

MINUTES

Board of Directors' Meeting

Call to Order

The Monday, March 22, 2021, regular meeting of the Orange County Transportation Authority (OCTA) and affiliated agencies was called to order by Chairman Do at 9:01 a.m. at the OCTA Headquarters, 550 South Main Street, Board Room – Conference Room 07-08, Orange, California.

Roll Call

The Deputy Clerk of the Board (DCOB) conducted an attendance Roll Call and announced there was quorum of the Board of Directors (Board) as follows:

Via Teleconference: Andrew Do, Chairman
Mark A. Murphy, Vice Chairman
Lisa A. Bartlett
Doug Chaffee
Barbara Delgleize
Brian Goodell
Patrick Harper
Michael Hennessey
Gene Hernandez
Steve Jones
Joseph Muller
Vicente Sarmiento
Tim Shaw
Harry S. Sidhu
Donald P. Wagner
Ryan Chamberlain, District Director – Caltrans District 12

Directors Absent: None

Staff Present: Jennifer L. Bergener, Deputy Chief Executive Officer
Gina Ramirez, Deputy Clerk of the Board
Sahara Meisenheimer, Deputy Clerk of the Board

Via Teleconference: Darrell E. Johnson, Chief Executive Officer
James Donich, General Counsel

Invocation

Director Jones gave the invocation.

Pledge of Allegiance

Director Harper led in the Pledge of Allegiance.

Special Calendar

1. Adopt Resolutions of Necessity for the State Route 55 Improvement Project Between Interstate 405 and Interstate 5

Chairman Do opened the public hearing for this item and announced James Donich, General Counsel would be providing an opening statement on Resolution of Necessity (RON) 2021-018.

Mr. Donich stated that RON No. 2021-018 HBR, LLC, is being pulled since OCTA had reached an agreement with the property owners for that resolution. He noted two objection letters for resolutions 2021-017 and 2021-019 were included in the Board Agenda packet. The property owners, through their council, have submitted the objection letters to the adoption of the resolutions. These letters state that they disagree with the amount of the appraisals and the offers made to them for the property rights that OCTA seeks to acquire. If OCTA had reached an agreement on the appraisals, OCTA would not need to seek the adoption of a RON. Generally, when there is an objection to adopting a RON, the property owner disagrees with the amount of compensation listed in the offer.

Mr. Donich also commented on the proposed RON process and stated that 12 affirmative votes are needed to pass the RON's.

Ross Lew, Program Manager, provided a PowerPoint presentation.

Director Shaw asked for clarification on the driveway on Slide 5 of the PowerPoint presentation.

Mr. Lew responded that the driveway reconstruction can be done expeditiously in off business hours and will not impact the business. It can be reconstructed with a rapid setting concrete and can be open to access the next day.

Chairman Do opened the floor for public comments. No public comments were received other than the two objections previously sent to the Board in the Agenda packet.

1. (Continued)

A motion was made by Director Hennessey, seconded by Director Delgleize, and following a roll call vote, declared passed 14-1 to adopt Resolution of Necessity Nos. 2021-017, and 2021-019, and authorize and direct General Counsel to prepare, commence, and prosecute a proceeding in eminent domain for the purpose of acquiring necessary right-of-way and real property interests for the State Route 55 Improvement Project between Interstate 405 and Interstate 5.

Director Wagner voted in opposition on this item.

Consent Calendar (Items 2 through 9)

2. Approval of Minutes

A motion was made by Vice Chairman Murphy, seconded by Director Hernandez, and following a roll call vote, declared passed 15-0, to approve the Orange County Transportation Authority and affiliated agencies' regular meeting minutes of March 8, 2021.

3. Agreement for Construction of the Anaheim Canyon Metrolink Station Improvement Project

A motion was made by Vice Chairman Murphy, seconded by Director Hernandez, and following a roll call vote, declared passed 15-0, to:

- A. Find Environmental Construction, Inc., the apparent low bidder, as non-responsive for failure to meet the federal program requirement for Disadvantaged Business Enterprise participation.
- B. Authorize the Chief Executive Officer to negotiate and execute Agreement No. C-0-2193 between the Orange County Transportation Authority and Stacy and Witbeck, Inc., the lowest responsive, responsible bidder, in the amount of \$13,480,000, for the construction of the Anaheim Canyon Metrolink Station Improvement Project.
- C. Authorize the use of up to \$4,300,000, in additional federal Congestion Mitigation and Air Quality Improvement Program funds to provide full funding for construction of the Anaheim Canyon Metrolink Station Improvement Project.
- D. Authorize staff to process all necessary amendments to the Federal Transportation Improvement Program to facilitate programming of the Project.

4. State Legislative Status Report

A motion was made by Vice Chairman Murphy, seconded by Director Hernandez, and following a roll call vote, declared passed 15-0, to:

- A. Adopt a SUPPORT position on AB 1499 (Daly, D-Anaheim), which would remove the sunset date on existing design-build authority for highway projects.
- B. Adopt an OPPOSE UNLESS AMENDED position on SB 261 (Allen, D-Santa Monica), which would require metropolitan planning organizations to meet vehicle miles traveled reduction targets as part of the regional transportation plan.

