

MINUTES

Board of Directors' Meeting

Call to Order

The Monday, September 27, 2021, regular meeting of the Orange County Transportation Authority (OCTA) and affiliated agencies was called to order by Vice Chairman Murphy at 9:01 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
Barbara Delgleize
Katrina Foley
Brian Goodell
Patrick Harper
Michael Hennessey
Gene Hernandez
Steve Jones
Joseph Muller
Tam Nguyen
Vicente Sarmiento
Tim Shaw
Harry S. Sidhu
Donald P. Wagner
Ryan Chamberlain

Directors Absent: Andrew Do, Chairman

Staff Present: Darrell E. Johnson, Chief Executive Officer
Gina Ramirez, Clerk of the Board Specialist, Senior
Allison Cheshire, Clerk of the Board Specialist, Senior
James Donich, General Counsel

Invocation

Director Hennessey gave the Invocation.

Pledge of Allegiance

Director Harper led the Pledge of Allegiance.

Special Calendar

There were no Special Calendar matters.

Consent Calendar (Items 1 through 14)

Vice Chairman Murphy commented on Item 1 and stated that while approving this resolution allows the Board to continue meeting virtually, beginning with the October 11 Board meeting, all Board meetings will be held in-person at the Orange County Transportation Authority (OCTA) headquarters. He noted that all health and safety protocols would be in place.

He also noted that Board committees would be at the discretion of the Committee Chair, in consultation with the CEO and General Counsel, whether to meet virtually or in person.

Vice Chairman Murphy stated that matters on the Consent Calendar are to be approved in one motion unless a Board Member or a member of the public requests separate action on a specific item.

Orange County Transportation Authority Consent Calendar Matters

1. Ralph M. Brown Act Board Resolution for Teleconference Meetings

Director Foley pulled this item to inquire about Assembly Bill (AB-361) and the ability to continue holding teleconferencing meetings and allowing access to the public to participate via teleconference.

James Donich, General Counsel, responded with an overview of AB-361 and new requirements should the Board choose to utilize provisions of the new law.

A motion was made by Director Foley, seconded by Director Sarmiento, and following a roll call vote, declared passed 16-0, to adopt Board of Directors Resolution 2021-083.

2. Approval of Minutes

A motion was made by Director Foley, seconded by Director Shaw, and following a roll call vote, declared passed 16-0, to approve the Orange County Transportation Authority and affiliated agencies' regular meeting minutes of September 13, 2021.

3. Agreement for Public Outreach Consultant Services during the Environmental Phase of the Interstate 5 Improvement Project from San Diego County Line to Avenida Pico

A motion was made by Director Foley, seconded by Director Shaw, and following a roll call vote, declared passed 16-0, to:

- A. Approve the selection of McCormick-Busse, Inc., doing business as MBI Media, as the firm to provide public outreach consulting services during the Environmental Phase of the Interstate 5 Improvement Project from the San Diego County Line to Avenida Pico.
- B. Authorize the Chief Executive Officer to negotiate and execute Agreement No. C-1-3353 between the Orange County Transportation Authority and McCormick-Busse, Inc., doing business as MBI Media, in the amount of \$298,450, for a three-year initial term, effective through October 31, 2024, with an option term of up to 24 months, to provide public outreach consulting services during the Environmental Phase of the Interstate 5 Improvement Project from the San Diego County Line to Avenida Pico.

4. State Legislative Status Report

Director Wagner pulled this item, asked for clarification on the programs, and inquired if they were all pending further negotiations.

Lance Larson, Executive Director of Government Relations, noted this applied to all programs and that a more detailed report would be forthcoming in October.

Director Foley inquired about AB-1499.

Mr. Larson responded that the governor had taken a lot of actions. He stated that staff plans on doing an end-of-year report, which is a compilation of all the bills that were acted on or not, at the Legislative and Communications Committee next month.

A motion was made by Director Foley, seconded by Director Shaw, and following a roll call vote, declared passed 16-0, to receive and file as an information item.

5. Federal Legislative Status Report

A motion was made by Director Foley, seconded by Director Shaw, and following a roll call vote, declared passed 16-0, to receive and file as an information item.

6. Cooperative Agreement with the Southern California Regional Rail Authority for Railroad Track Stabilization in the City of San Clemente

Staff pulled this item and continued it to the October 11, 2021, Board meeting.

Director Muller discussed his concerns for the Capo Beach area tracks and stated that OCTA should involve other agencies such as the Orange County (OC) parks and any other relevant agency to develop preventive measures. Instead of always going back and doing an emergency authorization for a coastal development plan, he also suggested to drop the riprap in or build a seawall.

