

MINUTES

Board of Directors' Meeting

Call to Order

The Monday, October 11, 2021, regular meeting of the Orange County Transportation Authority (OCTA) and affiliated agencies was called to order by Chairman Do 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:

Directors Present: Andrew Do, Chairman

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

Directors Absent: None

Staff Present: Darrell E. Johnson, Chief Executive Officer
Jennifer L. Bergener, Deputy Chief Executive Officer
Andrea West, Interim Clerk of the Board
Gina Ramirez, Clerk of the Board Specialist, Senior
Allison Cheshire, Clerk of the Board Specialist, Senior
James Donich, General Counsel

Invocation

Director Shaw gave the Invocation.

Pledge of Allegiance

Director Muller led the Pledge of Allegiance.

Special Calendar

There were no Special Calendar matters.

Consent Calendar (Items 1 through 9)

Orange County Transportation Authority Consent Calendar Matters

1. Approval of Minutes

A motion was made by Director Muller, seconded by Director Hernandez, 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 27, 2021.

Director Sarmiento was not present to vote on this item.

2. Ralph M. Brown Act Board of Directors Resolution for Teleconference Meetings

A motion was made by Director Muller, seconded by Director Hernandez, and following a roll call vote, declared passed 16-0, to adopt Board of Directors Resolution 2021-084.

Director Sarmiento was not present to vote on this item.

3. Coronavirus Update

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

Director Sarmiento was not present to vote on this item.

4. Orange County Transportation Authority Investment and Debt Programs Report - August 2021

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

Director Sarmiento was not present to vote on this item.

5. South Orange County Transportation Projects Update and Cooperative Agreement

A motion was made by Director Muller, seconded by Director Hernandez, and following a roll call vote, declared passed 15-1, to authorize the Chief Executive Officer, or his designee, to execute a cooperative agreement with the County of Orange and the City of San Clemente to work cooperatively on south Orange County regional transportation solutions.

Director Sarmiento was not present to vote on this item.

Director Chaffee voted in opposition.

6. 2021 Pavement Management Relief Funding Program for Local Agencies

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

- A. Approve the 2021 Pavement Management Relief Funding program guidelines and distribution of \$10.931 million federal funding.
- B. Authorize staff to make all necessary amendments to the Federal Transportation Improvement Program, as well as execute any necessary agreements to facilitate the recommendations above.

Director Sarmiento was not present to vote on this item.

Orange County Local Transportation Authority Consent Calendar Matters

7. Cooperative Agreement with the California Department of Transportation for the Interstate 605/Katella Avenue Interchange Project

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

- A. Authorize the Chief Executive Officer to negotiate and execute Cooperative Agreement No. C-1-2809 between the Orange County Transportation Authority and the California Department of Transportation, in the amount of \$2,520,200, for right-of-way support services, right-of-way acquisition, and utility relocations for the Interstate 605/Katella Avenue interchange project.
- B. Authorize the use of up to \$2,520,200 in Measure M2 Freeway funds for right-of-way capital and right-of-way support services for the Interstate 605/Katella Avenue interchange project.
- C. 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.

Director Sarmiento was not present to vote on this item.

8. Amendment to Cooperative Agreement with the City of Seal Beach for the Interstate 405 Improvement Project

A motion was made by Director Muller, seconded by Director Hernandez, and following a roll call vote, declared passed 16-0, to authorize the Chief Executive Officer to negotiate and execute Amendment No. 2 to Cooperative Agreement No. C-6-1126 between the Orange County Transportation Authority and the City of Seal Beach, in the amount of \$370,000, for additional services for the Interstate 405 Improvement Project. This will increase the maximum obligation of the cooperative agreement to a total value of \$740,600.

Director Sarmiento was not present to vote on this item.

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

A motion was made by Director Muller, seconded by Director Hernandez, and following a roll call vote, declared passed 15-1, to:

- A. Approve the release of Request for Proposals 1-3279 to select a firm to provide the development, construction, and implementation, as well as the operations and maintenance of the OC Streetcar ticket vending machines for a five-year initial term with one, five-year option term.
- B. Approve the proposed evaluation criteria and weightings for Request for Proposals 1-3279 for the development, construction, and implementation, as well as the operations and maintenance of the OC Streetcar ticket vending machines.

