

# MINUTES

## *Board of Directors' Meeting*

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### **Call to Order**

The Monday, September 13, 2021, regular meeting of the Orange County Transportation Authority (OCTA) and affiliated agencies was called to order by Vice Chairman Murphy at 9:03 a.m. at the OCTA Headquarters, 550 South Main Street, Board Room – Conference Room 07-08, Orange, California.

### **Roll Call**

Gina Ramirez, Clerk of the Board, Senior (COBS), conducted an attendance Roll Call and announced a quorum of the Board of Directors (Board) as follows:

**Via Teleconference:** Mark A. Murphy, Vice Chairman  
Lisa A. Bartlett  
Doug Chaffee  
Katrina Foley  
Brian Goodell  
Patrick Harper  
Michael Hennessey  
Gene Hernandez  
Steve Jones  
Joseph Muller  
Tam Nguyen  
Tim Shaw  
Harry S. Sidhu  
Donald P. Wagner  
Ryan Chamberlain

**Directors Absent:** Andrew Do, Chairman  
Barbara Delgleize  
Vicente Sarmiento

**Staff Present:** Darrell E. Johnson, Chief Executive Officer  
Jennifer L. Bergener, Deputy Chief Executive Officer  
Gina Ramirez, Clerk of the Board Specialist, Senior  
Sahara Meisenheimer, Clerk of the Board Specialist

**Via Teleconference:** James Donich, General Counsel

## **Invocation**

Director Shaw gave the Invocation.

## **Pledge of Allegiance**

Director Hernandez led the Pledge of Allegiance.

## **Special Calendar**

There were no Special Calendar matters.

## **Orange County Transportation Authority Consent Calendar Matters**

### **1. Approval of Minutes**

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 14-0, to approve the Orange County Transportation Authority and affiliated agencies' regular meeting minutes of August 23, 2021.

### **2. Coronavirus Update**

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 14-0, to receive and file as an information item.

### **3. Orange County Transportation Authority Investment and Debt Programs Report - July 2021**

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 14-0, to receive and file as an information item.

### **4. Authorization for the Orange County Transportation Authority to Deposit and Invest Excess Funds with the Treasurer-Tax Collector of the County of Orange**

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 14-0, to approve Resolution No. 2021-062 authorizing the Orange County Transportation Authority to deposit and invest excess funds with the Treasurer-Tax Collector of the County of Orange.

**5. Bond Anticipation Notes (Interstate 405 Improvement Project), Series 2021 Financing Documents**

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 14-0, to adopt Resolution No. 2021-076, authorizing the issuance and sale of Bond Anticipation Notes (I-405 Improvement Project), Series 2021 in an aggregate principal amount not to exceed \$675 million, and the execution and delivery of related financing documents. The related financing documents include forms of the Master Indenture, First Supplemental Indenture, Standby Bond Purchase Agreement, Purchase Contract, Preliminary Official Statement, and the form of the Continuing Disclosure Certificate, and taking all other actions necessary in connection with the proposed transaction.

**6. Excess Workers' Compensation Insurance Policy**

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 14-0, to authorize the Chief Executive Officer to negotiate and execute Purchase Order No. A48430, in the amount of \$500,000, to Marsh Risk and Insurance Services, Inc., to purchase excess workers' compensation insurance on behalf of the Orange County Transportation Authority for the policy period of October 1, 2021 to October 1, 2022.

**7. Metrolink Fiscal Year 2020-21 Performance Report**

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 14-0, to receive and file as an information item.

**8. Approval to Release Request for Proposals for Maintenance Services for Operating Railroad Right-of-Way**

Director Wagner pulled this item, along with Item 14 and expressed concerns about the language stated in the two Request for Proposal (RFP) documents that gives the Board the discretion, regardless of what the evaluation team or what the Committee with jurisdiction does. He requested that General Counsel add language to these two RFP's and any future ones to state the final decision is entirely within the Board's discretion.

James Donich, General Counsel, responded that the Orange County Transportation Authority (OCTA) has never included that type of language in a staff report for an RFP document. He stated what Director Wagner referenced is relevant case law through the California courts. The courts have granted control to public agencies to award as long as the award is not arbitrarily inconsistent or lacking in any evidentiary standing.

**8. (Continued)**

Mr. Donich stated that due to the recent issues that have come up, it might not be a bad idea to include language into the procurement policy. He noted this would require staff to bring an item to the Board to approve an amendment to the procurement policy and include it in the staff report and future RFP documents as OCTA issues them to reflect relevant case law.

