



**October 24, 2018**

**To:** Finance and Administration Committee

**From:** Darrell E. Johnson, Chief Executive Officer

**Subject:** Approval of the 2018 Measure M2 Plan of Finance, Issuance of Measure M2 Bonds, Selection of Underwriting Team, and Bond Counsel Services Amendment

**Overview**

Staff has completed an update to the Measure M2 Plan of Finance that identifies the program requirements over the next few years for the Measure M2 Program. The updated Measure M2 Plan of Finance highlights the need for the issuance of Measure M2 bonds to fund future expenditures. If a financing is approved, the selection of an underwriting team is recommended, along with additional funds required for bond counsel services.

**Recommendations**

- A. Authorize the selection of Bank of America Merrill Lynch; Barclays Capital, Inc.; Citigroup Global Markets, Inc.; Goldman Sachs & Co.; J.P. Morgan Securities LLC; and Stifel, Nicolaus & Company, Inc., from the Orange County Transportation Authority's underwriting pool, to assist with the next Measure M2 bond offering.
- B. Authorize the selection of Bank of America Merrill Lynch and Citigroup Global Markets, Inc., from the Orange County Transportation Authority's underwriting pool, to serve as the senior underwriting manager and co-senior underwriting manager, respectively, for the next Measure M2 bond transaction.
- C. Authorize the Chief Executive Officer to execute Amendment No. 5 to Agreement No. C-5-3099 between the Orange County Transportation Authority and Nossaman LLP, in the amount of \$200,000, to provide bond counsel services for the Orange County Transportation Authority Sales Tax Revenue Bonds, Series 2019 transaction. The total contract amount will be \$527,250.

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- D. Authorize the issuance of sales tax revenue bonds to finance the Measure M2 Program.
  - E. Adopt the 2018 Measure M2 Plan of Finance, which identifies the Measure M2 project requirements over the next several years.
  - F. Direct staff to pursue financing opportunities through the Transportation Infrastructure Innovation Act for Measure M2 projects.

***Background***

The Measure M2 (M2) ordinance expresses a preference for pay-as-you-go project financing. The ordinance states that Orange County Transportation Authority (OCTA) may use bond financing as an alternative method if the planned expenditures make pay-as-you-go financing unfeasible. OCTA's Board of Directors (Board) has continued to advance implementation of M2 through the adoption of early delivery plans and address slower growth in sales tax revenue projections through strategic financing. In 2010, OCTA issued \$353 million in M2 bonds to support the Early Action Plan.

By 2041, OCTA plans to deliver \$13.1 billion of M2 transportation improvements to Orange County. The \$1.9 billion Interstate 405 Improvement Project (405 Project) is the largest project in the M2 plan and in OCTA's history. The general-purpose lanes portion of the 405 Project, 75 percent of the total cost, will be funded by a combination of local, state, and federal funds. The 405 Express Lanes portion of the 405 Project, 25 percent of the total cost, will be paid for by user-generated toll revenue from those who use the 405 Express Lanes.

A total of \$1.136 billion is programmed from M2 funds for the 405 Project. The current 405 Project Plan of Finance includes \$243 million pay-as-you-go M2 funds and approximately \$900 million of bond proceeds from the sale of M2 sales tax revenue bonds in 2019 and 2021.

On May 23, 2016, the Finance and Administration Committee approved the 405 Project Preliminary Plan of Finance. OCTA carefully reviewed the debt financing options for the 405 Express Lanes portion of the 405 Project (25 percent of total costs) that must be financed with non-M2 sources. To address this, OCTA closed a 35-year \$628.93 million Transportation Infrastructure Finance and Innovation Act (TIFIA) loan in July 2017. The non-recourse TIFIA loan is secured solely by future net toll revenues from the 405 Express Lanes. M2 funds cannot be used to repay the TIFIA loan.

The Build America Bureau (Bureau), which administers TIFIA loans for the United States Department of Transportation, ultimately required OCTA to secure committed M2 funds prior to the close of the TIFIA loan. OCTA chose a cost-effective solution to obtain a \$900 million line of credit (LOC) secured by a subordinate lien on future M2 receipts. Through a competitive procurement, OCTA selected Bank of America Merrill Lynch (BAML) to provide the LOC required by the Bureau. The BAML LOC is structured with two tranches, with one tranche for \$400 million maturing July 1, 2019, and one tranche for \$500 million maturing on July 1, 2021. The LOC was structured this way to match OCTA's anticipated M2 financing.

***Discussion***

Based on the projected construction spending curve for the 405 Project, OCTA's actual M2 sales tax receipts to date, and projected M2 sales tax receipts through 2023, OCTA's preference to complete the general purpose lanes portion of the 405 Project on a pay-as-you-go basis is unfeasible and bond financing is necessary. The cashflow to support this conclusion is outlined in the OCTA Fiscal Year 2018-19 Comprehensive Plan that was approved by the Board on September 24, 2018.

OCTA's objectives for the M2 financings include completing the funding of the 405 Project, achieving low cost of capital, and securing low long-term interest rates. Other objectives that are important to note include maximizing future financial management flexibility and minimizing risk.

With Board approval, OCTA plans to issue M2 sales tax revenue bonds producing approximately \$400 million in bond proceeds in early 2019 and M2 sales tax revenue bonds producing approximately \$500 million in bond proceeds in 2021. However, OCTA staff continues to evaluate various financing options and variables which could change its current 405 Project Plan of Finance recommendation.

