




March 11, 2021

To: Transit Committee
From: Darrell E. Johnson, Chief Executive Officer 
Subject: OC Streetcar Project Supplemental Contingency

Overview

The Orange County Transportation Authority is currently underway with the implementation of the OC Streetcar project. Board of Directors' approval is requested to provide additional funding to supplement the contingency for the project.

Recommendations

- A. Authorize the use of up to an additional \$7.32 million in Measure M2 funds and up to \$8.29 million in additional Federal Congestion Mitigation and Air Quality Improvement Program funds to supplement the contingency for the OC Streetcar project. Along with other previously-approved funding adjustments of \$70,000, this will increase the Federal Transit Administration Full Funding Grant Agreement funding from \$407.76 million to \$423.44 million, with use of federal funds contingent on Federal Transit Administration approval.
- B. Authorize staff to process all necessary amendments to the Federal Transportation Improvement Program and execute or amend all necessary agreements to facilitate the above action.

Background

The Orange County Transportation Authority (OCTA), in cooperation with the City of Santa Ana (City) and the City of Garden Grove, is implementing a modern streetcar running between the Santa Ana Regional Transportation Center in the City and the intersection of Harbor Boulevard and Westminster Avenue in the City of Garden Grove. The OC Streetcar project (Project) will improve transit connectivity and accessibility, increase transit options, relieve congestion, and

provide benefits to the community and traveling public. The Project is being implemented as part of Measure M2 (M2) Project S – Transit Extensions to Metrolink, approved by Orange County voters in November 2006.

Construction of the 4.15-mile Project line involves complex and specialized work, including the installation of embedded track in existing streets, an overhead contact system (OCS) to supply power to the vehicles, stops with canopies, two bridges, and a maintenance and storage facility (MSF).

Discussion

On July 9, 2018, the Board of Directors (Board) approved a Project cost of \$407.75 million. The Project cost was adopted as part of the execution of the Full Funding Grant Agreement (FFGA) with the Federal Transit Administration (FTA) in November 2018 that secured \$148.95 million in federal New Starts discretionary funding for the Project. The FFGA is a contract between OCTA and FTA governing the delivery of the Project. FTA closely monitors implementation of the Project to ensure that the terms of the FFGA are being met. This includes approving any adjustments to the Project scope, cost, or schedule.

Following execution of the FFGA in November 2018, a Notice to Proceed was issued to Walsh Construction Company II, LLC, (Walsh) to commence construction activities. Since that time, work on the Project has progressed with a number of construction activities continuing to advance. A summary of recent construction milestones include: substantial completion of the bridges over Westminster Avenue and the Santa Ana River, completion of utility relocations, installation of embedded track at Bristol Street, and construction and installation of the MSF building floor slabs, the first station at Fairview Street, and the OCS poles. Additionally, vehicle manufacturing activities continue with four of the eight vehicles in testing.

The overall Project, which includes both construction and vehicle production, is approximately 48 percent complete. In terms of the construction effort, many challenges have been encountered as shared with the Board in several prior Project updates. Some of the major challenges include the following:

- The number and nature of utility conflicts encountered was higher and more complex than anticipated.
- An extensive amount of contaminated and hazardous soil was encountered during excavations on the Pacific Electric Right-of-Way (PEROW), city streets, and at the MSF site.

- Additional unforeseen conditions have been encountered, including thicker sections of pavement and unsuitable subgrade conditions within city streets, as well as an abandoned well, underground storage tank, and cultural resources discovery at the MSF.
- Contractor non-compliance with construction quality requirements and quality control plans.
- An extensive number of Requests for Change (RFC) have been submitted by Walsh to address unforeseen conditions, material substitutions, design modifications, and requests made by third parties. The RFCs have resulted in numerous change notices issued.
- An extensive number of Requests for Information (RFI) have been submitted by Walsh seeking clarifications of plans and specifications, design modifications, deviations for constructability, and designer intent. Each RFI requires technical and contractual reviews and may include specialized design disciplines, as well as oversight and approval from partner agencies and other third parties.

These challenges have resulted in OCTA issuing a higher than anticipated number of construction contract change orders (CCO) to Walsh, and requiring an increased level of professional services for technical and contractual reviews and oversight of the work by OCTA and its consultants to ensure that quality, safety, and environmental compliance requirements are met.

To date, OCTA has issued 186 days of additional contract time to Walsh due to delays related to remediation of contaminated soil at the MSF and within the PEROW, and to address delays due to a utility conflict delaying the relocation of a major storm drain. This additional contract time also requires contract extensions for professional services and staff resources for a longer duration than originally estimated.

As of January 2021, \$34.5 million of the \$37.9 million Project contingency has been committed or expended for changes, which includes \$20.6 million for CCOs, \$12.2 million for professional services, and \$1.7 million for vehicles. The original estimate of Project contingency, reviewed and concurred with by FTA, was based on the assessed known risks at the time the Project construction contract was awarded in 2018. Some of the risks have been greater than expected, and there have been additional expenses associated with items not included in the FFGA resulting in Project contingency being drawn down faster than originally forecasted for this stage of construction.

