



January 9, 2020

To: Transit Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: Contract Change Order for Removal and Disposal of Contaminated Materials Within the Orange County Transit District-Owned Pacific Electric Right of Way and Other Project Areas for the OC Streetcar Project

Overview

On September 24, 2018, the Orange County Transportation Authority Board of Directors authorized 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 the continued removal and disposal of contaminated materials within the Orange County Transit District-owned Pacific Electric Right of Way as well as other project areas.

Recommendation

Authorize the Chief Executive Officer to negotiate and execute Contract Change Order No. 3.1 to Agreement No. C-7-1904 with Walsh Construction Company II, LLC, in the amount of \$7,278,795, for the removal and disposal of contaminated materials within the Orange County Transit District-owned Pacific Electric Right of Way and other project areas for the construction of the OC Streetcar project.

Discussion

On September 24, 2018, the Orange County Transportation Authority (OCTA) awarded the contract for construction of 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, storm drain, sewer, and water system relocations within City of Santa Ana (City) streets. Installation of foundations

and retained approaches for the new 350-foot-long bridge across the Santa Ana River and the bridge over Westminster Avenue is also underway.

The Project utilizes approximately two miles of the Pacific Electric Right of Way (PEROW) between Raitt Street northwest to Harbor Boulevard. Historically, rail operations have been known to use weed control substances and experience spills and leaks that could cause environmental impacts. The construction contract requires Walsh to remove the top one foot of soil in the PEROW, stockpile the materials, and test the soil against regulatory limits. The soil testing results revealed that some soil exceeds the California hazardous waste criteria for arsenic and petroleum hydrocarbons, and some soil was deemed contaminated non-hazardous. Other soil was determined to be uncontaminated and can be reused on the Project or transported to a local landfill. Concentrations of the contaminants are somewhat irregular.

On August 27, 2019, the OCTA Board of Directors (Board) approved Contract Change Order (CCO) No. 3, in the amount of \$1,600,000, for the removal and disposal of contaminated materials from the top one foot of soil within the PEROW. The work has been proceeding, with the soil transported to disposal facilities based upon the soil testing and profile results. Walsh is being paid on a time-and-materials basis.

In addition to the top one foot of soil, deeper excavations are required in the PEROW for several Project elements, including retaining walls, bridge abutments, storm drains and ditches, utility duct banks, overhead catenary foundations, and the track bed. In preparation for this work, Walsh advised that due to the quantities of contaminated soil being generated by the Project, disposal facilities are requiring soil testing for soil profiling to minimize liability.

Soil testing was conducted in these excavation areas this fall. The results revealed that while some soil can be reused on the Project, soil in several segments exceeded the California and federal hazardous waste criteria for arsenic and petroleum hydrocarbons, and some soil was determined to be contaminated non-hazardous. Similar to the top one foot of soil, this level of contamination and the subsequent requirements for removal was unanticipated based on the results of the 2017 Limited Phase II Environmental Site Assessment conducted during the Project design.

Excavations are also occurring within City streets for the relocation of storm drains and sewer and water lines, with the track bed scheduled to be excavated in early 2020. Most of this soil must be hauled off as it must be replaced by crushed rock bedding and material with a high sand content, per requirements of City technical specifications. Testing of the soil excavated from several utility relocations revealed that some of the soil exceeded California hazardous waste

criteria for arsenic and some soil was determined to be contaminated non-hazardous. Soil that exceeds the California and federal hazardous waste criteria must be transported off-site to approved disposal facilities. Contaminated non-hazardous soil which cannot be reused on the Project must be transported to approved disposal facilities because contamination levels exceed local landfill waste acceptance criteria. The facilities accepting the hazardous soil and contaminated non-hazardous soil are a substantial distance from the Project, resulting in higher transportation and disposal costs.

Walsh has also been encountering a significant amount of buried railroad ties during the excavations. The ties were part of the Pacific Electric 'Redcar' that operated until 1950. The ties are treated with chemicals that are potentially hazardous to human health. State regulations require the ties be taken to designated disposal facilities.

The cost of the work to address the contamination is expected to significantly exceed the approved CCO No. 3 budget. Staff is recommending that a supplemental CCO be approved for the additional removal and disposal of the contaminated and hazardous soil that cannot be reused on the Project, as well as the disposal of the treated wood waste. An independent cost estimate, which provides an order of magnitude cost for the additional anticipated work, has been prepared by the construction management team. The cost of the additional work is estimated at \$7,278,795.

The contractor will be paid on a time-and-materials basis. Before payment is made to the contractor, quantities will be confirmed through surveys and disposal facility records, and the soil classification and disposition checked against the final testing results. Deductive change orders will be issued for any work included in the original contract that was not performed.

The cost of the work will be funded from the Project contingency because the extent of contaminated soil that requires removal was not discovered nor evident when the Project cost estimate was prepared. This will not increase the Project cost of \$407,759,966, 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. 3.1, in the amount up to \$7,278,795, will increase the cumulative value of the contract to \$231,124,377, as shown in Attachment A. Board approval is required for CCO No. 3.1, pursuant to the State of California Public Contracting Code Section 20142.

Fiscal Impact

The additional work described in CCO No. 3.1 is included in OCTA's Fiscal Year 2019-20 Budget, Capital Programs Division, Account 0051-9017-TS010-Z40, and is funded with Federal 5309 New Starts and local Measure M2 funds.

Summary

Staff recommends Board authorization for the Chief Executive Officer to negotiate and execute CCO No. 3.1 to Agreement No. C-7-1904 with Walsh, in the amount of \$7,278,795, for the additional removal and disposal of contaminated materials on the PEROW for the Project.

**Contract Change Order for Removal and Disposal of
Contaminated Materials Within the Orange County Transit
District-Owned Pacific Electric Right-of-Way and Other
Project Areas for the OC Streetcar Project**

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Attachment

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

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