

MINUTES

Board of Directors' Meeting

Call to Order

The Monday, October 25, 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 (COB), conducted an attendance roll call and announced a quorum of the Board of Directors (Board) as follows:

Directors Present: Andrew Do, Chairman
Mark A. Murphy, Vice Chairman
Doug Chaffee
Barbara Delgleize
Katrina Foley
Brian Goodell
Patrick Harper
Michael Hennessey
Gene Hernandez
Steve Jones
Tam Nguyen
Vicente Sarmiento
Tim Shaw
Harry S. Sidhu
Donald P. Wagner
Ryan Chamberlain

Via Teleconference: Lisa A. Bartlett

Directors Absent: Joseph Muller

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 Harper led the Pledge of Allegiance.

Special Calendar

There were no Special Calendar matters.

Consent Calendar (Items 1 through 13)

Orange County Transportation Authority Consent Calendar Matters

1. Approval of Minutes

Staff pulled this item to note a correction to the name Katrina Foley on page one and to amend the minutes.

A motion was made by Vice Chairman Murphy, seconded by Director Hernandez, and following a roll call vote, declared passed 16-0, to approve the amended minutes of the Orange County Transportation Authority and affiliated agencies regular meeting minutes of October 11, 2021.

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

A motion was made by Vice Chairman Murphy, seconded by Director Hernandez, and following a roll call vote, declared passed 16-0, to adopt Board of Directors Resolution 2021-089.

3. Investments: Compliance, Controls, and Reporting, January 1 through June 30, 2021, Internal Audit Report No. 22-501

A motion was made by Vice Chairman Murphy, seconded by Director Hernandez, and following a roll call vote, declared passed 16-0, to direct staff to implement a recommendation provided in Investments: Compliance, Controls, and Reporting, January 1 through June 30, 2021, Internal Audit Report No. 22-501.

4. Update on Diversity Outreach and Inclusion Efforts

Director Jones pulled this item to comment that he appreciated the diversity and inclusion staff that have engaged with diverse communities at various in-person community events. He noted some commuters have shared that they have participated in round tables and acknowledged staff.

Director Nguyen also pulled this item and echoed Director Jones' acknowledgment of the Diverse Community Leaders Group on the Committee and thanked Chairman Do for his leadership and ensuring that the underserved communities sit at the table and have a voice. He discussed the trust-building campaign that the Gonzalez family of Northgate Markets has done in the Latino community. In addition, he thanked Dr. Quynh Kieu, Dr. Bich-Lien Nguyen, and Justin Nguyen, who are involved in the diversity inclusion efforts.

Chairman Do thanked Director Jones and Nguyen for their comments and acknowledged Northgate Market and the Gonzalez family as they have been instrumental in helping the County through the pandemic by hosting many events for dispensing the Coronavirus (COVID-19) vaccine.

Director Foley echoed the sentiments expressed by Directors Jones and Nguyen and thanked the Orange County Transportation Authority (OCTA) for including the special needs communities who have disabilities and making OCTA's transportation system more accessible.

Chairman Do urged the public to get vaccinated and protect themselves and others from COVID-19.

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

5. Microsoft Enterprise Agreement Renewal

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

- A. Approve the selection of Dell, Inc., to provide the Microsoft Enterprise renewal license for all of the Orange County Transportation Authority's Microsoft software.
- B. Authorize the Chief Executive Officer to negotiate and execute Purchase Order No. C13676 between the Orange County Transportation Authority and Dell, Inc., in the amount of \$2,575,000, for the renewal of the Microsoft Enterprise Agreement for a three-year term.

6. SB 1 (Chapter 5, Statutes of 2017) State of Good Repair 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 16-0, to authorize the filing of SB 1 State of Good Repair claims, in the amount of \$6,393,649, or up to the actual allocation published by the State Controller's Office, to help sustain and upgrade the Orange County Transportation Authority's bus system.

7. Transportation Infrastructure Finance and Innovation Act Debt Service Savings

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

8. Draft Revisions to the Orange County Transportation Authority's 2021-22 State and Federal Legislative Platforms

A motion was made by Vice Chairman Murphy, seconded by Director Hernandez, and following a roll call vote, declared passed 16-0, to direct staff to incorporate the recommended revisions to the 2021-22 Orange County Transportation Authority State and Federal Legislative Platforms and seek further feedback from the Orange County Transportation Authority Board of Directors, with subsequent drafts being brought forward for final consideration and adoption later this year.

