



TO: Chairman Richards and Board Members
FROM: Brian Annis, Chief Financial Officer
DATE: November 2, 2023
RE: Detail on Change Orders Summarized in the CEO Report

Summary

This memorandum provides further information on recently-executed large change orders summarized in the CEO Report in the November 2, 2023, Board Agenda. There are five change orders listed in the CEO Report that exceed \$25 million and are reported to the Board by the CEO consistent with Board Policy HSRA11-001 that provides the CEO delegation and reporting requirements regarding contracts and contract management. The five change orders are as follows:

1. Construction Package 1 (CP1) – Time Impact Analysis: \$154.4 million
2. CP1 – Escalation Cost Adjustment: \$80.0 million estimate (with final compensation determined by future inflation through use of a cost index)
3. CP2/3 – Interim Time Extension: \$48.3 million
4. CP2/3 – Conejo Avenue Viaduct Interim Change Order: \$30.0 million
5. CP2/3 – Tule River Viaduct Interim Change Order: \$42.0 million

Background

Board Policy HSRA11-001 was most recently updated on September 23, 2021, through Board Resolution HSRA 21-09. Among other provisions, the Policy directs the following:

The CEO is delegated the authority to amend any contract by any dollar amount, provided the action is consistent with the Program Baseline and Program Budget (including the contingency balance amount contained therein) and subject to specified reporting requirements; and

The CEO is required to report 1) contingency balance trending information to the Board Finance & Audit Committee at its regular meetings, or more frequently upon request, and 2) to the Board any single contingency use for any amended contract or construction-related change order equal to or greater than \$25 million.

At the March 16, 2023, meeting, the Board approved a new Program Baseline and Program Budget that updated the three Construction Package budgets with additional contingency budget for future anticipated change orders on design-build contracts and for other contracts and costs to complete the CP work. The augmentation was based on the updated forecasts in the 2023 Project Update Report and totaled \$2.073 billion with allocations for each CP of \$845 million for CP1; \$1.15 billion for CP2/3; and \$78 million for CP4. The budget increases were driven by global inflation, scope changes required

by third parties, and other factors as described in the 2023 Project Update Report. These five change orders were anticipated at the time of the 2023 Project Update Report forecast.

Detail

Additional detail on each of the five change orders is presented below:

1. CP1 – Time Impact Analysis: \$154.4 million

The Time Impact Analysis (TIA) addresses time impacts from February 2, 2021 through August 1, 2023, extends the Contract Substantial Completion Deadline to November 23, 2026 and the Final Acceptance Deadline to December 31, 2026, and increases the Contract budget in the amount of \$154.4 million. The negotiated time extension represents 1,059 Calendar Days, which is comprised of 1,059 Calendar Days of compensable delays.

This change order includes (i) initial lump sum of \$54,726,667.00 for Equipment Standby and Impacts, including the credit for the Olive Overcrossing acceleration (ii) \$2,516,135.60 for acceleration at McKinley, Fresno Trench, Church for work performed through Schedule of Values (SOV) payment process, and (iii) \$93,377,029.90 divided into two separate daily rate amounts of (a) \$97,593.10 per Calendar Days for 913 Calendar Days from December 30, 2023 to June 29, 2026 and (b) \$29,277.60 per Calendar Days for 146 Calendar Days from June 30, 2026, to November 23, 2026. The total compensation for this Change Order is \$154,436,989.00.

The amount of the delay settlement was based on forensic schedule analysis and cost justification in accordance with General Provisions Section 17, Changes, Section 23, Equitable Adjustments, Section 49, Facilities of Others, and Book 3, Part B, Subpart 8 – Cost and Scheduling Controls Program. The analysis was performed by the Project and Construction Manager (PCM) staff and the Authority's independent auditor and negotiated by authorized senior management staff with the approval of, and in consultation with, the authorized Authority signatory.

2. CP1 – Escalation Cost Adjustment: \$80 million

This Change Order includes (i) initial lump sum payment of \$11,228,069.57 as the escalation cost adjustment for costs incurred from February 2, 2021, to August 1, 2023, for specified work during that period that was otherwise not adjusted for inflation, and (ii) future escalation cost adjustment from August 2, 2023, to the Substantial Completion Deadline of November 23, 2026. The initial budget allocation for this item is \$68,771,930. The value of the escalation amount can increase or decrease based on the actual work performed and the Authority's Model calculations. Therefore, the \$80,000,000 budgeted value for CO may need to be adjusted accordingly based on future inflation as measured by cost indices.