In order to address the impending depletion of contingency, staff planned to seek Board approval of a revised Project funding plan in February 2021 to address both costs incurred to date and anticipated future costs with consideration of upcoming risks. However, in January 2021, FTA advised OCTA that, given the

project challenges it will be performing its own risk assessment to better understand the impacts of Project risks on the cost and schedule. FTA requested that OCTA not finalize the Project cost and schedule until its risk assessment is completed. FTA's concurrence with the Project cost and schedule is necessary to both amend the FFGA and utilize additional federal funds. It is anticipated that FTA's process will be completed in late summer 2021. This additional time will provide more certainty in finalizing the schedule and cost to complete, as some Project risks will be retired and the Project will be further along with the remaining excavation work and MSF building work, costs related to the cultural resources discovery will be finalized, and there will be a better understanding of any potential coronavirus impacts.

To maintain Project progression while the cost and schedule is confirmed by FTA, supplemental contingency funding, in the amount of \$15.68 million, is requested to cover costs anticipated through November 2021. Expected uses of this supplemental contingency include anticipated CCOs, vehicle manufacturing change orders, professional service contract amendments to secure additional efforts and longer durations, as well as anticipated higher costs for upcoming planned contracts. Attachment A includes a breakdown of the expected uses of the supplemental contingency. The \$3.4 million contingency balance shown on the table would also be used to fund upcoming CCOs.

Funding Plan

Staff is proposing to fund the \$15.68 million contingency supplement with \$7.32 million in M2 Project S funds and \$8.29 million in federal Congestion Mitigation and Air Quality Improvement Program (CMAQ) funds, as well as \$70,000 in state Transit and Intercity Rail Capital Program (TIRCP) funds, which were previously approved for the Project funding plan. This is consistent with the Board-adopted Capital Programming Policies and the M2 Ordinance, which require that every effort be made to maximize state and federal funding for M2 projects. The Project is an eligible use for CMAQ funds, and Board policy directs these funds to M2 fixed-guideway and/or M2 high-occupancy or high-occupancy toll operational improvements as a priority. Funding is available that was previously set aside for the high-occupancy vehicle lane component of the State Route 55 (SR-55) Improvement Project from Interstate 405 to Interstate 5. This is due to the SR-55 project recently being awarded \$140 million in SB 1 (Chapter 5, Statutes of 2017) funds, allowing the CMAQ funds reserved for the SR-55 project to be redirected instead to the Project. Use of M2 Project S funding is consistent with the intent of that program to provide funds for extensions to Metrolink.

The additional funding as proposed has a split of approximately 46.9 percent from local M2 funds and 53.1 percent from federal CMAQ funds, which is consistent with the local-to-federal funding split that was established as part of the FFGA. It should be noted that FTA will need to approve the use of the additional federal CMAQ funds once it is in agreement with the final estimated Project cost at completion. In the interim, OCTA will use M2 funds to cover the costs until the additional federal funds are confirmed through an executed grant. The original and proposed funding is provided in the table below:

OC Streetcar Project Proposed FFGA Funding Plan

Funding Programs (in 1,000's)	FFGA	Supplemental Contingency Funding	Proposed FFGA Funding Plan
FTA 5309 (New Starts)	\$148,955	-	\$148,955
FTA 5307	\$13,599	-	\$13,599
CMAQ	\$54,123	\$8,289	\$62,412
State TIRCP	\$25,586*		\$25,586
Subtotal State and Federal	\$242,263*	\$8,289	\$250,552
M2	\$165,565	\$7,321	\$172,886
Total FFGA Funding	\$407,828*	\$15,610	\$423,438

*Includes previously State-approved funding addition of \$0.07 Million in TIRCP

Not included in the table is \$8.6 million in previously-programmed funding that is being used for activities that are non-federally participating and not eligible to be included in the FFGA Project cost, including early environmental phase work and certain right-of-way acquisition costs.

When OCTA approves a programming change for a project, a Capital Funding Plan is provided to allow the Board to consider this change while looking at the overall funding for projects in the transit program. Once approved, the changes noted above will be added into the Capital Funding Program Report for the transit program, which is provided in Attachment B.

Next Steps

Staff will continue to keep the Board apprised of Project progress, including the status of FTA's risk analysis. Upon completion of FTA's review, staff will return to the Board for a recommendation on the overall Project cost to complete and schedule.

Fiscal Impact

Funds are included in OCTA's Fiscal Year 2020-2021 Budget as well as the proposed budget for fiscal year 2021-22, Capital Programs Division, under several professional service and construction accounts for the Project in Fund 0051. This will increase the Project FFGA budget by \$15.68 million, using a combination of M2, CMAQ, and TIRCP funds.

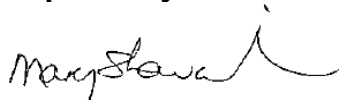
Summary

Staff is seeking Board of Directors' approval of supplemental contingency funds for the OC Streetcar Project, and approval to process all necessary amendments to the Federal Transportation Improvement Program and execute or amend all necessary agreements to facilitate the supplemental contingency funds.

Attachments

- A. OC Streetcar Project Proposed Supplemental Contingency
- B. Capital Funding Program Report

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