




**March 22, 2017**

**To:** Finance and Administration Committee

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

**Subject:** Amendments to the 91 Express Lanes Three-Party Operating Agreement and Facility Agreement

### **Overview**

The Riverside County Transportation Commission anticipates opening the 91 Express Lanes extension in spring of 2017. As the opening date approaches, a number of agreements need to be amended to account for the joint operations. Among the effected agreements are the three-party operating agreement between the Orange County Transportation Authority, Riverside County Transportation Commission, and Cofiroute USA, LLC., as well as the Riverside County Transportation Commission / Orange County Transportation Authority Facility Agreement.

### **Recommendations**

- A. Authorize the Chief Executive Officer to negotiate and execute Amendment No. 2 to Agreement No. C-3-1529 among the Orange County Transportation Authority, Riverside County Transportation Commission, and Cofiroute USA, LLC., for the inclusion of the joint software license, software maintenance, and escrow agreements.
- B. Authorize the Chief Executive Officer to negotiate and execute Amendment No. 3 to Agreement No. C-3-1529 among the Orange County Transportation Authority, Riverside County Transportation Commission, and Cofiroute USA, LLC., in the amount of \$1,302,562, for maintenance and support services for the 91 Express Lanes Electronic Toll and Traffic Management systems.
- C. Authorize the Chief Executive Officer to negotiate and execute Amendment No. 2 to Agreement No. C-5-3828 between the Orange County Transportation Authority and Riverside County Transportation Commission, in the amount of \$431,308, for the reimbursement of shared operational expenses through June 30, 2018.

***Discussion***

Cofiroute USA, LLC., (CUSA) developed and deployed the 91 Express Lanes' back office/account management system referred to as the Revenue and Account Management System (RAMS). The functionalities of RAMS include toll processing of lane system data, operational processing of data for toll and trip calculation, automated replenishment of customer accounts, financial processes and reporting, violation processing based on images captured, and other general accounting functions and reports. In return for the development of the software, the operating agreement (Existing Operator Agreement) with CUSA was amended in 2011 to include two five-year extension periods: July 2011 through June 2016 for the first period and from July 2016 through June 2021, as well as the inclusion of a software maintenance agreement, a license agreement, and an escrow agreement pertaining to RAMS.

With the extension of the 91 Express Lanes into Riverside County, the Orange County Transportation Authority (OCTA) and the Riverside County Transportation Commission (RCTC) entered into a three-party operating agreement with CUSA to provide management and operational services for the 91 Express Lanes. The three-party operating agreement was approved by the OCTA Board of Directors (Board) in May 2013. Similar to the Existing Operator Agreement, the three-party operating agreement anticipated the inclusion of the software maintenance agreement, license agreement, and escrow agreement for RAMS (RAMS Ancillary Agreements), upon final negotiation. In order to process transactions from the Riverside County portion of the 91 Express Lanes, CUSA made modifications to RAMS.

During the past several months, staff from each respective agency have met to discuss and negotiate the terms of the RAMS Ancillary Agreements. These agreements will be incorporated into the three-party agreement, which replaces the Existing Operator Agreement once RCTC opens the toll lanes to traffic. RCTC is expected to open its portion of the 91 Express Lanes on March 20, 2017. When the three-party agreement was being negotiated, annual estimated costs in the amount of \$803,613 for software maintenance and \$175,000 for the license agreement were included in the baseline calculation of the monthly amount due to CUSA. The parties acknowledged the estimates were subject to final concurrence on the amendment to the RAMS Ancillary Agreements. The agencies have reached the negotiated amount of \$687,435 for the RAMS software maintenance, subject to a two percent annual escalation, and \$175,000 for the license agreement. The cost for both services will be shared equally with RCTC. OCTA is currently paying \$413,861 for software maintenance and \$100,000 for the license agreement under the Existing

Operator Agreement. An amendment to the three-party agreement is needed to address the reduced amounts, as well as the inclusion of the RAMS Ancillary Agreements. RCTC has presented Amendment No. 2 to Agreement No. C-3-1529 in draft form to its commission and has received approval. Approval of draft Amendment No. 2 by RCTC's commission prompted the decision to issue a separate amendment to address the maintenance and support services for the 91 Express Lanes Electronic Toll and Traffic Management systems as described below.

