



**December 5, 2022**

**To:** Regional Planning and Highways Committee

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

**Subject:** Contract Change Order for the Interstate 405 Improvement Project from State Route 73 to Interstate 605

**Overview**

On November 14, 2016, the Orange County Transportation Authority Board of Directors approved Agreement No. C-5-3843 with OC 405 Partners, a joint venture, for the design and construction of the Interstate 405 Improvement Project from State Route 73 to Interstate 605. A contract change order is needed to compensate OC 405 Partners for direct costs associated with resequencing and restaging certain paving operations near the Bolsa Avenue bridge.

**Recommendation**

Authorize the Chief Executive Officer to negotiate and execute Contract Change Order No. 143 to Agreement No. C-5-3843 between the Orange County Transportation Authority and OC 405 Partners, a joint venture, in the amount of \$5,100,000, for direct costs associated with resequencing and restaging certain paving operations near the Bolsa Avenue bridge.

**Discussion**

The Orange County Transportation Authority (OCTA), in cooperation with the California Department of Transportation (Caltrans), is implementing the Interstate 405 (I-405) Improvement Project from State Route 73 (SR-73) to Interstate 605 (I-605) (Project). The Project will add one general purpose lane in each direction from Euclid Street to I-605, consistent with Measure M2 (M2) Project K, and will add an additional lane in each direction that would combine with the existing high-occupancy vehicle lane to provide dual express lanes in each direction on I-405 from SR-73 to I-605, otherwise known as the 405 Express Lanes.

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On November 14, 2016, the OCTA Board of Directors (Board) approved Agreement No. C-5-3843 (Contract) with OC 405 Partners (OC405), a joint venture, for the design and construction of the Project. The Contract was executed and Notice to Proceed (NTP) No. 1 was issued to OC405 on January 31, 2017. On July 27, 2017, NTP No. 2 was issued to OC405 for the full design and construction of the Project.

The recommended contract change order (CCO) is described in more detail below.

**Resequencing and Restaging Certain Pavement Operations**

In late 2021, the discovery of additional archaeological resources near the Bolsa Avenue bridge delayed certain scheduled work in this area. Shortly thereafter, OCTA and OC405 began discussing potential schedule implications and potential mitigation strategies. To avoid Project delays, a schedule mitigation strategy to resequence and restage certain paving activities in this area was developed by OC405 in coordination with OCTA. Early this year, OCTA issued Directive Letter No. 116 (DL-116) pursuant to the Contract to implement the noted schedule mitigation strategy. The Contract provides that OC405's reimbursable costs are limited to those reasonable mitigation costs incurred in connection with reallocation and redeployment. The mitigation costs to implement DL-116 include developing restaging plans, mobilizing paving crews and equipment, additional falsework rental/purchase, and other direct costs. OC405 implemented the DL-116 mitigation strategy, but did not follow up with actual detailed cost impacts as set forth in the Contract. Notwithstanding this, OCTA is requesting this CCO, in the amount of \$5,100,000, to fairly compensate OC405 for complying with this directive.

OCTA has developed an independent cost estimate to implement DL-116. Upon OCTA's issuance of this CCO, OC405 refused to sign this CCO, claiming it believes its reimbursable costs would be higher than OCTA's estimate. To date, OC405 has not submitted any detailed cost documentation that meets the requirements of the Contract to support this claim. Additionally, OC405 prefers to defer the analysis of time impacts related to this issue. This CCO is being issued unilaterally by OCTA, to compensate OC405 for costs that OCTA understands were reasonably borne by OC405 to implement DL-116 as provided in the Contract.

***Procurement Approach***

The procurement was handled in accordance with the best-value selection process authorized by AB 401 (Chapter 586, Statutes of 2013) for design-build (DB) projects and with OCTA's Board-approved procedures for

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public works projects, which conform to both federal and state requirements. On November 14, 2016, the Board authorized the Contract with OC405, in the amount of \$1,217,065,000, for the design and construction of the Project through a DB contract.

Proposed CCO No. 143, in the amount of \$5,100,000, will provide compensation to OC405 for direct costs associated with resequencing and restaging certain paving operations near the Bolsa Avenue bridge (DL-116). The CCO will increase the cumulative value of the Contract by \$5,100,000.

Attachment A lists the CCOs that have been executed to date, and the CCOs that are pending execution with OC405.

**Fiscal Impact**

Funding for this work was approved in OCTA's Fiscal Year 2022-23 Budget, Capital Programs Division, Account No. 0017-9084-FK101-0GM, and is funded with local M2 funds. The costs of CCO No. 143 are funded from the Project contingency and are not anticipated to increase the total Project estimate of \$2,080,000,000.

***Summary***

Staff recommends the Board of Directors authorize the Chief Executive Officer to negotiate and execute Contract Change Order No. 143 to Agreement No. C-5-3843 with OC405 Partners, in the amount of \$5,100,000, for direct costs associated with resequencing and restaging certain paving operations near the Bolsa Avenue bridge.

***Attachment***

- A. OC 405 Partners, Agreement No. C-5-3843, Contract Change Order Log

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