5. Federal Legislative Status Report

A motion was made by Vice Chairman Murphy, seconded by Director Hernandez, and following a roll call vote, declared passed 15-0, to receive and file as an information item.

6. Local Transportation Fund Claims for Fiscal Year 2021-22

A motion was made by Vice Chairman Murphy, seconded by Director Hernandez, and following a roll call vote, declared passed 15-0, to adopt Orange County Transit District Resolution No. 2021-013 authorizing the filing of Local Transportation Fund claims, in the amounts of \$152,727,401 to support public transportation and \$8,094,904 for community transit services.

7. Approval to Release Invitation for Bids for Battery Chargers for 40-Foot Plug-In Battery-Electric Buses

A motion was made by Vice Chairman Murphy, seconded by Director Hernandez, and following a roll call vote, declared passed 15-0, to approve the release of Invitation for Bids 0-2731 for battery chargers for 40-foot plug-in battery-electric buses.

8. Bus Operations Performance Measurements Report for the Second Quarter of Fiscal Year 2020-21

A motion was made by Vice Chairman Murphy, seconded by Director Hernandez, and following a roll call vote, declared passed 15-0, to receive and file as an information item.

9. Agreement for Public Communications and Community Outreach Consultant Services for the State Route 55 Improvement Project Between Interstate 405 and Interstate 5

Darrell E. Johnson, Chief Executive Officer (CEO), stated staff pulled this item at the Legislative and Communications Committee meeting and continued the item to the next Board of Directors meeting.

Regular Calendar

10. Transportation Infrastructure Finance and Innovation Loan Interest Rate Reset Form of Financing Documents

Andrew Oftelie, Chief Financial Officer (CFO), discussed the following:

- Background on why the Orange County Transportation Authority (OCTA) has this loan.
- The Interstate 405 (I-405) freeway and using Measure M funds on Transportation Infrastructure Finance and Innovation Act (TIFIA) loan of \$629 million loan OCTA has drawn \$287 million loan, and are paying a fixed rate of 2.91 percent.
- Staff recommends that the Board approve the necessary documents to terminate the existing loan and establish a new loan with the Build America Bureau (Bureau) that administers TIFIA loans.
- OCTA would pay back the Bureau and establish a new loan at whatever the 30-year treasuries plus one basis point, then draw from the amount OCTA already had outstanding.
- At the time, OCTA looked at using toll revenue bonds and compared that to a loan from the Bureau. The payment term was more flexible, and it was a lower rate.
- The weight is not a negotiable number. Benefits at the time the Board had to approve allowed for important policy decisions.
- TIFIA loan is a crucial part of the I-405 Improvement Project.
- The interest rate is at a historically low rate. The Bureau doesn't have a process in place for a straight re-financing. OCTA has worked with the Bureau, and there will be no other changes with the terms of the loan.

10. (Continued)

A motion was made by Director Delgleize, seconded by Director Sarmiento, and following a roll call vote, declared passed 15-0, to:

- A. Approve the substantially final form of the Transportation Infrastructure Finance and Innovation Act Loan Agreement between the Orange County Transportation Authority and the United States Department of Transportation for up to \$628.9 million, the substantially final form of the Second Supplemental Indenture by and between the Orange County Transportation Authority and the Trustee, and the substantially final form of the Loan Pay-off and Termination Agreement between the Orange County Transportation Authority and the United States Department of Transportation.
- B. Authorize the Chief Executive Officer to negotiate and execute a final Transportation Infrastructure Finance and Innovation Act Loan Agreement, Second Supplemental Indenture, and Loan Payoff and Termination Agreement.
- C. Authorize the Chairman, Vice Chairman, Chief Executive Officer, Chief Financial Officer, Director of Finance and Administration, and Department Manager of Treasury and Public Finance to sign all documents related to the Transportation Infrastructure Finance and Innovation Act loan, including the Transportation Infrastructure Finance and Innovation Act Loan Agreement, the Second Supplemental Indenture, Loan Pay-off and Termination Agreement, and any certificates, notices, receipts, or agreements in connection with the foregoing.

11. OC Streetcar Project Supplemental Contingency

Jim Beil, Executive Director of Capital Programs, provided a PowerPoint presentation.

A discussion ensued regarding:

- Specific projects under the Capital Investment Grants Program have additional funding available under the \$1.9 trillion stimulus funding package. It will take staff some time to figure out how that additional funding will be set up.
- Clarification on increasing the budget for the OC Streetcar Project and seeking additional supplemental allotment on contingency until further analysis is finalized by the Federal Transit Administration (FTA).

Director Hennessey noted his concerns on quality control issues with the contractor, contractor willingness, and the site's security.

11. (Continued)

Mr. Beil responded the contractor is not an issue. It's a challenging project, and there are many unknowns.

Director Goodell stated site security should be re-evaluated.

