



**June 10, 2021**

**To:** Transit Committee

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

**Subject:** Amendment to the 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, Stationlink, and express bus services. The initial term of the agreement expired on May 31, 2019. The first option term was exercised in 2019 and expired May 31, 2021. To ensure continuity of these services, until this item could be finalized and brought before the Board of Directors, an administrative amendment was executed to extend the agreement through June 30, 2021. At this time, staff seeks Board of Directors' approval to exercise the second and final, two-year option term and apply revised rates for the option term through June 10, 2023.

### **Recommendation**

Authorize the Chief Executive Officer to negotiate and execute Amendment No. 14 to Agreement No. C-4-1737 between the Orange County Transportation Authority and First Transit, Inc., in the amount of \$69,714,520, to exercise the second two-year option term to provide contracted fixed-route services through May 31, 2023, with adjustment of the end date to June 10, 2023, and permit reimbursement of First Transit, Inc. expenses related to maintaining a state of readiness and eligible for federal funding at amounts not to exceed \$5,000,000 for the first and \$3,000,000 for the second year of the option term, increasing the maximum obligation of the agreement to a total contract value of \$315,856,805.

### **Background**

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. First Transit began operating the service in June 2015, following the transition from the prior contractor. The original agreement was for an initial term of four years, with two, two-year options. The contract reimbursement structure includes both a fixed rate and variable rate that are estimated based on an assumed number of revenue vehicle hours (RVH) to be operated during each year of the contract. This agreement has been amended 14 times to expand the scope of work to include providing iShuttle services and additional Measure M2 Project V-funded circulators on behalf of cities as well as to exercise the first option term and adjust reimbursement rates.

### ***Discussion***

The contract was most recently amended through approval by the Board in February 2021, to modify the fiscal year (FY) 2020-21 rates and authorize payment of additional financial relief using federal funds for coronavirus (COVID-19) pandemic-related impacts. Previously, the agreement has been amended 13 times, including two amendments, in June 2020 and December 2020, approved by the Board to provide financial relief related to the impacts of the COVID-19 pandemic for the period March 23, 2020 through May 31, 2021. Amendment No. 13 was administratively approved to extend the current contract term from May 31, 2021 to June 30, 2021, to afford staff additional time to re-present the costs associated with exercising the second option term, now presented for approval as Amendment No. 14. All amendments to this agreement are detailed in Attachment A.

*Option Term:* The maximum term for the agreement, including the second and final option term as defined in the original agreement, expires on May 31, 2023. Following the administrative amendment to extend the current option term for one month to June 30, 2021, as noted above, staff seeks Board approval to exercise the second option term effective July 1, 2021, with the first-year rates effective retroactively to the original option term start date of June 1, 2021. Staff also seeks Board approval to exercise this option term with the addition of ten days so the contract will expire on June 10, 2023, which aligns with the planned June 11, 2023 service change. A procurement will be conducted prior to this date to select a contractor to perform these services beginning June 11, 2023, and this ten-day period will facilitate an orderly transition to a new agreement.

*Service Levels:* OCTA has incrementally increased the amount of service provided by First Transit from less than 28 percent in March 2015 to levels ranging between 38 to 40 percent of OC Bus service.

In March 2020, due to the COVID-19 pandemic and the state's stay-at-home order, OC Bus fixed-route service was reduced to Sunday service levels seven days a week, approximately 40 percent of the total service provided on weekdays prior to the COVID-19 pandemic. This in turn reduced the amount of service First Transit provides by more than 50 percent. In June 2020, a Saturday service was implemented six days a week, which resulted in a slight increase to the service levels operated by First Transit, increasing to approximately 67 percent of the service provided pre-pandemic. A small increase is expected in June 2021, and staff will develop service level plans for contracted services through June 10, 2023.