Director Wagner inquired about the cost being 20 percent of the evaluation criteria and is unsure how that works in a situation where the Board is supposed to go with the lowest responsible bid.

Mr. Donich responded in an RFP process that there is no requirement that the Board goes with the lowest responsible bidder. He noted that there are no state statutes that would govern how the agency is to award an RFP. It is up to the agency to determine through their procurement policy. In those situations, typically, OCTA's RFPs are awarded through the procurement policy to the best value bidder. OCTA determines the best value from a combination of price, work plan, and qualifications. He stated that Invitation for Bids (IFB's) are required by law to go to the lowest bidder.

Director Wagner stated that he would continue to consider the price on behalf of the taxpayers, regardless of the percentage set in the evaluation criteria.

Concerns were raised by Directors Bartlett, Harper, and Hennessey about the following:

- Making substantive changes to OCTA's procurement process without the Chairman and others in attendance.
- Set up an ad-hoc procurement Committee and bring something to the Board for consideration.
- When there is an open, transparent, and accountable procurement process and the Board does not vote or pass staff's recommendation, the Board has to be cautious of how that appears to outside vendors and participants.
- A balancing act between integrity and the procurement process that is set in place.
- The price should be a higher weighted item in the evaluation criteria.

Mr. Johnson, CEO, agreed with the concerns and reservations on Items 8 and 14 and noted for clarification that staff is asking the Board to release these RFP's today. He stated there is a slight change to the contract documents, and if staff needs to delay these for two weeks, that is not a problem. He also said it would make him more comfortable if there were a motion to make that change and then vote on it, so staff can incorporate the changes in the procurement policy going forward.

**8. (Continued)**

Mr. Johnson, CEO, stated that OCTA does have a strong committee structure. The Finance and Administration (F&A) Committee does have jurisdictional responsibility for the procurement policy. He noted changes made in the past, using the F&A Committee, and engaging the vendor community in open sessions had worked well for OCTA.

Director Hennessey stated he is sympathetic to the idea of low bids and cautioned that the Board could set the criteria.

Vice Chairman Murphy concurred with Director Wagner that a review and a discussion around the process might be a good idea given that the Board has had lots of questions over the last couple of months.

Director Foley shared Director Wagner's concerns and stated that if the Board has the discretion, it would be helpful to add the language to the document.

A motion was made by Director Wagner, seconded by Director Hennessey, and following a roll call vote, declared passed 14-0, to:

- A. Approve the proposed evaluation criteria and weightings for Request for Proposals 1-3684 for selection of a contractor to provide maintenance services for the operating railroad right-of-way.
- B. Approve the release of Request for Proposals 1-3684 for maintenance services for the operating railroad right-of-way.

**9. South Orange County Multimodal Transportation Study Update**

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 14-0, to receive and file as an information item.

**10. Grant Awards for the Garden Grove-Santa Ana Rails-to-Trails Gap Closure and Bus Stop Safety and Accessibility Study**

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 14-0, to:

- A. Adopt Orange County Transportation Authority Resolution No. 2021-071 and authorize the Chief Executive Officer, or designee, to accept the Active Transportation Program \$3,000,000 grant award and execute required grant-related agreements with the California Department of Transportation and California Transportation Commission.

**10. (Continued)**

- B. Adopt Orange County Transportation Authority Resolution No. 2021-072 and authorize the Chief Executive Officer, or designee, to accept the Sustainable Communities Program \$300,000 grant award and execute grant-related agreements with the Southern California Association of Governments.
- C. Authorize the Chief Executive Officer, or designee, to amend the Federal Transportation Improvement Program and process all necessary amendments to facilitate the recommendations above.

**11. Grant Award Acceptance for the 2022 Orange County Fair Express Bus Service**

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 14-0, to authorize the Chief Executive Officer, or designee, to accept the Mobile Source Air Pollution Reduction Review Committee Major Event Center Transportation Program award for \$289,054, and to negotiate and execute grant-related agreements and documents with the Mobile Source Air Pollution Reduction Review Committee.

**Orange County Transit District Consent Calendar Matters**

**12. Agreement for Compressed Natural Gas Fueling Facility Operation and Maintenance**

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 14-0, to:

- A. Approve the selection of Trillium USA Company, LLC, doing business as Trillium, as the firm to provide compressed natural gas fueling facility operation and maintenance.
- B. Authorize the Chief Executive Officer to negotiate and execute Agreement No. C-1-3317 between the Orange County Transportation Authority and Trillium USA Company, LLC, doing business as Trillium, in the amount of \$1,845,540, to provide compressed natural gas fueling facility operation and maintenance for a three-year initial term beginning December 1, 2021, with two, one-year option terms.