Mr. Beil stated the contractor would implement additional security.

Director Hennessey inquired about a disbarment ordinance.

James Donich, General Counsel, stated OCTA does not have a disbarment ordinance in place that would give the ability to bar a contractor from further work with OCTA. While it is available under the law, the Board has never adopted one. As long as the contractor is deemed responsible, they can participate in Invitation for Bids at OCTA.

A motion was made by Director Delgleize, seconded by Director Sarmiento, and following a roll call vote, declared passed 13-1, to:

- A. Authorize the use of up to an additional \$7.32 million in Measure M2 funds and up to \$8.29 million in additional Federal Congestion Mitigation and Air Quality Improvement Program funds to supplement the contingency for the OC Streetcar project. Along with other previously-approved funding adjustments of \$70,000, this will increase the Federal Transit Administration Full Funding Grant Agreement funding from \$407.76 million to \$423.44 million, with use of federal funds contingent on Federal Transit Administration approval.
- B. Authorize staff to process all necessary amendments to the Federal Transportation Improvement Program and execute or amend all

Director Wagner voted in opposition of this item.

Director Chaffee was not present to vote on this item.

12. Amendment to Agreement for Construction Management Services for the OC Streetcar Project

Jim Beil, Executive Director of Capital Programs, reported on the following:

- Overview of PGH Wong Engineering, Inc., (PGH Wong) and their duties to manage the OC Streetcar Project's construction.
- Numerous challenges in the initial stages of construction and design clarifications and deficiencies have extended the overall construction duration.
- PGH Wong's time and material burn rates have been higher than what was anticipated and have resulted in a contract amendment to increase funding.
- The overall assessment is not being finalized until the Federal Transit Administration (FTA) completes its own detailed cost and schedule risk analysis.
- Staff will return later to request an additional amendment after the FTA has completed its risk analysis.

A motion was made by Director Sarmiento, seconded by Director Delgleize, and following a roll call vote, declared passed 13-1, to authorize the Chief Executive Officer to negotiate and execute Amendment No. 11 to Agreement No. C-6-0926 between the Orange County Transportation Authority and PGH Wong Engineering, Inc., in the amount of \$6,829,862, and extend the agreement term through November 30, 2021, for continued OC Streetcar project construction management services. This will increase the maximum cumulative obligation of the agreement to a total contract value of \$17,983,474.

Director Wagner voted in opposition of this item.

Director Chaffee was not present to vote on this item.

Discussion Items

13. Public Comments

The DCOB stated that the COB Department received two public comments on March 21st from Craig A. Durfey, and one additional public comment was received on March 11th from an anonymous member of the public. The Board was emailed the comments on March 22nd. The comments will be retained as part of the record for today's Board meeting.

14. Chief Executive Officer's Report

Mr. Johnson, CEO, reported on the following:

March Employees of the Month Recognition –

- The Operations Employee of the Month is Tolga Efe.
- Tolga is a coach operator at the Santa Ana base who started his driving career with OCTA in April 1998.
- Last May, Tolga achieved an impressive 20 years of safe driving.
- The Maintenance Employee of the Month is Eduardo Ramos.
- Eduardo is a Journeyman Mechanic who joined OCTA in March 1991. He is a crucial mechanic on the day shift at the Garden Grove base, working on both the contingency and the active fleet.
- The Administrative Employee of the Month is Jennifer Beaver, who joined OCTA in 2013. In addition to writing and managing the content of OCTA's award-winning blog, "On the Move," Jennifer has also played a vital role during the pandemic preparing COVID-19 information for our riders and customers.
- OCTA's March Employees of the Month were congratulated.

Public Committee Recruitment –

- OCTA is currently conducting a recruitment for the Taxpayer Oversight Committee.
- OCTA is also seeking applicants from the First, Second, Fourth, and Fifth Supervisorial Districts for the Taxpayer Oversight Committee.
- This committee ensures Measure M funds are spent in compliance with the ordinance, and its recruitment is independently conducted by the Grand Jurors Association of Orange County.
- Applications are due May 2, 2021.

15. Directors' Reports

Director Shaw provided an update on the external agencies that he serves on: Mobile Source Air Pollution Reduction Review Committee and the LOSSAN Rail Corridor Agency.

16. Closed Session

James Donich, General Counsel, announced a Closed Session would be held as follows:

Pursuant to Government Code Section 54956.9(d)(1) - Conference with General Counsel - Existing Litigation - Evan Weiss, et al., v. Orange County Transportation Authority, et al. - OSCS Case No. 30-2012-00605637.

There was no report out for the above noted Closed Session Item.

17. Adjournment

The meeting adjourned at 9:53 a.m.

The next regularly scheduled meeting of this Board will be held at **9:00 a.m. on Monday, April 12, 2021**, at the Orange County Transportation Authority Headquarters, Board Room - Conference Room 07-08, 550 South Main Street, Orange, California.

ATTEST:

Gina Ramirez
Deputy Clerk of the Board

Andrew Do
Chairman