



**April 9, 2020**

**To:** Transit Committee

**From:** Darrell E. Johnson, Chief Executive Officer

**Subject:** Contract Change Order for Utility Conflicts for the Construction of the OC Streetcar Project

### **Overview**

On September 24, 2018, the Orange County Transportation Authority Board of Directors approved Agreement No. C-7-1904 with Walsh Construction Company II, LLC, for construction of the OC Streetcar project. A contract change order is required for necessary work to address continuing utility conflicts.

### **Recommendation**

Authorize the Chief Executive Officer to negotiate and execute Contract Change Order No. 4.2 to Agreement No. C-7-1904 with Walsh Construction Company II, LLC, in the amount of \$2,426,000, for work to address utility conflicts for the construction of the OC Streetcar project.

### **Discussion**

On September 24, 2018, the Orange County Transportation Authority (OCTA) Board of Directors (Board) awarded the contract to construct the OC Streetcar project (Project) to Walsh Construction Company II, LLC (Walsh). The Notice to Proceed with Construction was issued to Walsh on March 4, 2019. Construction activities are underway, with the focus on construction of the Maintenance and Storage Facility and the underground storm drain, sewer, and water utility relocations within City of Santa Ana (City) streets. Installation of foundations and retained approaches for both the new 350-foot long bridge across the Santa Ana River and the bridge over Westminster Avenue is also underway.

Walsh continues to encounter many unknown utility lines during the underground relocation work that are neither shown on the contract plans nor on City and private utility record maps. Additionally, Walsh is continuing to encounter underground utilities that are not in the locations reflected in utility records and

not as noted on the plans. When unidentified utilities are encountered, or when utilities are at a different location than shown on the plans, Walsh notifies OCTA and requests direction to resolve the conflict. Additional potholing is often necessary to confirm the utility type and location for supporting design change decisions. Work to alleviate the utility conflict can include cutting and capping the utility or relocating the utility.

The Project is being constructed in one of the oldest developed areas of the City, and contains old and abandoned utilities dating back approximately 150 years. Many of these old and abandoned utilities are not documented on City utility base maps or in utility company records. Significant efforts were undertaken during the design phase of the Project to identify existing utilities and develop plans for relocation or protection for those determined to conflict with the Project. It is not possible to exactly locate all the known and unknown existing underground utilities without trenching for the new installations and exposing as-built conditions to identify unknown conflicts. The type of potholing allowed by the City and performed during the design could only be used to verify the location and depth of critical utilities shown on record maps.

On April 15, 2019, Contract Change Order (CCO) No. 4.0 was issued to Walsh, in the amount of \$200,000, for work to address unknown utilities on a time-and-expense basis. CCO No. 4.0 included potholing, cutting, capping, and/or relocating unidentified or mislocated utilities to different locations or elevations. As the work progressed, numerous additional unknown and existing mis-located utilities were encountered. This required additional efforts by Walsh to eliminate the conflicts, with the cost of the work exceeding the approved CCO No. 4.0 budget.

Supplemental CCO No. 4.1, in an amount not to exceed \$833,000, was approved by the Board on November 25, 2019, and issued to Walsh for continued work to address the utility conflicts. The amount of CCO 4.1 was an estimate of the cost for the remaining work and was based on the assumption that the conditions encountered in the initial stages of work for sewer and water lines would remain consistent for the duration of the work, including relocations of storm drains.

As work continued on sewer and waterline relocations and commenced on the remaining storm drain relocations, it became apparent that the utility conflicts encountered by the contractor are more complex than anticipated, requiring extensive redesign work and additional construction to eliminate the conflicts. As a result, the funds in CCO No. 4.1 are nearly depleted, and additional funding is required to address utility conflicts with the remaining storm drain, sewer, and waterline construction. The current status of completed work is 85 percent of the sewer line construction, 45 percent of the water line formation, and 15 percent of the storm drain relocations.

An independent cost estimate, which provides an order of magnitude cost for the continued work to address unknown utility conflicts, has been prepared by the construction management team. The cost of the additional work is estimated at \$2,426,000, and includes conservative assumptions on the number of unknown utility conflicts that may be encountered, and the associated work to address the conflicts based upon experience to date with the completed sewer, waterline, and storm drain work. This estimate reflects the significant efforts required to address conflicts encountered with the storm drain relocations, including trench potholing that involves opening up a large section of the street to expose and survey all potential conflicts, re-design, coordination with the City and affected third-party utilities, and relocation work. The storm drain work was commencing at the time of the preparation of CCO No. 4.1, and the full extent of conflicts and required work to address the conflicts was not known.

Proposed supplemental CCO No. 4.2, to augment CCO nos. 4.0 and 4.1 by \$2,426,000, for the remaining work to address unknown utility conflicts requires Board approval. This CCO is paid on a time-and-materials basis to the contractor after labor and equipment quantities are confirmed through daily extra work reports prepared by the contractor, and approved by the construction management team. Deductive change directives will be issued for work included in the original contract that was not performed.

Walsh has also requested time-related overhead be paid as part of the CCO because the Project schedule may be impacted. It was agreed that the request would be deferred until the required time impact evaluation is provided and reviewed by OCTA. Staff will return to the Board for approval of any required supplemental costs related to the change when the final impacts have been agreed to by both OCTA and Walsh.

The cost of the work will be funded from the Project contingency because the work was unknown and not evident when the Project cost estimate was prepared. It will not increase the Project cost of \$407.7 million, as defined in the Full Funding Grant Agreement.

### ***Procurement Approach***

The initial procurement was handled in accordance with OCTA's Board-approved procedures for public works projects. These procedures, which conform to both federal and state requirements, require that contracts are awarded to the lowest responsive, responsible bidder after a sealed bidding process. On September 24, 2018, the Board authorized Agreement No. C-7-1904 with Walsh, in the amount of \$220,638,549, for construction of the Project.

Proposed CCO No. 4.2, in the amount of \$2,426,000, will increase the cumulative value of the contract to \$233,550,377, as shown in Attachment A. Board approval is required for CCO No. 4.2, pursuant to the State of California Public Contracting Code Section 20142.

**Fiscal Impact**

The additional work for this Project is included in OCTA's Fiscal Year 2019-20 Budget, Capital Programs Division, Account 0051-9017-TS010-Z42, and is funded with Federal Section 5309 New Starts and local Measure M2 funds.

***Summary***

Staff recommends Board of Directors' authorization for the Chief Executive Officer to negotiate and execute Contract Change Order No. 4.2 to Agreement No. C-7-1904 with Walsh Construction Company II, LLC, in the amount of \$2,426,000, for continued work to address utility conflicts for the OC Streetcar project.

***Attachment***

- A. Walsh Construction Company II, LLC, Agreement No. C-7-1904,  
Contract Change Order (CCO) Log

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