**13. October 2021 Bus Service Change**

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 14-0, to receive and file as an information item.

**Orange County Local Transportation Authority Consent Calendar Matters**

**14. Approval to Release Request for Proposals for the Preparation of Plans, Specifications, and Estimates for the State Route 55 Improvement Project Between Interstate 5 and State Route 91**

Director Wagner pulled this item, and it was discussed under Item 8.

A motion was made by Director Wagner, seconded by Director Hennessey, and following a roll call vote, declared passed 14-0, to:

- A. Approve the proposed evaluation criteria and weightings for Request for Proposals 1-3643 for consultant services for the preparation of plans, specifications, and estimates for the State Route 55 Improvement Project between Interstate 5 and State Route 91.
- B. Approve the release of Request for Proposals 1-3643 for consultant services for the preparation of plans, specifications, and estimates for the State Route 55 Improvement Project between Interstate 5 and State Route 91.

**15. Contract Change Orders for the Interstate 405 Improvement Project from State Route 73 to Interstate 605**

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 14-0, to:

- A. Authorize the Chief Executive Officer to negotiate and execute Contract Change Order No. 101 to Agreement No. C-5-3843 between the Orange County Transportation Authority and OC 405 Partners, a joint venture, in the amount of \$230,838, to remove an encroaching building overhang adjacent to the Magnolia Street northbound on-ramp.
- B. Authorize the Chief Executive Officer to negotiate and execute Contract Change Order No. 106 to Agreement No. C-5-3843 between the Orange County Transportation Authority and OC 405 Partners, a joint venture, in the amount of \$925,000, to provide bridge lighting on seven overcrossing bridges.
- C. Authorize the Chief Executive Officer to negotiate and execute Contract Change Order No. 107 to Agreement No. C-5-3843 between the Orange County Transportation Authority and OC 405 Partners, a joint venture, in the amount of \$420,000, to provide conduit extensions and pull boxes for future bridge lighting on nine overcrossing bridges.

**15. (Continued)**

- D. Authorize the Chief Executive Officer to negotiate and execute Contract Change Order No. 109 to Agreement No. C-5-3843 between the Orange County Transportation Authority and OC 405 Partners, a joint venture, in the amount of \$410,000, to provide full pavement reconstruction to part of the Harbor Boulevard northbound on-ramp.

**16. Amendment to Agreement for Additional Design Services for the State Route 55 Improvement Project Between Interstate 405 and Interstate 5**

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 11-1, to authorize the Chief Executive Officer to negotiate and execute Amendment No. 7 to Agreement No. C-7-1719 between the Orange County Transportation Authority and WKE, Inc., in the amount of \$563,183, for additional design services for the State Route 55 Improvement Project between Interstate 405 and Interstate 5. This will increase the maximum cumulative obligation of the agreement to a total contract value of \$19,867,709.

Director Wagner voted in opposition.

Due to the Levine Act, Directors Jones and Shaw did not vote or participate on this item.

**17. Environmental Mitigation Program Endowment Fund Investment Report for June 30, 2021**

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 14-0, to receive and file as an information item.

**18. Bond Anticipation Notes (Interstate 405 Improvement Project), Series 2021 Approval of Standby Bond Purchase Agreement**

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 14-0, to:

- A. Adopt Resolution No. 2021-077 authorizing the execution and delivery of a Standby Bond Purchase Agreement to facilitate the issuance of Bond Anticipation Notes by the Orange County Transportation Authority.
- B. Authorize staff to take all other actions necessary in connection with the execution and delivery of said Standby Bond Purchase Agreement.

**19. Capital Programming Update**

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 14-0, to:

- A. Consistent with right-of-way phase estimates for the Interstate 5 Improvement Project from Yale Avenue to State Route 55 (Segment 2), authorize the use of \$23.926 million from the following fund sources:
  - Surface Transportation Block Grant (\$17.5 million),
  - Measure M2 freeway funds (\$5.575 million),
  - Repurposed earmarks (up to \$0.851 million), contingent on Federal Highway Administration approval, and
  - Additional Measure M2 freeway funds in lieu of \$0.851 million of repurposed earmarks, in the event the federal funds are not available.
- B. Consistent with updated design phase estimates for the State Route 55 Improvement Project from Interstate 5 to State Route 91, authorize the use of the funding below, increasing total funding for the phase from \$8.921 million to \$11 million, and reducing Measure M2 funds by \$3.921 million:
  - Surface Transportation Block Grant (\$3.359 million), and
  - Highway Infrastructure Program (\$2.641 million).
- D. Consistent with the forecasted cost for the environmental phase for the Interstate 5 Managed Lanes Project from the Orange County/San Diego County line to Avenida Pico, authorize the use of \$0.907 million in additional Surface Transportation Block Grant funds to fund this change in the project cost estimate from \$5.5 million to \$6.407 million.
- E. Authorize the use of up to \$3.207 million in additional Measure M2 Regional Capacity Program funds for the OC Bridges Railroad Grade Separation Program in lieu of federal Congestion Mitigation and Air Quality improvement funding.
- F. Authorize the use of \$12.526 million in Congestion Mitigation and Air Quality Improvement Program funds for 173 bus engine repowers.
- G. Authorize staff to process all necessary amendments to the Federal Transportation Improvement Program and execute or amend all necessary agreements to facilitate the above actions.

