



## Legislation Details (With Text)

**File #:** 2505-2014      **Version:** 1  
**Type:** Ordinance      **Status:** Passed  
**File created:** 10/22/2014      **In control:** Public Utilities Committee  
**On agenda:** 12/8/2014      **Final action:** 12/10/2014

**Title:** To authorize the Director of Public Utilities to modify and increase the construction contract with Kenny-Obayashi Joint Venture in the amount of \$29,500,000.00 for additional work needed on the OSIS Augmentation & Relief Sewer (OARS) Phase 1 project and to settle and release on behalf of the City claims related to the additional work; to authorize the appropriation, transfer, and expenditure of up to \$29,500,000.00 from the Sewer System Reserve Fund to the Ohio EPA Water Pollution Control Loan Fund (WPCLF); to amend the 2014 Capital Improvements Budget; to apply for, accept, and enter into an Ohio Water Pollution Control Loan Fund Supplemental Loan Agreement with the Ohio Environmental Protection Agency and the Ohio Water Development Authority in order to complete the construction of the OSIS Augmentation & Relief Sewer (OARS) Project Phase 1; to designate a dedicated source of repayment for the loan; and to declare an emergency. (\$29,500,000.00)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. ORD 2505-2014 Information.pdf

Date	Ver.	Action By	Action	Result
12/10/2014	1	CITY CLERK	Attest	
12/9/2014	1	MAYOR	Signed	
12/8/2014	1	COUNCIL PRESIDENT	Signed	
12/8/2014	1	Columbus City Council	Approved	Pass

**1. BACKGROUND:** This Ordinance authorizes the Director of Public Utilities to modify and increase the construction contract with Kenny-Obayashi Joint Venture for the OSIS Augmentation & Relief Sewer (OARS) Phase 1 project for the Division of Sewerage and Drainage; and to apply for, accept and enter into a Water Pollution Control Loan Fund (WPCLF) Supplemental Loan Agreement totaling \$29,500,000.00 to finance the completion of this project.

### ADDITIONAL INFORMATION

The contract modification is a result of a settlement agreed to by all parties to cover the costs of the redesign of the Tunnel Boring Machine and related work due to subsurface conditions found after the project had commenced. The contractor has continued working throughout the project though the conditions have changed.

**1.1 Amount of additional funds to be expended: \$29,500,000.00**

Original Contract Amount:	\$264,506,000.00
Modification No. 1 (this Mod.):	<u>\$29,500,000.00</u>
Total (Orig. + Mod. 1)	\$294,006,000.00

Modification No. 1 (current) is needed to increase Contract No. EL010880 by \$29,500,000.00 for the following item:

**OARS1-RFP-024 - Tunnel Groundwater DSC Claims - \$28,500,000.00; Additional Contingency: \$1,000,000.00.**

The contract documents do not provide baseline groundwater inflows for the tunnel profile as a whole, but focus on inflows for discrete water producing zones. The contract specifications did not preclude the use of a multi-mode Tunnel Boring Machine (TBM), which could operate in both the open and closed mode. The contractor selected a TBM with the intent to operate primarily in open-mode based on the data provided in the contract documents. During the first few months of TBM mining groundwater inflows were not discrete or isolated events, instead these water producing solution features turned out to be essentially significant and constant subsurface conditions.

After 10 months of mining rock averaging a 23-feet-per-day production rate with continuous and substantial groundwater inflows, the Contractor was forced to redesign the Tunnel Boring Machine to a closed-only slurry mode system to handle the continuous groundwater inflows. The actual subsurface conditions were materially different than could be interpreted from the data in the contract documents. These events led to two Differing Site Condition (DSC) claims. This modification is to provide funding to settle the claims and complete the project.

Milestone 7 - Substantial Completion has been extended 791 calendar days to June 30, 2017.

Milestone 8 - Final Completion has been extended 791 calendar days to August 29, 2017.

The Supplemental Loan authorization is a requirement of Ohio EPA's Water Pollution Control Loan Fund (WPCLF) program. This loan program is jointly administered by the Ohio EPA's Division of Environmental and Financial Assistance, and the Ohio Water Development Authority (OWDA). The WPCLF program provides below-market interest rate loans for municipal wastewater treatment improvements.

**2. CONTRACT COMPLIANCE INFORMATION:** 26-2579073, expires 8/23/2015, Majority

**3. EMERGENCY DESIGNATION:** In order to obtain OWDA board approval of the Supplemental Loan Agreement, a certified copy of this Authorizing Legislation must be submitted to the Ohio EPA and the OWDA as a part of the loan application. The earliest possible effective date of this ordinance insures compliance with the OWDA loan program requirements and thereby expedites the project's completion. Furthermore as part of the claim, the City has agreed to pay the contract by December 31, 2014.

