated construction impacts and sometimes engages as first line customer management staff, easing concerns over field conditions or changes throughout the Project. The additional \$140,000 will allow this team to perform outreach efforts and related services during construction closeout and completion of punch list items.

Project Development

Project mediation was held in October 2023 and was unsuccessful in resolving a significant contractor claim. As litigation in this matter will continue, TO provide a cost proposal to provide litigation support throughout the remainder of the project. An additional estimated budget of \$14,085,743 is recommended to support litigation of contractor claims and continued claim support. This legal budget estimate is predicated on various assumptions regarding the anticipated direction and duration of litigation of project matters. If actual project activities require an adjustment of the legal support budget, a revised budget request will be brought before the Board at that time for consideration. This increase to the legal budget is offset by minor savings in other areas of Project Development, resulting in an overall increase of \$14,015,296 to the Project Development budget.

Amendment No. 2 to sole source Contract No. 23-1002956 with TO increases the contract by \$14,085,743 for a revised not-to-exceed amount of \$16,785,743 for legal representation related to contractor claims and litigation.

Toll Service Provider

In June 2018, the Board approved Contract No. 17-1001617 with TransCore LP, as the Toll Service Provider (TSP) for I-10 Express Lanes Contract 1 in the amount of \$27,839,626. The contract includes \$18,550,595 in capital cost and \$9,289,031 in Operations and Maintenance costs for five years upon revenue commencement. Additionally, the Board approved a contingency of \$1,855,000 for the capital cost as part of the TSP budget. In October 2022, the Board approved Amendment No. 1 to Contract No. 17-1001617 increasing the not-to-exceed amount by \$10,115,481 to \$37,955,108 for exercising I-15 Express Lanes Contract 1 TSP Option (Option) with a contingency amount of \$1,011,500 as shown in Table 2. By exercising the Option, TransCore LP will provide design, development, and implementation of the toll collection system and Operations and Maintenance of the I-15 Express Lanes Contract 1 system for five years after revenue service commencement. TransCore LP Operations and Maintenance cost is funded with toll revenue once Express Lanes revenue commencement begins.

Table 2- Toll Service Provider (TransCore) Contract Summary

TransCore LP Toll Service Provider (TSP)	I-10 Contract 1 Original Budget	I-10 Contract 1 March 2024 Update	Increase/ Decrease	I-15 Contract 1 Option
Capital	\$18,550,595	\$18,550,595	\$0	\$7,962,088
Capital Contingency	\$1,855,000	\$3,422,375	\$1,567,375	\$796,200
Operations & Maintenance	\$9,289,031	\$9,289,031	\$0	\$2,153,393
Operations & Maintenance Contingency	\$0	\$1,432,625	\$1,432,625	\$215,300
Total without Contingency	\$27,839,626	\$27,839,626	\$0	\$10,115,481
Total	\$29,694,626	\$32,694,626	\$3,000,000	\$11,126,981

As a result of the construction delay, TransCore LP has experienced additional costs to retain key staff on the project and for performing inspection of DB Contractor work. SBCTA maintains that the increased cost as a result of the delay is the responsibility of the DB contractor, and SBCTA will work through the litigation process to recoup the amount of this delay change order to the TransCore LP contract from the DB Contractor. Staff is requesting a \$3 million increase in contingency to address a change order from TransCore LP as a result of the construction delay. Considering the remaining Board-approved contingency of \$1,432,625, this results in an increase of \$1,567,375 to the Project budget.

Toll Collection System

In January 2018, the Board approved Cooperative Agreement No. 18-1001854 with TCA for the provision of toll transaction and violation processing, customer service and account management, and other toll operations related services for Express Lanes within San Bernardino County Transportation Authority

Bernardino County. The agreement stated that SBCTA is responsible for all startup cost such as design, development, testing and training for additional customer service representatives.

As noted above, the Board approved a budget increase in March 2023 to account for Express Lanes maintenance startup costs required to beginning operations such as purchasing a bituminous machine for delineator maintenance, spare Express Lanes signage, customer service walk in center furniture, equipment, and other related costs.

Based on an updated toll service implementation cost estimate from TCA an additional \$600,000 is necessary to cover work elements items not initially incorporated within the March 2023 project budget or anticipated in Agreement No. 18-1001854. These additional funds will cover cost increases due to additional work needed to be compliant with recent state tolling legislation (Assembly Bill 2594, Ting), servicing the SBCTA customer service walk in center and addressing SBCTA toll business rules that are incompatible with TCA's current business practices.

Right-of-Way (ROW) Acquisition

Upon review of the current status of ROW acquisition activities completed to date, staff has identified remaining budgets that may be shifted and utilized for other project work. With most of the ROW activities completed, staff recommends that \$1 million of this remaining budget be shifted and used for other activities as shown in Table 1 herein.

Financial Costs

The current Financial Costs budget includes the \$4,139,000 necessary for the initial deposit to the operations and maintenance reserve. The Board approved a budget amendment on September 4, 2023, to fund the initial deposit to the operations and maintenance reserve, currently estimated at \$5,104,000, with Measure I investment from future toll revenue. Therefore, this cost can be removed from the Project budget.

Caltrans Support Cost

Because the Preliminary Engineering (PE) phase is complete, staff recommends removing \$50,000 of Measure I Freeway Program funds remaining in the Caltrans PE Support budget to be used in other areas of the Project budget.

Caltrans Cooperative Agreement Amendment

To complete the amendment and implement the Funding Plan Updates shown within Table 1, amendments and certain fund programming allocations are necessary at this time. Amendment No. 5 to Cooperative Agreement No. 17-1001736 is needed with Caltrans to update the funding table to increase the federal formula Surface Transportation Block Grant Program (STP) funds and to decrease the Measure I Freeway Program funds in order to accommodate these cost increases. Staff has analyzed the current STP programming capacity and has determined that an additional \$8.1 million can be programmed for this Project without impacting other planned STP-funded projects. Because many of the cost increases described above are not federally eligible, staff will remove local funds as needed from contingency and backfill with the increased STP funds to minimize the burden on Measure I.

Financial Impact:

The Project is included in the adopted Budget for Fiscal Year 2023/2024 and funded with various State, Federal, Local and Measure I Freeway and Interchange funds in Program 40, Project Delivery.

Reviewed By:

This item was reviewed and recommended for approval (17-0-0) with a quorum of the Board present at the Board of Directors Metro Valley Study Session on February 15, 2024. This item has been amended after approval by the Metro Valley Study Session to increase the project budget by an additional \$600,000 to account for additional start up costs required to ensure consistency with recent state tolling legislation, development and servicing of the SBCTA customer service walk in center, and address SBCTA business rules that are incompatible with current Transportation Corridor Agencies practices. SBCTA General Counsel and Risk Manager have reviewed this item and the draft amendments.

Responsible Staff:

Timothy Byrne, Director of Express Lanes

Approved
Board of Directors
Date: March 6, 2024

Witnessed By: