



**February 11, 2021**

**To:** Transit Committee

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

**Subject:** Amendment to Agreement with First Transit, Inc., for the Provision of Contracted Fixed-Route Service

### **Overview**

On March 23, 2015, the Orange County Transportation Authority Board of Directors approved an agreement with First Transit, Inc., for the management and operation of contracted fixed-route OC Bus service. Since March 23, 2020, as a result of the coronavirus pandemic, OC Bus fixed-route service has been significantly reduced. Because of the sustained operation of reduced service levels, and consistent with the terms of the agreement, First Transit, Inc. has requested an amendment to adjust the contract rates, and to be reimbursed for additional costs incurred as a result of the coronavirus pandemic. The Coronavirus Aid, Relief, and Economic Security Act of 2020, specifically provides for this relief with guidance from the Federal Transit Administration. Staff requests approval of an amendment to the agreement with First Transit, Inc., to adjust the contract rates for the service provided from June 14, 2020 through May 31, 2021, and to increase the amount of coronavirus pass-through funds by \$3,149,737.

### **Recommendations**

- A. Authorize the Chief Executive Officer to negotiate and execute Amendment No. 12 to Agreement No. C-4-1737 between the Orange County Transportation Authority and First Transit, Inc. to adjust the rates for the provision of contracted fixed-route OC Bus service, and increase the maximum reimbursement necessary to cover actual expenses due to the coronavirus pandemic an additional \$3,149,737, for an amount not to exceed \$4,969,679, from June 14, 2020 through May 31, 2021. In addition, authorize scope of work modifications to clarify performance expectations.

- B. Approve an amendment to the Orange County Transportation Authority Fiscal Year 2020-2021, Operations Division Budget, in the amount of \$4,415,312.

***Discussion***

The Orange County Transportation Authority (OCTA) Board of Directors (Board) awarded a contract to First Transit, Inc. (First Transit), to provide management, operations, and vehicle maintenance of contracted fixed-route service in March 2015. The original agreement was for an initial term of four years, with two, two-year option terms. The contract reimbursement structure includes both a fixed monthly rate and a variable hourly rate that are based on an assumed number of revenue vehicle hours (RVH) to be operated during each year of the contract.

The contract has been amended 11 times, most recently in June 2020 and December 2020, to provide financial relief because of coronavirus (COVID-19)-related impacts between March 22, 2020 and May 31, 2021. All amendments to this agreement are detailed in Attachment A.

In response to the COVID-19 pandemic, the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 was established. The CARES Act provides funds to prevent, prepare for, and respond to the COVID-19 pandemic's impacts. With guidance from the Federal Transit Administration, this includes operating expenses defined as the costs necessary to operate, maintain, and manage a public transportation system, and other expenses such as driver salaries, fuel, and items having a useful life of less than one year, including personal protective equipment and cleaning supplies.

In March 2020, OC Bus fixed-route service was reduced to Sunday service levels seven days a week, approximately 40 percent of service provided on weekdays prior to the COVID-19 pandemic. This reduced the amount of service provided by First Transit by more than 50 percent. In June 2020, OCTA restored OC Bus service to a Saturday service level six days a week, returning to roughly 60 percent of the weekday service levels provided pre-pandemic. This increased the level of service provided by First Transit to approximately 67 percent of the service they had provided pre-pandemic. The current service level, effective October 2020, provided a slight increase to the service provided by First Transit. The current service plan will retain October service levels through June 12, 2021.

Consistent with the agreement's scope of work, First Transit structured the monthly and hourly contract rates based on providing 660,000 annual RVH. Under

the current service plan, First Transit will provide approximately 415,000 RVH from June 14, 2020 through May 31, 2021 (the end of the first two-year option term). As a result of the significant decrease in the level of service provided, First Transit has requested an adjustment to the current contract rates as further outlined below; requests of this type are permitted within the terms of the contract.

*Proposed Rate Adjustment:* Following several months of negotiations, OCTA staff and First Transit have reached agreement on a proposed adjustment of the variable hourly rate for the current fiscal year from \$67.25 to \$69.90. The annual cost of this rate adjustment assuming 415,000 RVH is \$1.1 million. During contract rate negotiations, certain costs currently included in the variable hourly rate were identified as more appropriate to include in the fixed monthly rate. Shifting these costs from the variable rate to the fixed rate resulted in an increase to the fixed monthly rate from \$238,410 to \$246,122.

In addition to changes to the fixed monthly and hourly rates, additional COVID-19-related expenses were identified for the current operating year, estimated to be up to \$3,149,737. This amount, in addition to the \$1,819,942 previously authorized, totals \$4,969,679 of COVID-19-related expenses funded through the CARES Act. First Transit is responsible to provide detailed back-up documentation to justify the expenses related to COVID-19 impacts.