9. Federal Legislative Status Report

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

Orange County Transit District Consent Calendar Matters

10. State Transit Assistance 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 16-0, to adopt Resolution No. 2021-078 to authorize the filing of State Transit Assistance Fund claims, in the amount of \$36,415,760, or up to the actual allocation published by the State Controller's Office, to support public transportation.

11. Bus Operations Performance Measurements Report for the Fourth 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 16-0, to receive and file as an information item.

12. Agreement for Bus Stop Maintenance Services

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

- A. Approve the selection of ShelterClean Services, Inc., as the firm to perform bus stop maintenance services at fixed-route service bus stop locations.
- B. Authorize the Chief Executive Officer to negotiate and execute Agreement No. C-1-3408 between the Orange County Transportation Authority and ShelterClean Services, Inc., in the amount of \$1,647,044, to perform bus stop maintenance services at fixed-route service bus stop locations, for a three-year initial term commencing on December 1, 2021, with two, two-year option terms.

Orange County Local Transportation Authority Consent Calendar Matters

13. Anaheim Canyon Metrolink Station Improvement Project Update

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

Regular Calendar

Orange County Transportation Authority Regular Calendar Matters

14. 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 provided opening comments on this item.

The COB read into the record public comments from Michael R. Rizzo, General Counsel for WSP USA Services Inc., and Daniel D. 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:

Lewis Cornell, President and CEO of WSP USA, Service, Inc., (WSP), stated that WSP looks forward to continuing its 30-year long history delivering projects to make Orange County a better place to live, as the expert evaluation panel unanimously agreed.

Mr. Cornell discussed that Interstate 405 (I-405) is unlike the State Route 91 (SR-91). He stated it is much more complex involving multiple cities, multiple freeways, and multiple ingress and egress points. Despite the scheduled delays with this procurement, WSP remains committed to OCTA's back-office systems setup and will be ready well before the project opening. He stated that continuing to delay the award of this contract not only jeopardizes the project startup but OCTA's ability to meet important Transportation Infrastructure Finance and Innovation Act milestones.

Mike Rizzo of Pillsbury Winthrop Shaw Pittman LLP, General Counsel for WSP, stated that the longer this protest is prolonged, the more it jeopardizes the potential go-live date for the I-405 Express Lanes.

Mr. Rizzo, noted WSP has been transparent since the beginning of this process about intentions to exercise the legal rights that the OCTA has granted through its protest process and California law. He stated that Cofiroute has threatened to sue the OCTA.

Mr. Rizzo also stated that in a memo that Darrell E. Johnson, Chief Executive Officer (CEO), wrote on July 14, 2021, staff recommended a contract award to WSP and the Finance and Administration Committee approved that recommendation by a vote of 8-0. He noted that either party would have to prove that the Board's award to the other party was arbitrary and capricious. The evidence that WSP would present would be that the evaluation criteria voted twice, never changed, that every member of the evaluation committee chose WSP and gave WSP the higher score. Also, the evaluation committee voted 6-0 to award the contract to WSP.

WSP has the stronger arguments, and that Cofiroute's views are far more susceptible to a swift summary dismissal should this matter go to court. However, if WSP is forced to go to litigation on this issue, it would go the duration, and Mr. Rizzo remains confident that the Board will sustain the protest.

Chairman Do and Directors Bartlett, Chaffee, Delgleize, Harper, Hennessey, Hernandez, Jones, Sarmiento, Sidhu, and Wagner provided comments and stated who they recommend to be awarded the contract.

A substitute motion was made by Director Hernandez, seconded by Director Bartlett, and following a roll call vote, failed 8-6 to uphold the protest 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.

A motion was made by Director Wagner, seconded by Vice Chairman Murphy, and following a roll call vote failed 7-7 to deny the protest by WSP USA Services, Inc. and uphold the original decision to award the contract to Cofiroute USA.

