

## A G E N D A



## Recommendation for Council Action (CLMD)

Austin City Council

Item ID:

57703

Agenda Number

3.

Meeting Date:

May 12, 2016

Department:

Capital Contracting Office

## Subject

Authorize additional contingency funding for the construction contract with OSCAR RENDA CONTRACTING for the Waller Creek Inlet Facility at Waterloo Park project in the amount of \$5,000,000, for a total contract amount not to exceed \$39,781,250.

## Amount and Source of Funding

Funding is available in the Fiscal Year 2015-2016 Capital Budget of the Watershed Protection Department.

## Fiscal Note

A fiscal note is attached.

**Purchasing  
Language:**

Original contract was awarded to Oscar Renda Contracting through a competitive Invitation for Bid solicitation process.

**Prior Council  
Action:**

June 18, 2015 – Council approved the Waller Creek Tunnel Inlet at Waterloo Park additional contingency.  
October 20, 2011 – Council approved the Waller Creek Tunnel Inlet at Waterloo Park contract.

**For More  
Information:**

Rolando Fernandez, 512-974-7749; Sarah Torchin, 512-974-7141; Lucy Bonee, 512-974-7967; Joe Pantalion, 512-974-3438; Howard Lazarus, 512-974-7190; Jorge Morales, 512-974-7298; Gary Jackson, 512-974-7115.

**Boards and  
Commission  
Action:**

**Related Items:**

**MBE / WBE:**

This contract was awarded in compliance with City Code Chapter 2-9A (Minority Owned and Women Owned Business Enterprise Procurement Program) by meeting the goals with 10.40% MBE and 2.43% WBE participation.

## Additional Backup Information

This Recommendation for Council Action is a request to authorize funding in the amount of \$5,000,000 to address change orders necessary for the completion of the Waller Creek Inlet at Waterloo Park Project (the "Inlet Project").

Due to the impact of the Capitol View Corridor delays and directly related inefficiencies, the final cost of the Inlet Project will be approximately \$39,781,250. There is current construction contract funding in the amount of \$34,781,250. The presently contemplated change orders on the Inlet Project will resolve all outstanding contractual issues with the contractor, Oscar Renda Contracting, related to the Capitol View Corridor impacts and provide a final schedule for Project completion. In addition, there are several other change orders anticipated in the normal course of completion of the Inlet Project, which would be covered by the contingency built into the \$5,000,000.

The contract was approximately 75% complete with the Project's Inlet Facility Building in April of 2014 when the City issued a stop work order to address then recently discovered Capitol View Corridor conflict. The City directed Oscar Renda Contracting to stand ready with its manpower and equipment to resume work. Oscar Renda Contracting stood ready to recommence the work for over a year and incurred uncompensated costs for its overhead, equipment, and workforce and submitted a set of change order requests for the Project delays of over \$8,000,000.

City staff has finished its evaluation of the Capitol View Corridor impact change order requests and the other pending change order requests and recommends the approval of additional funding of \$5,000,000 to fund the change orders necessary to compensate Oscar Renda Contracting for its delays and to provide funding for the other change orders necessary to complete the Inlet Project.

If the City executes change orders in the full amount authorized in this action, the total contract amount will be increased by more than 25%. A 25% increase is considered the "not to exceed" change order cap under state statute unless certain conditions exist. Increasing over 25% is allowable in this case because of the nature of the costs at hand. The costs in the change orders to address the impact of delays, the value of any work that had to be demolished, the cost of demolition, and the portion of the pending change orders adjusted by the market as measured by the Construction Cost Index and due to the delay are all considered "non-value added costs." These non-value added costs are neither "extra work" nor "additional work" which is intended to be captured by the statutory change order threshold. In addition, these non-value added change order costs also lie outside the requirement of bidding under to the "health & safety" exception to bidding. The change orders are necessary to complete a partially constructed flood control project in a downtown area subject to major seasonal flood events and subject to major development activity. Finally, the required demolition of a functional portion of the City's flood control infrastructure can be considered unforeseen and unanticipated damage to municipal infrastructure which is also an exception to bidding.

The City's Change Control Committee will review the all proposed Change Orders when they are finalized prior to issuance of a notice to proceed. The Change Control Committee was established to comply with Council Resolution No. 20120126-048, which required the establishment of consistent criteria and process to evaluate contractual changes for all contracts administered by the Capital Contracting Office. The Change Control Committee is comprised of management-level subject matter experts.

This project is located within zip code 78701 (District 1 and 9). The project is managed by the Public Works Department.

Oscar Renda Contracting is located in Roanoke, Texas.

### **Background**

The Waller Creek Flood Control Project, when completed, will improve public safety and contribute to economic

development of the entire City through transformation of the Waller Creek District into more vibrant area. The removal of ~28 acres from the flood zone will mitigate flooding throughout the District and allow development of both recreational amenities and commercial facilities. The increase in value in the properties being removed from the flood zone is being captured through a Tax Increment Financing district, which is the primary funding mechanism for the project.

Currently, much of the District lies within a 100-year flood plain and is subject to severe flooding, erosion, and litter. The project will reduce the risk of severe flooding and stream bank erosion along lower Waller Creek by capturing and diverting flood waters from the upper creek basin (above 12th Street) into a large tunnel located 70 feet underground. The main tunnel begins in Waterloo Park where an inlet facility and pond will accept flood waters and screen out trash and debris. Creek side inlets between 4th and 5th Streets and between 8th and 9th Streets will capture additional flood waters below 12th street. The tunnel will discharge to an outlet facility/lagoon (completed) on the shores on the Lady Bird Lake. The reduction in floodplain area of over 25 acres resulting from the Waller Creek Tunnel project will increase the amount of developable land area in the lower Waller Creek watershed.