**FISCAL IMPACT:** This Ordinance authorizes the appropriation, transfer, and expenditure of up to \$29,500,000.00 from the Sewer System Reserve Fund, Fund 654, to the Water Pollution Control Loan Fund, Fund 666, to fund this modification expenditure. This transaction is a temporary measure that is required until such time as the Department is able to execute a WPCLF Supplemental Loan Agreement with the Ohio EPA and the Ohio Water Development Authority (OWDA) and reimburse the Sewer System Reserve Fund. This Ordinance amends the 2014 Capital Improvements Budget for the Division of Sewerage and Drainage. The loan award is tentatively scheduled for the January 29, 2015 OWDA Board meeting.

**Budgeted Amount:** There is sufficient budget authority in the 2014 Sewer System Operating Fund for the Supplemental Loan Application Fee expenditure. The Loan Fee will be invoiced to the City by OWDA once the loan is executed. The Supplemental Loan will be paid off over a 20-year period from sewerage system user rate payments (dedicated source of repayment). Sewerage rate increases have been projected and planned in anticipation of this project and its associated loans.

To authorize the Director of Public Utilities to modify and increase the construction contract with Kenny-Obayashi Joint Venture in the amount of \$29,500,000.00 for additional work needed on the OSIS Augmentation & Relief Sewer (OARS) Phase 1 project and to settle and release on behalf of the City claims related to the additional work; to authorize the appropriation, transfer, and expenditure of up to \$29,500,000.00 from the Sewer System Reserve Fund to the Ohio EPA Water Pollution Control Loan Fund (WPCLF); to amend the 2014 Capital Improvements Budget; to apply for, accept, and enter into an Ohio Water Pollution Control Loan Fund Supplemental Loan Agreement with the Ohio Environmental

Protection Agency and the Ohio Water Development Authority in order to complete the construction of the OSIS Augmentation & Relief Sewer (OARS) Project Phase 1; to designate a dedicated source of repayment for the loan; and to declare an emergency. (\$29,500,000.00)

**WHEREAS**, contract No. EL010880 with Kenny-Obayashi Joint Venture was authorized by Ordinance No. 1040-2010, passed July 19, 2010, was executed on August 5, 2010, and approved by the City Attorney on August 6, 2010, for the OSIS Augmentation & Relief Sewer (OARS) Phase 1 project; and

**WHEREAS**, modification No. 1 is needed to increase the construction contract for additional work due to unforeseen subsurface conditions and required modification to the Tunnel Boring Machine in the amount of \$29,500,000.00; and

**WHEREAS**, it is necessary to authorize the Director of the Department of Public Utilities to execute a modification to the construction contract for the OSIS Augmentation & Relief Sewer (OARS) Phase 1 Project; and

**WHEREAS**, the City and Kenny-Obayashi Joint Venture have agreed to settle claims related to the additional work, and it is necessary for the City and Kenny-Obayashi Joint Venture to execute documents setting forth the agreed settlement; and

**WHEREAS**, it is immediately necessary to both appropriate funds from the Sewer System Reserve Fund and authorize the transfer of said funds into the Water Pollution Control Loan Fund, in order to temporarily fund this expenditure and provide the requisite budget authority for the said project, until such time as the City is able to execute a WPCLF Supplemental Loan Agreement for the above stated purpose and reimburse the Sewer System Reserve Fund; and

**WHEREAS**, the City anticipates incurring certain Original Expenditures (as defined in Section 1.150-2(c) of the Treasury Regulations (the "Treasury Regulations") promulgated pursuant to the Internal Revenue Code of 1986, as amended) with respect to the construction of the Project described in this Ordinance (collectively, the "Project"); and

**WHEREAS**, it is necessary to authorize an amendment to the 2014 Capital Improvements Budget for the purpose of providing sufficient spending authority for the aforementioned project expenditure; and

**WHEREAS**, the Department of Public Utilities has submitted a Supplemental Loan Application to the Ohio EPA under the Ohio Water Pollution Control Loan Fund (WPCLF) program for additional funds to finance the completion the OSIS Augmentation & Relief Sewer (OARS) Project, Phase 1, under the Division of Sewerage and Drainage, which financial assistance will help in reducing total project costs to the City's sewerage customers; and

**WHEREAS**, the WPCLF Loan Application and Loan Agreement documents require the City to submit to the Ohio EPA a certified copy of the approved City Council legislation which authorizes the Director of Public Utilities to apply for and subsequently execute the WPCLF Agreement; and

**WHEREAS**, this legislation must be approved by City Council and a certified copy must be submitted to the Ohio EPA as part of the Loan Application and Loan Agreement approval process, in order to provide additional funds to complete the project as designed; and

**WHEREAS**, an emergency exists in the usual daily operation of the Division of Sewerage and Drainage, Department of Public Utilities, in that it is immediately necessary to authorize the Director to execute a contract modification and the WPCLF Supplemental Loan Agreement with the OWDA and the Ohio EPA for the immediate preservation of the public peace, health, property, and safety; Now Therefore:

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:**

**SECTION 1.** That the Director of Public Utilities is hereby authorized to modify and increase the construction contract with Kenny-Obayashi Joint Venture for the OSIS Augmentation & Relief Sewer (OARS) Phase 1 Project in the amount of

\$29,500,000.00.