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

James Donich, General Counsel, reminded the Board that nine affirmative votes are required for any official act taken by OCTA. Mr. Donich also provided the Board with options and gave an overview of the procurement policy.

Chairman Do stated that more time for deliberation is necessary. He requested this item be continued to a Special Board of Directors meeting with a Closed Session to discuss further possible remedies scheduled as soon as possible.

Orange County Local Transportation Authority Regular Calendar Matters

15. OC Streetcar Project Quarterly Update

James G. Beil, Executive Director of Capital Programs, and Tresa Oliveri, Principal Community Relations Specialist, provided a PowerPoint presentation.

Following the presentation, no action was taken on this receive and file information item.

16. Contract Change Orders for Construction of the OC Streetcar Project

Ross Lew, Program Manager, Senior, provided a verbal report on this item.

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

- A. Authorize the Chief Executive Officer to negotiate and execute Contract Change Order No. 4.4 to Agreement No. C-7-1904 with Walsh Construction Company II, LLC, in the amount of \$3,500,000, to address utility conflicts.
- B. Authorize the Chief Executive Officer to negotiate and execute Contract Change Order No. 54 to Agreement No. C-7-1904 with Walsh Construction Company II, LLC, in the amount of \$1,200,000, for traction power substation site plan revisions.

- C. Authorize the Chief Executive Officer to negotiate and execute Contract Change Order No. 64.2 to Agreement No. C-7-1904 with Walsh Construction Company II, LLC, in the amount of \$1,200,000, for Southern California Edison metering switchgears.
- D. Authorize the Chief Executive Officer to negotiate and execute Contract Change Order No. 69 to Agreement No. C-7-1904 with Walsh Construction Company II, LLC, in the amount of \$600,000, for optical backbone network system redundancy.
- E. Authorize the Chief Executive Officer to negotiate and execute Contract Change Order No. 79 to Agreement No. C-7-1904 with Walsh Construction Company II, LLC, in the amount of \$3,000,000, for maintenance and storage facility permit drawings and revisions.

Director Wagner voted in opposition on this item.

Discussion Items

17. Public Comments

There were no public comments received.

18. Chief Executive Officer's Report

October Employees of the Month

The Operations Employee of the Month is Guillermo Obeso.

- Guillermo is a Coach Operator at the Garden Grove base who started with OCTA in 1990. In March, he achieved an impressive 28 years of safe driving, making him a role model for his colleagues.

The Maintenance Employee of the Month is Patrick Dawes.

- Patrick is a Journeyman Mechanic at the Garden Grove base who joined OCTA in 2005. His exceptional diagnostic skills help keep our buses on the road, enabling OCTA to provide safe and reliable transportation.

The Administrative Employee of the Month is Gina Ramirez.

- Gina is a Clerk of the Board Specialist, Senior who joined OCTA in 2013. During the pandemic, Gina was instrumental in helping to transition all board and committee meetings to a virtual format.

Congratulations to OCTA's October Employees of the Month.

Second District Mayors' Forum

- On Wednesday, October 27, OCTA at 3:00 p.m. OCTA will host a Second District Mayors' Forum to provide the mayors, council members, and city staff with an update on the projects and programs and get input from the cities.
- OCTA has already hosted forums for the Fourth and Fifth Districts, were well attended, and staff received great feedback.

19. Directors' Reports

Director Hennessey congratulated Gina Ramirez, Clerk of the Board Specialist, Senior.

20. Closed Session

A Closed Session was held as follows:

- A. Pursuant to Government Code Section 54956.9(d)(1) - Conference with General Counsel - Existing Litigation - Orange County Transportation Authority v. 18349 Euclid Street, LLC, etc., et al., OCSC Case No. 30-2019-01163637.
- B. Pursuant to Government Code Section 54966.8 - Conference with Real Property Negotiators to Discuss Price and Terms of Payment - 1535 Scenic Avenue, Costa Mesa, CA 92626 - Agency Negotiator is Kirk Avila, General Manager Express Lanes Programs.

Director Muller was absent, and Director Bartlett participated via teleconferencing.

There was no report out.

21. Adjournment

The meeting adjourned at 10:29 a.m.

The next regularly scheduled meeting of this Board will be held at **9:00 a.m. on Monday, November 8, 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