Director Bartlett thanked staff for being proactive and taking measures to shore up that area in San Clemente. She concurred with Director Mueller and wanted to note that she's had conversations with Darrell E. Johnson, Chief Executive Officer, (CEO), and staff to work with OC Parks and the County's public works department to look at a long-term plan for that area. She noted that the County and OCTA are very proactive relative to the entire coastal region from the Cyprus Shores area where the riprap is and up through the Serra Siding project and beyond.

Mr. Johnson, CEO, stated staff could present to either the Committee or the entire Board on the rail defense against climate study, focused on the seven miles of the coastal rail corridor. OCTA has done a fair amount of work in that area, and it was done with the planning grant from the California Department of Transportation and had a lot of stakeholder input. He anticipates returning in two weeks with this funding request for the work going on today.

7. Long-Range Transportation Plan Challenges and Goals

A motion was made by Director Foley, seconded by Director Shaw, and following a roll call vote, declared passed 16-0, to receive and file as an information item.

8. Draft 2021 Orange County Congestion Management Program Report Release for Public Review

A motion was made by Director Foley, seconded by Director Shaw, and following a roll call vote, declared passed 16-0, to direct staff to release the draft 2021 Orange County Congestion Management Program Report for public review and set November 22, 2021, as a public hearing date for adoption of the final 2021 Orange County Congestion Management Program.

Orange County Transit District Consent Calendar Matters

9. 2021 Title VI Plan Triennial Report

A motion was made by Director Foley, seconded by Director Shaw, and following a roll call vote, declared passed 16-0, to:

- A. Review, approve, and direct staff to submit the 2021 Title VI Plan Triennial Report to the Federal Transit Administration's Regional Office of Civil Rights on or before October 1, 2021.
- B. Review and approve the results of the Service Standards and Policies monitoring in Section 4 of the 2021 Title VI Plan Triennial Report.

Orange County Local Transportation Authority Consent Calendar Matters

10. Cooperative Agreement with the California Department of Transportation for the State Route 55 Improvement Project Between Interstate 5 and State Route 91

A motion was made by Director Foley, seconded by Director Shaw, and following a roll call vote, declared passed 16-0, to authorize the Chief Executive Officer to negotiate and execute Cooperative Agreement No. C-1-3642 between the Orange County Transportation Authority and the California Department of Transportation, in the amount of \$500,000, to provide oversight of the plans, specifications, and estimates, and to advertise and award the construction contract for the State Route 55 Improvement Project between Interstate 5 and State Route 91.

11. Amendment to Cooperative Agreement with the City of Westminster for the Interstate 405 Improvement Project

A motion was made by Director Foley, seconded by Director Shaw, and following a roll call vote, declared passed 16-0, to authorize the Chief Executive Officer to negotiate and execute Amendment No. 3 to Cooperative Agreement No. C-5-3615 between the Orange County Transportation Authority and the City of Westminster, in the amount of \$998,652, for additional city services for the Interstate 405 Improvement Project. This will increase the maximum obligation of the cooperative agreement to a total value of \$3,661,331.

12. Approval to Release Request for Proposals for the OC Streetcar Ticket Vending Machines

Staff pulled this item and continued it to the October 11, 2021 Board meeting.

13. 2021 Measure M2 Sales Tax Forecast

A motion was made by Director Foley, seconded by Director Shaw, and following a roll call vote, declared passed 16-0, to receive and file as an information item.

14. Amendments to On-Call Traffic Engineering and Intelligent Transportation Systems Services Agreements

A motion was made by Director Foley, seconded by Director Shaw, and following a roll call vote, declared passed 16-0, to authorize the Chief Executive Officer to negotiate and execute amendments between the Orange County Transportation Authority and the following consultants for on-call traffic engineering and intelligent transportation systems services agreements: Agreement No. C-9-1513 with DKS Associates, Inc.; Agreement No. C-9-1810 with AGA Engineers, Inc.; Agreement No. C-9-1811 with KOA Corporation; and Agreement No. C-9-1812 with Iteris, Inc., in a shared amount of \$10,547,425. This will increase the maximum obligation for all the on-call firms for a total combined aggregate contract value of \$15,875,425.

Regular Calendar

Orange County Transportation Authority Regular Calendar Matters

15. 2022 State Transportation Improvement Program

Darrell Johnson, Chief Executive Officer, provided opening comments and introduced Adriann Cardoso, Section Manager, Strategic Planning, who provided a PowerPoint presentation.

Director Shaw noted that he is excited about north Orange County's truck climbing lane on State Route 57 (SR-57) going through the Brea Canyon area. He also stated the on-and off-ramps at Lambert and SR-57 are under construction. He inquired on what project the \$6.5 million in phase two is going to fund.