**19. (Continued)**

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

- C. Authorize the use of \$1.720 million in Measure M2 for the State Route 55 Improvement Project from Interstate 405 to Interstate 5 to support anticipated increased costs for the design phase, changing the total project estimated cost from \$504 million to \$505.720 million.

Director Wagner voted in opposition on Recommendation C.

**20. Measure M2 Quarterly Progress Report for the Period of April 2021 Through June 2021**

A motion was made by Director Hernandez, seconded by Director Hennessey, and following a roll call vote, declared passed 14-0, to receive and file as an information item.

**Regular Calendar**

**Orange County Transit District Regular Calendar Matters**

**21. Agreement for OC ACCESS Paratransit and OC Flex Microtransit Services**

Director Shaw stated that due to the Levine Act, he would not participate.

Darrell E. Johnson, CEO, provided opening comments and introduced Jack Garate, Department Manager of Paratransit Services, who provided a PowerPoint presentation.

Director Foley noted that she did not have a conflict on this item under the Levine Act.

The COBS stated that a public comment was received on September 7, 2021, from Roz Esposito. The public comment was emailed to the Board on September 13, 2021, at 8:24 a.m. The comment would be retained as part of the record for today's Board meeting.

A lengthy discussion ensued regarding the following:

Director Wagner inquired about how OCTA would handle the vendor change orders to increase the contract dollar amount.

Mr. Johnson, CEO, responded that this would be a contract amendment versus a construction change order, in which different rules and processes apply.

**21. (Continued)**

Mr. Johnson, CEO, stated the current contract has a clause if OCTA were to raise or lower the revenue vehicle hours greater than or less than 20 percent, the vendor would have an opportunity to renegotiate the rates they put in their proposal. Before the coronavirus (COVID-19) pandemic, OCTA never had a reason to decrease or increase service by more than 20 percent.

Mr. Johnson, CEO, discussed the past fixed-route vendor requesting to change the wage structure based on driver shortages. OCTA staff came before the Committee and the Board to discuss it, and there were some changes made, but that was through a negotiated process that the Board ultimately approved.

He noted that OCTA's current paratransit vendor asked for the same type of change amendment, and the Board did not approve the amendment.

Mr. Johnson, CEO, stated the tools are within the contract and OCTA must look at the current operating environment if they are going to consider a contract amendment requested by the vendor. OCTA has tried to restructure this specific procurement taking into account that OCTA may have a less stable service level from now on, given what staff has learned over the last 20 months.

Director Muller inquired about the cost savings for OCTA and if adding a quality assurance manager position was requested in the proposal.

A lengthy discussion between staff and the Committee ensued regarding:

- The service that would be provided.
- All the proposals received from the vendors are all qualified.
- OCTA is looking at how to improve and the focus is on quality of service on the street.
- The Quality Assurance manager position was not requested in the proposal.
- The pricing is based on a per-trip basis which OCTA does not control.
- The cost difference is three percent, and staff's goal is to determine the best service value.
- The goal is to be more efficient.
- How does staff justify the additional cost.
- The operational approach model is different in this type of procurement.
- Very challenging population and it is a federally mandated service.
- The top two vendors have different approaches, and the overall look is not always on the dollar side.
- The contractor will provide the maintenance, while OCTA delivers the vehicles.
- Increase the number of performance metrics in the new contract.
- Industry has changed to a per trip basis which allows OCTA to reduce the costs overall.

**21. (Continued)**

A motion was made by Director Sidhu, seconded by Director Hernandez, and following a roll call vote, declared passed 12-1, to:

- A. Approve the selection of First Transit, Inc., as the firm to provide the management, operations, and maintenance of the OC ACCESS paratransit and OC Flex microtransit services.
- B. Authorize the Chief Executive Officer to negotiate and execute Agreement No. C-0-2150 between the Orange County Transportation Authority and First Transit, Inc., in the amount of \$242,579,221, to provide the management, operations, and maintenance of the OC ACCESS paratransit and OC Flex microtransit services for an initial four-year term commencing on January 1, 2022, with two, two-year option terms.