Once the underwriting team is approved, OCTA staff will evaluate several alternatives to ensure the lowest cost of financing available. This will include an evaluation of issuing all \$900 million in bonds in 2019 to take advantage of low interest rates and eliminate the need for an LOC. Additionally, staff will work with the underwriting team to explore options for replacing the LOC with lower cost options and evaluate subordinate lien options. The details of the Plan of Finance are available in Attachment A.

### Underwriting Team

In order to proceed with the recommended financing approach, OCTA will need to select underwriters for a \$400 million debt issuance.

In September 2016, the Board selected 11 firms to serve on an underwriting pool for a period of five years. At the time of the selection, staff specified that senior managers and co-managers would be selected for future debt issuances from the underwriting pool on a project-by-project basis. In 2017, OCTA selected BAML from the pool to provide TIFIA advisory services for the \$629 million loan.

On August 17, 2018, OCTA issued a mini request for proposals to the 11 firms from the underwriting pool for the next M2 financing. On September 6, 2018, 11 proposals were received. An evaluation committee consisting of OCTA staff from Contracts Administration and Materials Management, Express Lanes Programs, Finance and Administration, Financial Planning and Analysis, as well as an external representative from OCTA's contracted financial advisory consultant, Sperry Capital, Inc., met to review all proposals received. The evaluation committee recommends six firms to serve on the underwriting team for the next M2 debt issuance. The recommended firms are BAML; Barclays Capital, Inc.; Citigroup Global Markets, Inc. (Citi); Goldman Sachs & Co.; J.P. Morgan Securities LLC; and Stifel, Nicolaus & Company, Inc.

The evaluation committee also recommends naming BAML and Citi as the senior underwriting managers for this next M2 debt issuance. BAML will serve as the lead senior manager and be responsible for maintaining the underwriting books for the debt transaction, while Citi will assist BAML with the financing. The other four firms will serve as co-managers on the transaction.

In their proposals, BAML and Citi highlighted their respective firms' vast experience with sales tax revenue bonds in California and throughout the nation. Both firms proposed project teams that have experience with sales tax revenue bonds and an understanding of OCTA's debt structure. The proposed lead banker for the BAML project team has been involved in previous financings with OCTA and has over 30 years of experience. The proposed lead banker for the Citi project team has 27 years of experience. Both firms' technical proposals included work plans with supporting recommendations and a detailed discussion on moving forward with OCTA's financing program. During the interviews, both firms demonstrated their recommendations for the next M2 debt issuance, which included proactive approaches for educating potential investors on the transaction, as well as provided responses to the evaluation committee's questions.

### Anticipated Cost of Issuance Expenses and Underwriting Fees

Cost of issuance expenses for debt issuances are paid at the closing of a financing transaction. These costs include legal fees, financial advisory fees, rating fees, printing, roadshow, and other miscellaneous expenditures. The estimated cost of issuance expenses for an M2 debt issuance will total approximately \$550,000. In addition to these costs, the projected underwriting fees for the transaction are estimated at approximately \$582,000. Staff will determine the exact cost of issuance expenses for the transaction and provide those figures to the Board for approval.

Included in these costs are bond counsel services. OCTA currently contracts with Nossaman, LLP (Nossaman) to provide bond counsel services. Services include drafting and reviewing legal documents, providing opinions, and closing the transaction. The procurement for bond counsel services was originally handled in accordance with OCTA's Board-approved policies and procedures for professional services. On April 27, 2015, OCTA executed an agreement with Nossaman to provide bond counsel services. The original agreement was awarded on a competitive basis and includes a three-year initial term with two, one-year option terms and has been previously amended as described in Attachment B. OCTA is currently in the first option term of the contract and will look to exercise the second option term in early 2019. In order to proceed with the \$400 million M2 financing, funds will need to be added to the bond counsel agreement for the debt transaction.

### Future TIFIA Loans

OCTA's Next 10 Delivery Plan identifies the need for future debt issuances after 2021. Staff would like to pursue a new TIFIA loan secured by M2 revenues in lieu of traditional bond financing. Subsequent TIFIA loans may offer a lower alternative cost of debt with more flexible repayment structures.

### Next Steps

If the Board approves the recommended financing, selection of underwriters, and amendment to bond counsel services, staff will work with its financing team to develop the documents required for a transaction. Once the underwriting team is approved, staff will work with the financing team to evaluate alternatives and any changes to the recommended plan will be presented to the Board for approval. Once the recommended plan is finalized, staff will submit the financing documents to the Board for final review and approval. A tentative schedule is provided on the next page:

**Approval of the 2018 Measure M2 Plan of Finance, Issuance of Measure M2 Bonds, Selection of Underwriting Team, and Bond Counsel Services Amendment**

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Finance and Administration Committee Meeting (Potential Approval of Debt Issuance)	October 24, 2018
Board of Directors Meeting (Potential Approval of Debt Issuance)	November 12, 2018
Develop Bond Documents	November/December 2018
Finance and Administration Committee Meeting (Potential Approval of Draft Final Documents)	December 12, 2018
Rating Agency/Investor Presentations	December 2018
Board Meeting (Potential Approval of Final Bond Documents)	January 2019
Bond Pricing	January 2019
Bond Closing	February 2019

***Summary***

Staff has developed an M2 Plan of Finance to support the 405 Project, which includes the use of bond financing. Approval is requested for the selection of underwriters, amendment to the bond counsel contract, approval of the M2 Plan of Finance, and issuance of sales tax revenue bonds to fund the 405 Project.

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***Attachments***

- A. Orange County Transportation Authority, 405 Project, Measure M2 Plan of Finance, October 2018
- B. Nossaman LLP, Agreement No. C-5-3099 Fact Sheet

**Prepared by:**



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