



**February 3, 2020**

**To:** Regional Planning and Highways Committee

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

**Subject:** Contract Change Orders 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. Contract change orders are needed at this time to compensate for additional design and construction efforts for the Heil Avenue pedestrian overcrossing, to extend the plant establishment period to three years, and to reflect the increase in the 2017 State Senate Bill 1 diesel fuel sales tax rate.

**Recommendations**

- A. Authorize the Chief Executive Officer to negotiate and execute Contract Change Order No. 60 to Agreement No. C-5-3843 between the Orange County Transportation Authority and OC 405 Partners, a joint venture, in the amount of \$1,044,000, for additional design and construction efforts for the Heil Avenue pedestrian overcrossing.
- B. Authorize the Chief Executive Officer to negotiate and execute Contract Change Order No. 61 to Agreement No. C-5-3843 between the Orange County Transportation Authority and OC 405 Partners, a joint venture, in the amount of \$1,600,000, to extend the plant establishment period to three years.
- C. Authorize the Chief Executive Officer to negotiate and execute Contract Change Order No. 62 to Agreement No. C-5-3843 between the Orange County Transportation Authority and OC 405 Partners, a joint venture, in the amount of \$1,764,165, to reflect the 2017 State Senate Bill 1 diesel fuel sales tax rate increase.

### ***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 between State Route 73 (SR-73) and Interstate 605 (I-605) (Project). The Project will add one general purpose lane 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.

On November 14, 2016, the OCTA Board of Directors (Board) approved Agreement No. C-5-3843 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. NTP No. 2, for the full design and construction of the Project, was issued to OC405 on July 27, 2017.

#### **Heil Avenue Pedestrian Overcrossing**

As part of the Project, the Heil Avenue pedestrian overcrossing bridge will be reconstructed. The City of Huntington Beach expressed concerns regarding pedestrian safety during design review of the new pedestrian overcrossing. OCTA and Caltrans agreed with the concerns raised and, as a result, OC405 was directed to develop a design to incorporate openings into the wall that supports the access ramp that connects the pedestrian overcrossing to the adjacent local street on the south side. The openings will provide pedestrians clear and safe visibility when using the pedestrian overcrossing access ramp. As a result, additional design and construction efforts are needed to accommodate this change in the pedestrian overcrossing.

The amount of the contract change order (CCO) is based on staff review of the supporting documents provided by OC405. Some of OC405's claimed costs were unsupported, and OC405 was unable to provide supporting documentation when requested. OC405 has not agreed to the recommended lower CCO amount and may pursue the disputed amount at a later time. The purpose of this unilateral CCO is to compensate OC405 for entitled costs that have been reviewed and verified through appropriate documentation.

#### **Plant Establishment Period**

A three-year plant establishment period is required to commence at the completion of the Project in accordance with Caltrans requirements. The purpose of the plant establishment period is to allow the landscaping to establish

itself prior to Caltrans taking over maintenance responsibilities. OCTA's contract documents contained an inconsistency regarding the length of the plant establishment period. The contract documents in part referenced a one-year plant establishment period for the design-build (DB) contractor. A CCO is needed to provide compensation for two additional years of plant establishment to result in the required three-year period.

#### **Increase in State Sales Tax Rate for Diesel Fuel**

In 2017, the State of California adopted State Senate Bill 1 (SB1) – The Road Repair and Accountability Act of 2017, which in part increased the sales tax rate for diesel fuel. The increased sales tax rate took effect on November 1, 2017. Certain OC405 operations and equipment require diesel fuel to operate, and the contract provides that OC405 is entitled to a CCO for increases in a sales tax rate. The amount of the CCO is based on staff review of the supporting information provided by OC405 and is for compensation for the increased sales tax rate for diesel fuel.

#### ***Procurement Approach***

The procurement was handled in accordance with the best-value selection process authorized by AB 401 (Chapter 586, Statutes of 2013) for DB projects, and with OCTA's Board-approved procedures for public works projects, which conform to both federal and state requirements. On November 14, 2016, OCTA approved Agreement No. C-5-3843 with OC405 for the design and construction of the Project through a DB contract.

Board approval is required for proposed CCO Nos. 60, 61, and 62.

Proposed CCO No. 60, in the amount of \$1,044,000, will provide compensation to OC405 for the additional design and construction efforts related to the Heil Avenue pedestrian overcrossing in the City of Huntington Beach.

Proposed CCO No. 61, in the amount of \$1,600,000, will provide compensation to OC405 for two additional years of plant establishment for a total of three years.

Proposed CCO No. 62, in the amount of \$1,764,165, will provide compensation to OC405 for the increased sales tax rate for diesel fuel as a result of the adoption of SB1.

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

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**Fiscal Impact**

The funding for this work was approved in OCTA's Fiscal Year 2019-20 Budget, Capital Programs Division, accounts 0017-9084-FK101-0GM and 0037-9017-A9510-0GM, and is funded with a combination of federal, state, and local funds. M2 funds will be used for improvements specific to M2 Project K, and non-M2 funds will be used for improvements specific to the 405 Express Lanes. The costs of CCO Nos. 60, 61, and 62 are funded from the Project contingency and are not anticipated to increase the total Project estimate of \$1.9 billion.

**Summary**

Staff recommends Board authorization for the Chief Executive Officer to negotiate and execute CCO No. 60 in the amount of \$1,044,000, CCO No. 61 in the amount of \$1,600,000, and CCO No. 62 in the amount of \$1,764,165, to Agreement No. C-5-3843 with OC405.

**Attachment**

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

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