To finance the Waller Creek Tunnel project, the City Council created the Waller Creek Tax Increment Financing Reinvestment Zone No. 17 (Tax Increment Financing) in June 2007 as allowed by state law. In a Tax Increment Financing, one or more political subdivisions contribute up to 100% of the property tax on the increase in value of real property in the district (tax increment) for Tax Increment Financing purposes. Under the terms of this Tax Increment Financing and the Agreement to Participate in this Tax Increment Financing between the City of Austin and Travis County, the City of Austin will contribute 100% of its tax increment, and Travis County will contribute 50% of its tax increment. The first year of tax collections occurred in FY 2009 and in FY 2016, the estimated revenue generated by the City of Austin's tax increment is projected at \$2.4 million, and the contribution from Travis County at 50% of its tax increment is projected at \$1.1 million.

The Waller Creek Flood Control Project consists of four contracts, which reflect the interrelated components identified above. Each of these projects must be completed to ensure that the total project can be successfully completed and the Tax Increment Financing benefit fully realized. The complexity of the project and ensuring a path to completion requires that Council take action on seven separate measures simultaneously. The current status of each of the project's components and the relationships to the actions before Council are provided below:

#### **Waterloo Park Inlet**

The scope of work consists of construction of the major inlet and connections to the tunnel, improvements to Waterloo Park, and coordination with the Waller Creek Conservancy and the Central Health District on adjacent projects. Completion of this project was adversely impacted by conflicts with the Capital View Corridor, and the City has been collaborating with the design joint venture on remedies. The anticipated completion of the inlet and City-related work is September 2016. Contract changes will be required to address delays due to the CVC issues (including deconstruction of noncompliant work), scope modifications to accommodate the lower profile building, and revisions to site work and grading plans. These modifications are provided for by Agenda Item # 3 listed under Capital Contracting Office - Authorize additional contingency funding for the construction contract with Oscar Renda Contracting for the Waller Creek Inlet Facility at Waterloo Park project in the amount of \$5,000,000, for a total contract amount not to exceed \$39,781,250.

#### **Main Tunnel and 4th Street Side Inlet Facility Project**

The contract scope includes construction of the main tunnel, the 4th Street creek side inlet structure, and related creek improvements. The tunnel has been in service since May 2015, although repair work was still required but not completed. Work on the 4th Street Inlet is still in progress, with anticipated completion in the October – December 2016 timeframe. Contract changes will be required to address modifications required for the 4th Street Inlet

construction, Creekside retaining walls, and unforeseen conditions due to utilities locations, and these changes are addressed by Agenda Item # 4 under the Capital Contracting Office - Authorize additional contingency funding for the construction contract with SJ Louis Construction for the Waller Creek Tunnel Main Tunnel and 4th Street Creek Side Inlet project in the amount of \$500,000, for a total contract amount not to exceed \$50,400,500).

#### **8th Street Creek Side Inlet Facility Project**

The contract includes construction of a creek side inlet at 8th Street and the related connections to existing storm water facilities. Work on the 8th Street Inlet is in progress, with a projected completion of spring 2017. This Agenda Item is # 5 under the Capital Contracting Office.

#### **Waller Beach Site Improvements Outlet Facility/Lagoon Project**

This project consists of the outlet facility and lagoon, connections to the tunnel structure, trail improvements, and related work. Construction of these assets is substantially completed. The contract is being closed out, and no Council action is required at this time.

#### **Construction Easement**

Item # 9 under the Office of Real Estate Services - Authorize negotiation and execution of all documents and instruments necessary or desirable to acquire a temporary construction easement, totaling approximately 14,458 square feet, for the Waller Creek Tunnel Project, located at 701-703 East 9th Street, City of Austin, Travis County, Texas, from Ashland Equities Company LP, in an amount not to exceed \$119,221 (District 9) is also necessary to complete this project. During the course of construction ownership of the property has changed hands, and the extension of construction easement had to be renegotiated.

#### **Project Funding**

The additional funding required to execute the changes presented above is addressed in two Agenda Items from the Watershed Protection Department. Item # 13 - Approve an ordinance amending the Fiscal Year 2015-2016 Watershed Protection Department Capital Budget (Ordinance No. 20150908-002) to increase appropriations by \$7,500,000 for the Waller Creek Tunnel Project – places the funds in the appropriate accounts so that the contract changes can be executed and capital project can be completed. Item # 14 - Approve a resolution declaring the City of Austin's official intent to reimburse itself from Certificates of Obligation to be issued for expenditures in the total amount of \$7,500,000 – provides the funding source for the work.

It should be noted that Council did approve an additional \$6 million in funding in June 2015. At the time, staff's best estimate was that the funding would be sufficient to address construction changes due to redesign, unforeseen conditions, and related delays. Staff also believed that discussions and negotiations with the joint venture design team would be resolved concurrently with the settlement of construction disputes, so that any requests presented to Council would show a balance of additional costs versus the recovery. Unfortunately, the settling of these matters has not been synchronous, so that outlay of additional funds prior to recovery is required and the fiscal impact is mitigated.

#### **Maintenance, Inspection, and Warranty Work**

As the entry of the tunnel into service nears its on-year anniversary, the Watershed Protection Department will require that the tunnel be dewatered so warranty inspections can be performed, repair work be accomplished, and sedimentation can be removed. Due to the unique nature of the requirement, Staff believes the best way to procure

these services is through the use of the Competitive Sealed Proposal method. Under state statute, approval from the Governing Body is required before an alternative delivery method can be employed. Agenda Item # 2 under Capital Contracting Office - Authorize the use of the Competitive Sealed Proposal method for solicitation of maintenance, inspection, warranty, and construction work consisting of dewatering, providing access, and removal of sedimentation in support of the Waller Creek Tunnel Project - seeks this approval.