Ms. Cardoso responded that this project is considered phase two, and the project that Director Shaw referred to is considered phase one. The phases are planned together, and each project finds the other in terms of the delivery of the project. The \$6.5 million will support the initial phase of the plan, acceptance, and the environmental document.

15. (Continued)

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

- A. Approve the 2022 State Transportation Improvement Program submittal to program \$164.647 million to seven projects, from fiscal year 2022-23 through fiscal year 2026-27.
- B. Authorize the use of \$11.396 million in Measure M2 funds for the Interstate 5 Improvement Project from Interstate 405 to Yale Avenue (Segment 1).
- C. Consistent with construction phase estimates for the Transit Security and Operations Center, authorize the use of \$27.234 million from the following fund sources:
 - \$19.650 million in Local Partnership Program Formula funds,
 - \$3.924 million in additional State of Good Repair, and
 - \$3.660 million Coronavirus Response and Relief Supplemental Appropriations Act, 2021.
- D. Authorize staff to make all necessary amendments to the State Transportation Improvement Program and the Federal Transportation Improvement Program and execute any necessary agreements to facilitate the recommendations above.

Director Sarmiento was not present to vote on this item.

16. Appeal to the Board of Directors to Protest Proposed Award of Contract: Request for Proposals 0-2690 Contractor Selection for the Back-Office System and Customer Service Center Operations for the 405 Express Lanes in Orange County

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

James Donich, General Counsel provided opening comments and discussed the ruling on the protest and the background of the Board voting to award the contract to Cofiroute, USA. The protest was received from WSP USA Services, Inc. (WSP) and under the appeal process, WSP is allowed to offer an appeal to the Board.

Director Wagner inquired on who would determine what is allowable for the Board to hear and why Mr. Johnson, CEO, denied the appeal.

Mr. Donich responded that he would monitor the information presented today, and Mr. Johnson, CEO, and staff were available for comments.

16. (Continued)

Vice Chairman Murphy inquired if there were any public comments.

The Clerk of the Board read public comments into the record: from Michael McKnight and David Roberts and the comments emailed to the Board earlier this morning and noted they would be part of the record for today's meeting.

Lou Cornell, CEO of WSP, provided comment.

Mike Rizzo, General Counsel for WSP provided comment.

Mr. Donich responded and discussed the following:

- The evaluation process is to utilize the Board-adopted evaluation criteria and following those criteria by the evaluation committee, a recommendation is made. The Board Committee then recommends to the Board, but the Board Committee cannot decide for the Board.
- The statute discussed by WSP's counsel does not apply to OCTA as it is a local agency and not a state agency.
- The Board has the discretion to award a contract to whoever it wants regardless of the recommendation by staff or a committee.

Mr. Johnson CEO, stated the protest procedures allow for staff to make a presentation as well but no other public comments on this item, and that WSP has technical staff available.

Director Foley recused herself as she was unable to determine if any campaign contribution conflicts existed.

Kirk Avila, General Manager of the 91 Express Lanes, outlined the original staff recommendation as presented to the Board; provided a review of the evaluation committee recommendation to staff/committee, and the overview of how and why the recommendation was made.

Director Harper inquired about the CEO's analysis of protest.

Mr. Johnson, CEO, responded that this protest focused entirely on the decision-making of the Board and was not under his ability/authority to decide and noted it did not focus on anything within his responsibilities of management of the staff, the evaluation process, the quality of the proposal, the scoring, or the analysis.

Director Bartlett made a motion, seconded by Vice Chairman Murphy to hold a closed session at the next meeting to discuss the matter further.

Director Hennessey stated that the Board has been clear on their position regarding the contract award for this project and recommends moving this agreement forward.

16. (Continued)

Director Hernandez stated he appreciated the information shared today. However, not enough information was shared today by WSP to decide to overturn the decision.

Director Chaffee inquired if the decision to overturn this item allows Cofiroute USA, LLC to have the same option to file a protest.

Mr. Donich responded that Cofiroute would have the same option to file a protest.

Director Chaffee supported the closed session discussion.

Director Wagner stated that he is not sure discussing in a closed session would change the decision. He said WSP lobbied some of the Board Members as Cofiroute did. He noted WSP is an excellent company, and there is no doubt they could do the job as outlined.

Director Wagner noted his concerns about asking the Board to overturn their decision based on experience and knowledge as best possible does a disservice to the people of Orange County. He stated good companies lose contracts all the time.

Director Harper stated that the Board has the discretion to agree with the Committee or go in a different direction. He said it is essential to listen to the protest and evaluate the information presented. If there is any new information that would affect the previous decision, then it should be considered.

Director Hennessey inquired about the process of voting on the substitute motion.

Mr. Donich noted that OCTA's practice has been that the substitute motion is acted upon first.