3. CP2/3 – Interim Time Extension: \$48.3 million

This Change Order acknowledges Dragados/Flatiron Joint Venture's (DFJV) is entitled to compensation for at least an additional 253 Working Days of time-related costs, subject to audit and adjustment following the Audit and Reconciliation detailed in Section F of CO 312.4, and an interim time extension of at least 253 Working Days. This extends the current contract end date to August 16, 2024. This Change Order is an interim measure to ensure a time extension is provided while negotiations are ongoing. Also, the Authority acknowledges the delays impacted at least two of DFJV's subcontractors, Jacobs Engineering Group ("Jacobs") and Sener Engineering and Systems ("Sener"). In CO 312.4, Jacobs and Sener are entitled to the 253 Working Days of time-related costs, subject to audit and adjustment following the Audit and Reconciliation process as defined in Section F of CO 312.4.

4. CP2/3 – Conejo Avenue Viaduct Interim Change Order: \$30.0 million

The Conejo Avenue Viaduct is comprised of three sections: (1) North Approach section over the existing Conejo Avenue; (2) Pergola section over the existing BNSF tracks; and the (3) South Approach section. DFJV's original scope of work for the Pergola section called for constructing a Pergola section spanning over the existing BNSF tracks with a minimum vertical clearance requirement of 23-feet 4-inches over the existing BNSF tracks and using the collision loads as defined in Design Criteria Manual ("DCM"). Furthermore, there was no requirement for a 5-foot separation/maintenance offset between the unprotected high-speed rail ("HSR") structure supports and from the BNSF right-of-way ("ROW").

The Authority revised DFJV's original scope of work by issuing the DL 43 Series directing DFJV to revise the design of the Pergola section over the existing BNSF tracks by requiring a 5-foot separation/maintenance offset between the unprotected HSR Structure Supports and modifications to the collision loads as defined by the Design Criteria Manual. In addition, BNSF required a minimum vertical clearance of 24'-0" for the Pergola over the existing BNSF tracks. The DL 43 Series was issued in accordance with General Provisions Sec. 17.1.1, which states, "[t]he Contractor shall proceed immediately with the Work as directed in the directive letter, pending the execution of a formal Change Order."

Due to the costs incurred with the construction work associated with the revised scope of work completed to-date, the Parties have agreed to execute an interim Change Order for some of the costs DFJV has incurred, while the Parties continue to negotiate the remaining construction costs for this revised scope of work.

5. CP2/3 – Tule River Viaduct Interim Change Order: \$42 million

The Tule River Viaduct is comprised of three sections: (1) North Approach section over the existing SR-43; (2) Pergola section over the existing BNSF tracks; and (3) South Approach section over the Tule River area. DFJV's original scope of work for the North Approach section called for constructing two aerial structures connected by high-speed rail ("HSR") embankment. One aerial structure was a single span bridge over the existing Poplar Ave. and the other aerial structure was an 8-span North Approach bridge section of Tule River Viaduct. DFJV's original scope of work for the Pergola section called for constructing a 111.5-foot-wide Pergola section spanning over the existing BNSF tracks.

On August 24, 2017, the Authority revised DFJV's original scope of work for the North Approach section when it issued Directive Letter No. 82 ("DL 82") directing DFJV to revise the design by combining the two aerial structures connected by HSR embankment into one combined 13-span North Approach bridge section of the Tule River Viaduct. Due to changes in BNSF requirements, the Authority revised DFJV's original scope of work for the Pergola section when it issued the Directive Letter No. 43 Series ("DL 43 Series") directing DFJV to revise the to implement 5-foot separation/maintenance offset between the unprotected HSR Structure Supports and the BNSF ROW, to implement a minimum vertical clearance requirement of 24'-0" over existing BNSF tracks, and to implement modifications to the collision loads as defined in the Design Criteria Manual, which resulted in a 118-foot-wide, Pergola section over the existing BNSF tracks. The increased width of the Pergola structure resulted in deeper pergola beams, wider and deeper edge beams, and larger diameter columns and foundations (i.e increased quantities in concrete and reinforcing steel).

This structure change was the result of an Authority-Directed Change and was not part of DFJV's original scope of work. This change order will significantly benefit the Authority and the Project because this change order will allow DFJV to continue with constructing the Tule River Viaduct. Due to the costs incurred with the construction work associated with the revised scope of work completed to-date, the Parties have agreed to execute this interim change order for some of the costs DFJV has incurred, while the Parties continue to negotiate the remaining construction costs for this revised scope of work.

Budget and Fiscal Impact

This November 2, 2023, Finance and Audit Committee Board materials includes data through August 31, 2023, and includes the Conejo and Tule River interim change orders due to the inclusion of those change orders in the invoices approved for August work. The other three change orders were approved after the reporting period and not included in August invoices. The Finance and Audit Committee reported contingencies for each construction package will be adjusted in future reports for these other three changes orders as follows:

- The CP1 contingency reported with a remaining balance \$752.7 million through August 31, 2023, would be reduced for the first two change orders by a total of \$234.4 million, to a new total of \$518.3 million.
- The CP2/3 contingency reported with a remaining balance of \$850.7 million through August 31, 2023, would be reduced for the third change order (Interim Time Extension) by \$48.3 million, to a new total of \$802.4 million.

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