	Revenue Vehicle Hours	Fixed Monthly Rate	Variable Hourly Rate	Pass-Through Estimate for COVID-19 costs
Existing Rates	660,000	\$238,410	\$67.25	
CARES Act Pass-Through Previously Approved				\$1,819,942
<b>RECOMMENDATION:</b>				
Proposed Rates	415,000	\$246,122	\$69.90	
Additional CARES Act Pass-Through				\$3,149,737
Total CARES Act Pass-Through				<u>\$4,969,679</u>

Rather than adjust the hourly or monthly rate with costs that are COVID-19-related and temporary, it is prudent to separate these costs. COVID-19-related costs will be reimbursed with CARES Act funds following a careful review of actual costs incurred by First Transit. Keeping COVID-19-related costs separate from the hourly and monthly rates will continue to provide OCTA with a rate structure based on ongoing operational expenses.

*Proposed Scope of Work Clarifications:* Attachment B provides a list of scope of work, or contract language revisions, in order to clarify the performance standards implemented with the associated penalties and incentives. The revision to the on-time performance standard was included by staff. The preventive maintenance revision was developed by staff in response to First Transit's request for greater clarity regarding the penalties. First Transit requested a discontinuation of lost time deductions and missed trips that occur because of factors verifiably beyond the contractor's control. In addition, staff included contract language defining compensation for providing unscheduled service at OCTA's request, such as bus bridges for Metrolink rail service. Although payment for this type of service is not explicitly included in the scope of work, First Transit has, on occasion, been dispatched to provide this service, and the revised language ensures the contract language reflects on-going practices.

Staff will adjust oversight procedures to adapt to the revised preventive maintenance penalty, and to incorporate documentation of the instances where lost service time or missed trips are determined to be beyond the contractor's control.

*Next Steps:* The current agreement with First Transit expires on May 31, 2021. At this time, staff anticipates returning to the Board before that time to request approval of the remaining two-year option term. If approved, the final two-year option term will extend the current agreement through May 31, 2023.

### ***Procurement Approach***

This procurement was handled in accordance with OCTA's Board-approved policies and procedures for professional and technical services.

The proposed Amendment No. 12 includes the negotiated rates for the reduced service level as a result of the COVID-19 pandemic, effective June 14, 2020 through May 31, 2021, as well as the estimated additional pass-through reimbursement of COVID-19-related expenses incurred from June 14, 2020 through May 31, 2021.

OCTA staff from the Contracts Administration and Materials Management, Financial Planning and Analysis, and Bus Operations departments have reviewed all itemized expenses and found the adjusted rates and the estimated pass-through amount to be fair and reasonable.

**Fiscal Impact**

Funds required to accommodate the changes to the fixed and variable rate, as outlined in Amendment No. 12, can be accommodated within OCTA Fiscal Year 2020-21 Operations Division expense budget and will be funded with Local Transportation Funds.

The pass-through portion of the amendment totals a not-to-exceed amount of \$4,969,679. This amount is required to pay for COVID-19-related expenses incurred from June 14, 2020 through May 31, 2021 and will be fully reimbursable via the CARES Act. A portion of the total pass-through amount will require a budget amendment. As a result, staff requests approval of a budget amendment to the OCTA Fiscal Year 2020-21 Operations Division expense and revenue budget in the amount of \$4,415,312.

***Summary***

Staff requests Board authorization for the Chief Executive Officer to negotiate and execute Amendment No. 12 to Agreement No. C-4-1737 between OCTA and First Transit to allow the contractor a rate modification in the current term effective June 14, 2020 through May 31, 2021, authorize reimbursement of an additional \$3,149,737, for a total amount not-to-exceed \$4,969,679 for COVID-19-related costs (separated from the rate modification), and authorize scope of work revisions as noted. Secondly, approve an amendment to the OCTA Fiscal Year 2020-21, Operations Division expense and revenue budget, in the amount of \$4,415,312.

***Attachments***

- A. First Transit, Inc., Agreement No. C-4-1737 Fact Sheet
- B. First Transit, Inc., Agreement No. C-4-1737 Proposed Scope of Work Revisions

**Prepared by:**



---

Eileen Bruggeman  
Section Manager III  
Contracted Services, Operations  
714-560-5846



---

Jennifer L. Bergener  
Chief Operating Officer, Operations/  
Deputy Chief Executive Officer  
714-560-5462



---

Pia Veasapen  
Director, Contracts Administration and  
Materials Management  
714-560-5619