Director Muller voted in opposition.

Due to the Levine Act, Director Shaw did not vote or participate on this

**Discussion Items**

**22. Public Comments**

The COBS stated that a public comment was received on September 13, 2021, from Charles Johnson. The public comment was emailed to the Board on September 13, 2021, at 8:24 a.m. The comment would be retained as part of the record for today's Board meeting.

**23. Chief Executive Officer's Report**

Director Foley inquired about Item 2 and requested an update.

Mr. Johnson, CEO, provided an update on OCTA's efforts to proactively respond to the COVID-19 pandemic and referenced the materials emailed to the Board in advance of today's Board meeting.

Mr. Johnson, CEO, provided an update on the following:

**Transportation Infrastructure Finance and Innovation Act (TIFIA) -**

- Referenced the email, he sent about the TIFIA loan. He was pleased to report that OCTA closed on the new TIFIA loan for the Interstate 405 (I-405) Improvement Project last week.
- The new 1.95 percent interest rate will save an additional \$158 million over the life of the loan, resulting in tangible benefits for everyone who travels along the I-405 freeway.

**23. (Continued)**

- OCTA is the first agency ever to reset a partially drawn TIFIA loan, and he thanked the Board and the Finance and Administration Committee for their leadership.
- He also thanked the United States Department of Transportation for being a great partner. In addition, he thanked OCTA's Finance team led by Andrew Oftelie, Chief Financial Officer, Sean Murdock, Director of Finance, and Robert Davis, Department Manager of Treasury and Finance, who put in a lot of extra hours to make this happen.

**American Society of Civil Engineers (ASCE) Award-**

- The Los Angeles Section of the ASCE has selected the Interstate 5 (I-5) Central County Improvements project as its Construction Project of the Year. This project added a second carpool lane in both directions on the I-5 between the State Route 55 and State Route 57 freeways and was completed under budget and ahead of schedule.
- Mr. Johnson congratulated Niall Barrett, Program Manager, and the entire team who worked on this project.

**Interstate 405 (I-405) Virtual Neighborhood Meeting -**

- On Thursday, September 16<sup>th</sup>, from 4:00 p.m. to 5:00 p.m. OCTA will host a virtual neighborhood meeting to provide the community with an update on the upcoming closure of the Springdale Street bridge, as part of the I-405 Improvement Project. This meeting will be recorded and archived on our website for future viewing.
- The Springdale Street bridge is anticipated to be closed in late September after the Edwards Street bridge reopens.
- Demolition activities are anticipated to begin in early October.

**Hikes and Rides Return -**

- Mr. Johnson stated that the hikes and equestrian rides of OCTA's permanently protected wilderness preserves have returned.
- The first hike is scheduled for this Saturday, September 18<sup>th</sup>, at 9:00 a.m. at the Pacific Horizon Preserve in Laguna Beach.
- On Sunday, September 26<sup>th</sup> at 10:00 a.m., OCTA will host an equestrian ride at the Trabuco Rose Preserve in Trabuco Canyon.

**24. Directors' Reports**

Director Hennessey echoed Mr. Johnson's comments on the TIFIA loan and acknowledged staffs' accomplishments.

Director Hennessey also paid tribute to the September 12, 2008 Metrolink train crash that killed 25 people and injured 135 more. Director Hennessey reminded the Board that OCTA should always demand transparency and safety from our partners at Metrolink and that this is a very serious business to conduct.

**25. Closed Session**

A Closed Session was held as follows:

Pursuant to Government Code Section 54956.9 - Conference with General Counsel - Potential Litigation - One Matter

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

Vice Chairman Murphy and Directors Bartlett, Chaffee, Foley, Goodell, Harper, Hennessey, Hernandez, Jones, Nguyen, Shaw, Wagner, and Chamberlain were present for the Closed Session item.

**26. Adjournment**

The meeting adjourned at 10:16 a.m. in memory of the 25 lives lost in the Metrolink train crash in 2008.

The next regularly scheduled meeting of this Board will be held at **9:00 a.m. on Monday, September 27, 2021**, at the Orange County Transportation Authority Headquarters, Board Room - Conference Room 07-08, 550 South Main Street, Orange, California.

ATTEST:

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Gina Ramirez  
Clerk of the Board Specialist, Senior

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Mark Murphy  
Vice Chairman