Mr. Rizzo disagreed with legal advice given to the Board. He stated that OCTA should not publish a process and ask bidders to bid and go through the process and then disregard the process and make a selection based on criteria not published.

A substitute motion was made by Director Wagner, seconded by Director Sidhu, and following a roll call vote, failed 5-8, to deny the protest from WSP USA Services, Inc.

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

Director Sarmiento was not present to vote on this item.

16. (Continued)

A substitute motion was made by Director Hennessey, seconded by Director Hernandez, and following a roll call vote, failed 7-6, to uphold the protest from WSP USA Services, Inc. and award the contract to WSP USA Services, Inc.

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

Director Sarmiento was not present to vote on this item.

After a lengthy discussion ensued on the matter, a motion was made by Director Bartlett, seconded by Vice Chairman Murphy, and following a roll call vote passed 11-2 to schedule a Closed Session to discuss potential litigation on the WSP Protest at the October 11, 2021, Board of Directors meeting.

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

Director Sarmiento was not present to vote on this item.

Discussion Items

17. Public Comments

1. Charles Johnson, Teamsters Local 952 Union representative and Coach Operator, commented that the coach operators could not enforce the mask mandate. They also fear exposure to the Coronavirus and asked the Board to consider their concerns.

18. Chief Executive Officer's Report

Mr. Johnson, CEO, reported the following:

September Employees of the Month

- Freddy Garcia - Operations Employee of the Month
 - Freddy is a coach operator at the Santa Ana base who started his driving career with OCTA in 1995.
 - Earlier this year, he achieved an incredible 25 years of safe driving.
- David Sanchez - Maintenance Employee of the Month
 - David is a journeyman mechanic at the Santa Ana base who joined OCTA in 2019.
 - He was instrumental in standardizing the engine air intake hose lengths on some of the buses in the fleet, which has dramatically enhanced engine-life performance.
- Robert Davis - Administrative Employee of the Month
 - Robert is the Treasury and Public Finance Department Manager, and he joined OCTA in 2019.

18. (Continued)

- Robert successfully led the effort to complete the rate reset of OCTA's \$629 million Transportation Infrastructure Finance and Innovation Act (TIFIA) loan for the Interstate 405 Improvement Project that will ultimately save more than \$158 million over the life of the loan.

Congratulations to OCTA's September Employees of the Month.

Mobility 21 Annual Transportation Summit

- The Mobility 21 summit takes place this Thursday and Friday. The summit will be held virtually again this year.
- For details about the summit, please advise Mr. Johnson.

19. Directors' Reports

Director Foley requested an item be agendized for the next meeting, on an overview of the Coach Operators and why they are unable to enforce the mask mandate.

Mr. Johnson, CEO, responded that OCTA has had extensive conversations with the Transit Committee about mask requirements. There is a Coronavirus update that goes to every other Board meeting and if there is a need for an entire report, staff can follow the Committee process and bring the information to the Transit Committee then on to the Board. He also noted that he disagreed with Mr. Johnson's assessment and the issue has been discussed multiple times with the Transit Committee.

Director Foley inquired about having a virtual meeting.

Mr. Donich stated that in regards to AB-361, the resolution adopted by the Board today grants the Board the ability to continue to meet virtually during a declared emergency. The Board is scheduled to meet in person on October 11, and not availing ourselves of those rules is a decision by the Chairman of the Board. The Chairman determines all points of order according to the administrative code, and he wants the Board to be in person. The Board could meet virtually if the Chairman decided it would be a virtual meeting.

Director Foley inquired if the Board has the authority to override the Chair when it comes to public health.

Mr. Donich responded the Board has the authority through the administrative code to override the Chair's determination by a majority vote of nine when the Chair is making a point of order.

Director Wagner inquired if a Special Board meeting was possible to have the Closed Session and agendize the mask issues that Director Foley discussed.

19. (Continued)

Director Wagner made a motion to reconsider Item #1, seconded by Director Foley to accept the reconsideration of a previously agendaized item.

Mr. Donich clarified that the resolution under Item #1 states that the Board makes specific findings and can continue to meet virtually. If the Board does not approve the resolution, they can't continue to meet virtually.

Director Wagner withdrew his motion to reconsider Item #1.

20. Closed Session

There were no Closed Sessions scheduled.

21. Adjournment

The meeting adjourned at 11:04 a.m.

The next regularly scheduled meeting of this Board will be held at **9:00 a.m. on Monday, October 11, 2021**, at the Orange County Transportation Authority Headquarters, Board Room – Conference Room 07-08, 550 South Main Street, Orange, California.

ATTEST:

Gina Ramirez
Clerk of the Board Specialist, Senior

Mark Murphy
Vice Chairman