Director Sarmiento was not present to vote on this item.
Director Wagner voted in opposition.

Regular Calendar

Orange County Local Transportation Authority Regular Calendar Matters

10. Measure M2 Next 10 Delivery Plan: Market Conditions Key Indicators Analysis Forecast

Darrell E. Johnson, Chief Executive (CEO), provided opening comments and introduced Dr. Wallace Walrod, Ph.D., Chief Economic Advisor, Orange County Business Council (OCBC), and Dr. Marlon Boarnet, Ph.D., Professor and Chair of the Department of Urban Planning and Spatial Analysis at the University of Southern California, who co-presented a PowerPoint presentation on this item.

A discussion ensued regarding:

- Solutions for the backup of goods in the ports and the impact on local businesses.
- Over the last 18 months most companies have had to ramp downward and work with changing mandates and labor challenges.
- Disruptions to business and the supply chain are causing things to move slowly.
- Challenges to getting people back to work and getting the labor force moving forward may take six-month plus.
- Will see a significant increase in the cost of goods due to the backlog of goods in the ports.

- Companies are reassessing their supply chain, building supply chains that are not as long and less complicated, and moving manufacturing back to the United States (US).
- Inflationary cost pressures on usdebtclock.org.
- Will see wage increases at a higher level compared to 2018 as materials costs drive the wage increase to 5-6 percent over the next two to three years.
- Increase in manufacturing at the national level but not necessarily in California due to the high cost of living and state regulations.

Mr. Johnson, CEO discussed since the inception of Measure M1 in 1991, OCTA had been using university revenue forecasts. In 2016 staff began looking at the construction and industry forecasts and combined that with OCTA's project schedules and project cost estimates. He stated that staff is always looking to see if OCTA can accelerate projects and programs to benefit the public.

Mr. Johnson, CEO said OCTA would continue to focus on delivering the complete program in the most cost-effective way possible by looking at acceleration and how projects will lay out by the end of the calendar year.

Chairman Do stated the short-term anomalies will self-correct a year from now, and OCTA will be more confident and be able to assess the delivery of projects and programs with more certainty.

Mr. Johnson, CEO, responded that as soon as the Next 10 Plan is complete in December of each year, staff begins looking at the revenue forecast again in January through May.

A motion was made by Vice Chairman Murphy, seconded by Director Hennessey, and following a roll call vote, declared passed 17-0, to continue to monitor market conditions key indicators and provide updates to the Board of Directors as appropriate.

Discussion Items

11. Public Comments

The COB read into the record public comments from Michael R. Rizzo, General Counsel for WSP USA Services Inc., and Daniel McMillan from Jones Day. The COB noted that the comments were emailed to the Board earlier this morning and stated they would be part of today's meeting record.

Public comments were heard from the following speakers:

Richard Arce, President and CEO of Cofiroute USA thanked the Board for their clear commitment to their constituents and for treating the use of public funding with the utmost responsibility. Especially in taking the time to clarify further and understand the basis that led to the Board's award to Cofiroute USA (Cofiroute) to explore the selection process further.

Mr. Arce noted Cofiroute is ready to move forward to provide services to OCTA, and Cofiroute USA has never directly requested a change order from OCTA in the last 18 years. Cofiroute is prepared to operate the Interstate 405 Lanes.

Cary Sullivan, Partner for Jones Day and Counsel for Cofiroute, commented on Cofiroute's bid and previous service provided to OCTA on the 91 Express Lanes.

Mr. Sullivan stated that Cofiroute had implemented projects over the last couple of years in tolling. He noted the Board is aware that WSP USA Services, Inc., (WSP's) new contractor, Electronic Transaction Consultants, LLC, touts its so-called land and expand policy, which contemplates increasing the size and scope of projects after the contracts are secured. In addition, he stated that WSP's general counsel started a campaign with misinformation and intimidation and sites laws that do not apply.

Mike Rizzo, General Counsel for WSP, discussed the procurement policy manual and the Board's discretion to give OCTA the best value, but the manual doesn't allow the Board to change the evaluation criteria.

Mr. Rizzo stated a California court could determine whether OCTA acted democratically, especially when federal funds were involved.