From June 14, 2020 to June 12, 2021, First Transit will provide approximately 415,000 RVH, which is 35 percent of total OC Bus service. During the first year of the second and final option term, it is anticipated some level of additional bus service will be deployed to meet growing demands for service as COVID-19 pandemic-related restrictions continue to ease and weekday traffic patterns begin to return to pre-COVID-19 pandemic conditions. The proposed changes in the option term allow for an agreed-upon adjustment to the rates should service levels increase or decrease 20 percent or more, providing staff with flexibility in meeting service demand as it may change over the next two years. During the second year of the option term, staff will develop a service plan and conduct a procurement for the operation of contract fixed-route services, allowing for an award and transition period to have a new contract in place by June 11, 2023.

*Option Term Rates:* The current agreement does not contain rates reflective of the magnitude of the decrease in service resulting from the COVID-19 pandemic. Staff and First Transit have worked to develop rates for the final two-year option, which will be effective from July 1, 2021 through June 10, 2023, with the first-year rates retroactively applied to the original option term start date of June 1, 2021.

First Transit anticipates additional labor costs associated with the implementation of the state-mandated \$1.00 increase in the minimum wage, effective January 1, 2022. Those costs are spread over the first and second years. The rates for both years reflect a continued reliance on federal funding to off-set COVID-19 pandemic-related expenses and costs associated with maintaining a state of readiness. Reliance on the federal funding is anticipated to gradually subside as the OC Bus service levels increase.

Based on 415,000 RVH, the proposed rates result in a less than five percent increase in total annual cost in both years of the option term.

OC Bus Rates	Fixed Monthly Rate	Percent Increase	Variable Rate	Percent Increase	Annual Cost	Overall Percent Increase
Current Year	\$246,122		\$69.90		\$31,961,964	
Option Year 1	\$255,475	3.80%	\$73.40	5.01%	\$33,526,700	4.90%
Option Year 2	\$265,183	3.80%	\$76.92	4.80%	\$35,103,996	4.70%

To determine a reasonable level of increase to the fixed and variable rates, staff surveyed transit operators who contract for the operation and maintenance of fixed-route service and have current competitive bid proposal results. Recognizing that service delivery models vary and looking at the relationship of percent increase in the overall cost per RVH, the percentage increases range from two and a half percent to six percent.

As previously mentioned, rates have also been developed to allow for flexibility in meeting growing demand for OC Bus service as the COVID-19 pandemic-related restrictions begin to lessen, and the service plan requires changes resulting in an increase or decrease of 20 percent or more; these are provided below. Should either of these occur, staff would present the service plan to the Board consistent with prior practice, and the applicable variable rate would become effective on the same date as the service change in which the change becomes effective.

OC Bus Rates	Base Variable Rate	RVH Increase Greater than 20%	RVH Decrease Greater than 20%
Current Year	\$69.90	\$69.22	\$72.96
Option Year 1	\$73.40	\$72.22	\$76.91
Option Year 2	\$76.92	\$76.51	\$80.08

The option term rates continue to be based on operational and maintenance costs, with all costs related to the COVID-19 pandemic handled separately. Costs incurred due to the COVID-19 pandemic will continue to be eligible for reimbursement with Coronavirus Aid, Relief, and Economic Security (CARES) Act funds and subject to review and approval by OCTA staff as part of the invoice approval process. Based on experience gained since March 2020, a total of \$8 million has been estimated as possible costs associated with COVID-19 that would qualify for reimbursement during the second option term, dependent upon CARES Act eligibility.

*iShuttle Rates:* With the onset of the COVID-19 pandemic and issuance of the state's stay-at-home order, the iShuttle service was suspended in March 2020. The City of Irvine has requested that OCTA resume operation of four of the six routes on July 1, 2021, routes 400A, 401B, 403D, and 405F. The remaining two routes (402C and 404E) may be resumed in fall 2021, but resumption will be dependent on service demands. The iShuttle hourly variable rates will match the OC Bus variable rate. The fixed monthly rates are specific to the iShuttle service and will be \$25,974 in year one, and \$29,478 per month in year two of the option term. Costs associated with this service are tracked and billed separately from the OC Bus service, since these costs are reimbursed by the City of Irvine and have alternative sources of funding.