**SECTION 2.** That this agreement modification is in compliance with Section 329.16 of Columbus City Codes, 1959.

**SECTION 3.** That the Director of Public Utilities is hereby authorized to settle and release claims related to the additional work and to execute any agreements necessary and incident to the settlement of these claims on behalf of the City.

**SECTION 4.** That the Director of Public Utilities be, and hereby is, authorized to apply for, accept, and enter into a Water Pollution Control Loan Fund Supplemental Loan Agreement, with the Ohio Environmental Protection Agency and the Ohio Water Development Authority for the additional financing necessary to complete the construction of the Division of Sewerage and Drainage project, as described below with the "not to exceed" construction project costs in parenthesis, as follows:

OSIS Augmentation & Relief Sewer (OARS) Project, Phase 1, CIP No. 650704-100001, WPCLF No. CS390274-0132-01 (\$29,500,000).

**SECTION 5.** That Sewerage System Service Charges are hereby authorized to be the dedicated source of repayment for the Water Pollution Control Loan Fund Supplemental Loan Agreement.

**SECTION 6.** That the proceeds from the Ohio Water Development Authority Supplemental Loan for the OSIS Augmentation & Relief Sewer (OARS) Phase 1 Project; and funds from the unappropriated monies in Fund No. 666, the amount of \$29,500,000.00 for the cost of the modification of the construction contract is hereby appropriated to the Division of Sewerage and Drainage as follows:

Division 60-05 | Fund No. 666 | Project No. 650704-100001 | Object Level Three 6630 | OCA Code 667041 | \$29,500,000.00

**SECTION 7.** That from the unappropriated monies in the Sewer System Reserve Fund 654, and from all monies estimated to come into said fund from any and all sources, and unappropriated from any other purpose for the OSIS Augmentation & Relief Sewer (OARS) Project Phase 1. The sum of \$29,500,000.00 is hereby appropriated to the Division of Sewerage and Drainage; Division 60-05 | Object Level One 10 | Object Level Three 5502 | OCA Code 901654.

**SECTION 8.** That the City Auditor is hereby authorized to transfer \$29,500,000.00 from the Sewer System Reserve Fund 654 to the Water Pollution Control Loan Fund, Fund No. 666, into the said fund from any and all sources, into the appropriate accounts as specified in the section below, at such time as deemed necessary by him, and to expend the said funds, or as much thereof as may be necessary for the OSIS Augmentation & Relief Sewer (OARS) Project Phase 1 as follows:

Division 60-05 | Fund No. 666 | Project No. 650704-100001 | Object Level Three 0886 | 667041 | \$29,500,000.00

**SECTION 9.** That for the purpose of paying the cost of the Ohio Water Development Authority (OWDA) Fund Eligible Items within the aforementioned modification, the following expenditures, or as much there of as may be needed, is hereby authorized as follows: Fund No. 666, Dept./Div. No. 60-05, Project 650704-100001 | OCA Code 667041 | Object Level One 06 | Object Level Three 6630 | Amount \$29,500,000.00.

**SECTION 10.** That the 2014 Capital Improvements Budget is hereby amended as follows:

<u>Fund No.</u>	<u>Project No.</u>	<u>Project Name</u>	<u>Current Authority</u>	<u>Revised Authority</u>	<u>Change</u>
666	650704-100001	OSIS Augmentation & Relief Sewer (OARS) Project Phase 1	\$0	\$29,500,000.00	(+\$29,500,000.00)

**SECTION 11.** That said construction company, Kenny-Obayashi Joint Venture, shall conduct the work to the

satisfaction of the Director of Public Utilities and the Administrator of the Division of Sewerage and Drainage.

**SECTION 12.** That the funds necessary to carry out the purpose of this Ordinance are hereby deemed appropriated, and the City Auditor shall establish such accounting codes as necessary.

**SECTION 13.** That the City Auditor is hereby authorized and directed to transfer any unencumbered balance in the project account to the unallocated balance within the same fund upon receipt of certification by the Director of the Department administering said project that the project has been completed and the monies no longer required for said project; except that no transfer shall be made from a project account by monies from more than one source.

**SECTION 14.** That the City Auditor is authorized to establish proper project accounting numbers as appropriate.

**SECTION 15.** That the City Auditor is authorized to make any accounting changes to revise the funding source for all contracts or contract modifications associated with this Ordinance.

**SECTION 16.** That for reasons stated in the preamble hereto, which is hereby made a part hereof, this Ordinance is declared to be an emergency measure and shall take effect and be in force from and after its passage and approval by the Mayor, or ten days after passage if the Mayor neither approves nor vetoes the same.