In addition to providing maintenance to RAMS, CUSA has been responsible for the maintenance and support of the Electronic Toll and Traffic Management System (ETTM) for OCTA and will continue to provide these services to both agencies upon RCTC's opening. The ETTM system is responsible for the identification and capturing of vehicle information for customer account billing or violation processing. Staff has negotiated the amount of \$2,931,756 for the period April 1, 2017 through June 30, 2021, with OCTA's share comprising of \$1,302,562 due to fewer gantries on OCTA's portion of the 91 Express Lanes. OCTA's annual rate for the first full-term will be \$250,262 and is subject to a two percent escalation each year. As part of the \$1,302,562, staff has negotiated the amount of \$209,741 to cover contingencies for enhancements and modifications, such as the configuration of the ETTM system for the transition of the Title 21 protocol to 6C protocol. Although the maintenance period is over four years, the terms allow for staff to renew on a yearly basis until June 30, 2021. Since staff plans to replace the ETTM system within the next few years, the full amount of \$1,302,562 will more than likely not be utilized. Currently, OCTA is paying \$363,720 for the operational day-to-day support under the Existing Operator Agreement. A draft form of Amendment No. 3 to Agreement No. C-3-1529 was recently approved by RCTC's commission.

In order to facilitate the exchange of funds between the two agencies, the Riverside County Transportation Commission / Orange County Transportation Authority Facility Agreement (ROFA) was executed in November 2015. This agreement prescribes the funding transfers between the two agencies for costs incurred for the rent, leasehold improvements, and any shared operational expenses in relation to the 91 Express Lanes. Staff has identified shared operational expenses and has assigned responsibility for the administration and payment of these expenses. An amendment to the ROFA is required in the amount of \$431,308, to reimburse RCTC for joint operating costs incurred through June 30, 2018 by RCTC. Moving forward, both agencies will establish an annual fiscal year amount for the funding and payment of joint operating costs by January 15<sup>th</sup> of each year, and will return to each respective authoritative body for final approval. RCTC has presented Amendment No. 2 to

Agreement No. C-5-3828 in draft form to its commission and has received approval.

**Fiscal Impact**

Funding for Amendment No. 3 to Agreement No. C-3-1529 is included in OCTA's Fiscal Year 2016-17 Budget, 91 Express Lanes Account 0036-7350-B0100-A5H, and will be included in the 91 Express Lanes budget for the subsequent years. Funding for Amendment No. 2 to Agreement No. C-5-3828 is included in OCTA's Fiscal Year 2016-17 Budget, 91 Express Lanes Account, under various line items and will be included in OCTA's Fiscal Year 2017-18 Budget, 91 Express Lanes.

***Summary***

Staff recommends the Board authorize the Chief Executive Officer to negotiate and execute Amendment No. 2 to Agreement No. C-3-1529 among the Orange County Transportation Authority, Riverside County Transportation Commission, and Cofiroute USA, LLC., for the inclusion of the joint software license, maintenance and escrow agreements, and execute Amendment No. 3 to the same agreement, in the amount of \$1,302,562, for the maintenance and support services for the 91 Express Lanes Electronic Toll and Traffic Management Systems. In addition, staff is recommending the Board authorize the Chief Executive Officer to negotiate and execute Amendment No. 2 to Agreement No. C-5-3828 between the Orange County Transportation Authority and Riverside County Transportation Commission, in the amount of \$431,308, for the reimbursement of shared operational expenses through June 30, 2018.

***Attachments***

- A. Three-Party Operating Agreement No. C-3-1529 Fact Sheet
- B. Riverside County Transportation Commission – Orange County  
Transportation Authority Facility Agreement No. C-5-3828 Fact Sheet

***Prepared by:***

***Approved by:***



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