### ***Procurement Approach***

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

On March 23, 2015, the Board approved the award of the agreement with First Transit for a four-year initial term with two, two-year option terms in the amount of \$143,487,171, from June 1, 2015, through May 31, 2019. The original agreement was awarded on a competitive basis and was previously amended as described in Attachment A.

The proposed Amendment No. 14 is to exercise the second two-year option term of the agreement through June 10, 2023. This amendment will also include the negotiated rates for the reduced service levels as a result of the COVID-19 pandemic during the second option term, as well as the estimated additional pass-through reimbursement of COVID-19 pandemic-related expenses effective June 1, 2021, through June 10, 2023.

OCTA staff has reviewed all the itemized costs of eligible expenses, including salaries and benefits for contracted employees on leave due to reduced service levels, bus maintenance costs, and personal protective equipment (PPE) and cleaning supplies provided by First Transit. Based on the reduced service levels, the total cost of PPE and cleaning supplies to meet safety requirements, and the level of efforts associated with maintaining the buses, as well as the cost to ensure a state of readiness is maintained, staff found the hourly rates and the estimated pass-through total amount to be fair and reasonable.

Amending this agreement using the rates discussed above and estimated RVH will increase costs by \$97,018,249. The prior maximum contract obligation was \$246,142,285. Because of the pandemic, OC Bus provided a lower level of service beginning on March 23, 2020. As a result of this significant reduction in

OC Bus service, the maximum obligation for the first option term has not been exhausted. In considering the lower level of service provided during the first option term with the anticipated service plan and the estimated costs for the second option term, this reconciliation indicates that the maximum obligation needs to only be adjusted by \$69,714,520, bringing the maximum contract obligation to \$315,856,805. The amendment will allow continued management, operation, and vehicle maintenance of contracted fixed-route service for two additional years through June 10, 2023.

	<b>Two-Year Option Term</b>
iShuttle, For Two Years	\$ 4,096,741
iShuttle, For 10 Days (6/1/2023-6/10/2023)	\$ 57,891
OC Bus, Year 1, 486,000 RVH and OC Bus, Year 2, 540,000 RVH	\$ 83,457,096
OC Bus, For 10 Days (6/1/2023-6/10/2023)	\$ 1,225,178
Additional Services (Bus Bridge, Non-iShuttle Project V, OC Fair)	\$ 82,373
Maintenance Cost	\$ 98,970
<b>Total Fixed-Route Service:</b>	<b>\$ 89,018,249</b>
COVID-19 Expenses/State of Readiness	\$ 8,000,000
Total Amendment 14 Cost	\$ 97,018,249
Current Contract Underrun	\$ (27,303,729)
<b>Net Contract Increase for OC Bus and iShuttle</b>	<b>\$ 69,714,520</b>
Prior Contract Maximum Obligation	\$ 246,142,285
<b>New Maximum Contract Obligation:</b>	<b>\$ 315,856,805</b>

#### **Fiscal Impact**

Funding for this project will be included in OCTA's Proposed FY 2021-22, Operations Division Budget.

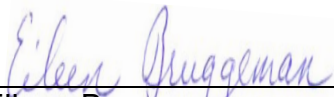
#### **Summary**

Staff requests Board authorization for the Chief Executive Officer to negotiate and execute Amendment No. 14 to Agreement No. C-4-1737 between OCTA and First Transit to exercise the second two-year option term to provide contracted fixed-route services through June 10, 2023, and implement rates effective June 1, 2021 through end of the contract, for an additional \$69,714,520 inclusive of major maintenance, additional services, and an amount not-to-exceed \$8,000,000 for COVID-19-related costs, increasing the maximum obligation of the agreement to a total contract value of \$315,856,805.

***Attachment***

A. First Transit, Inc., Agreement No. C-4-1737 Fact Sheet

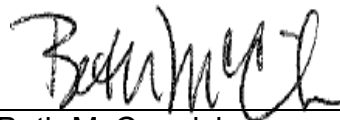
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