12. Chief Executive Officer's Report

Mr. Johnson, CEO, reported on the following:

Interstate 405 (I-405) Project Update

- On October 13th, OCTA staff will present an update on the status of the I-405 Improvement Project to the Westminster City Council.

Long-Range Transportation Plan (LRTP) & Mobility Hubs Roundtable

- On October 14th, at 1:00 p.m. via Zoom, OCTA will host a roundtable discussion with several community-based organizations to discuss OCTA's LRTP, as well as the Mobility Hubs Study. The LRTP will address future mobility needs through 2045.

- The Mobility Hubs Study will identify a potential strategy to bring together various mobility services, amenities, and technologies to connect travelers more conveniently and allow them to switch between bus, rail, bike, and ridesharing easily.

13. Directors' Reports

Director Shaw commented on Item 6 and the \$11 million allotted to local cities to help pave the streets. He stated that Orange County (OC) has the number one paving index rating in California and noted that the OC streets and roads look great.

Director Nguyen discussed his first-time attendance at the Mobility 21 Summit and how informative it was. He also stated that he sat in on several panels with transportation leaders.

14. Closed Session

Mr. Donich read the scheduled Closed Session items into the record and reported the Board would meet in a Closed Session and return into an open session to consider Item 15. He also noted there would be no report out for items on Closed Session.

A Closed Session was held as follows:

- A. Pursuant to Government Code Section 54956.9 - Conference with General Counsel Potential Litigation - One Matter.
- B. Pursuant to Government Code Section 54957.6 to discuss negotiations with Teamsters Local 952 regarding the coach operators. The lead negotiator for the Orange County Transportation Authority is Maggie McJilton, Executive Director of Human Resources and Organizational Development, and Teamsters Local 952 representative.
- C. Pursuant to Government Code 54957.6 to discuss collective bargaining agreement negotiations with the Transportation Communications International Union regarding the parts/stock room clerks and facilities maintenance employee unit. The lead negotiator for the Orange County Transportation Authority is Maggie McJilton, Executive Director of Human Resources and Organizational Development, and Transportation Communications International Union representative.

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

Chairman Do reconvened the meeting from the Closed Session and requested the COB read Item 15 into the record.

15. 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

Chairman Do stated public comments were heard on this item under Item 11.

There were no additional public comments on this item.

A motion was made by Director Muller, seconded by Vice Chairman Murphy, and following a roll call vote, failed 7-8 to deny the appeal from WSP USA Services, Inc.

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

Director Muller inquired if Director Wagner voted in opposition to deny the appeal.

Director Wagner responded and clarified his vote as a yes to deny the appeal.

Chairman Do inquired about the next steps since the motion failed to deny the appeal.

Mr. Donich responded that the Board had taken a vote to deny the appeal, and that vote failed 7-8. He stated nine affirmative votes are required to take any action on a Board agenda item.

Mr. Donich stated the Board could entertain a motion to affirm the appeal. He said the procurement policy requires the Board to render a decision on an appeal. He stated the Board could also go through a series of vote-a-ramas and see if a Board member changes their mind, or the Board could continue this item to a future meeting.

Director Bartlett inquired on the vote tally to deny the appeal.

Chairman Do stated that Director Wagner changed his vote from a no to a yes, which changed the tally from nine down to eight.

A substitute motion was made by Director Hennessey, seconded by Director Delgleize, and following a roll call vote, failed 8-7 to uphold the appeal 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.

After a discussion ensued on the matter, a motion was made by Vice Chairman Murphy, seconded by Chairman Do, and following a roll call vote failed 7-7 to deny the appeal by WSP USA Services, Inc. and uphold the original decision.

Director Muller was not present to vote on this item.

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

Chairman Do stated that more time for deliberation is necessary and requested this item be continued to in an open session to the October 25th Board meeting.

Director Muller inquired on the procedures if the Board could not reach a consensus.

Mr. Donich responded that the actual language of the procurement policy states that nine affirmative votes are required to take action, and OCTA may have to procure the project again per the procurement policy.

Director Delgleize inquired if all Board members voted.

Chairman Do stated that Directors Foley and Shaw recused themselves due to the Levine Act.

16. Adjournment

The meeting adjourned at 12:09 p.m.

The next regularly scheduled meeting of this Board will be held at **9:00 a.m. on Monday, October 25, 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

Andrew Do
Chairman