



**October 7, 2024**

**To:** Executive Committee

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

**Subject:** 405 Express Lanes Expenditure Plan Requirement

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**Overview**

In late 2016, the Orange County Transportation Authority Board of Directors awarded a design-build contract for the Interstate 405 Improvement Project. In mid-2017, a full Notice to Proceed was issued commencing all design and construction activities. With the Interstate 405 Improvement Project substantially completed and the 405 Express Lanes component in operations mode, the Orange County Transportation Authority has responsibilities of fulfilling the obligations and requirements of the funding and management agreements and state statutes. One key component required is the development of a 405 Express Lanes Expenditure Plan.

**Recommendation**

Direct staff to develop principles to guide the establishment of a 405 Express Lanes Excess Toll Revenue Policy and Expenditure Plan and return to the Board of Directors for consideration and approval.

**Background**

The Orange County Transportation Authority (OCTA), in cooperation with the California Department of Transportation (Caltrans) and the cities of Costa Mesa, Fountain Valley, Huntington Beach, Seal Beach, and Westminster, implemented the Interstate 405 (I-405) Improvement Project between State Route 73 (SR-73) and Interstate 605 (I-605) (Project). The Project added one general purpose lane in each direction from Euclid Street to I-605, consistent with Measure M2 (M2) Project K, and added an additional lane in each direction that combines with the existing high-occupancy vehicle (HOV) lane to provide dual express lanes in each direction of I-405 from SR-73 to I-605, otherwise known as the 405 Express Lanes. The addition of Express Lanes to the M2-funded general purpose lanes was requested by Caltrans as the owner of the I-405 and freeway system. The 405 Express Lanes commenced operations on December 1, 2023.

In order to operate the 405 Express Lanes, OCTA needed statutory authority for tolling. The California Transportation Commission (CTC) granted tolling authority to OCTA under the provisions of AB 194 (Chapter 687, Statutes of 2015) in May 2016. AB 194 required that OCTA enter into a toll operating agreement with Caltrans that addressed all matters related to the design, construction, maintenance, and operation of the toll facility. Consistent with this requirement, a toll operating agreement was developed for the 405 Express Lanes, in cooperation with Caltrans, and approved by the OCTA Board of Directors (Board) in November 2016.

OCTA explored various options for funding the implementation of the 405 Express Lanes as a separate component of the Project but would also include M2 funding for the general purpose lane. A federal loan with the United States Department of Transportation's Build America Bureau provided the most flexibility and lowest cost of borrowing. OCTA entered into a Transportation Infrastructure Finance and Innovation Act (TIFIA) loan in July 2017, at a fixed interest rate of 2.91 percent for 30 years. The original TIFIA loan was subsequently refinanced in September 2021 at a lower 1.95 percent interest rate. The TIFIA loan will be paid back with toll revenues.

These arrangements, which include the statutory requirements of AB 194, the toll operating agreement with Caltrans, and the TIFIA loan agreement, detail the operating responsibilities that OCTA has for maintaining the 405 Express Lanes.

### ***Discussion***

To move the 405 Express Lanes project forward, the provisions of AB 194 required OCTA to submit an application to the CTC, conduct a public hearing near the I-405 corridor, enter into an agreement with the California Highway Patrol (CHP) for law enforcement matters, enter into a toll operating agreement with Caltrans, and to use the revenues from the facility in the corridor where the revenue was generated pursuant to an expenditure plan. AB 194 is included as Attachment A.

In April 2016, OCTA submitted an application to CTC seeking approval to develop and operate the 405 Express Lanes in accordance with AB 194 and the CTC's toll facility guidelines. Also, that same month, OCTA held a hearing in the City of Costa Mesa, to receive public comments on the 405 Express Lanes and the application. The CTC found that OCTA's application met the criteria identified and complied with the requirements contained in AB 194. In May 2016, the CTC approved OCTA's application to develop and operate high-occupancy toll lanes, thereby granting tolling authority. In March 2017, OCTA entered into a toll operating agreement with Caltrans, and in October 2023, OCTA entered into an agreement with CHP to provide enforcement services on the 405 Express Lanes.

### Toll Operating Agreement with Caltrans

The 405 Express Lanes is operated and maintained by OCTA based on a toll operating agreement executed with Caltrans in 2017. The operating agreement is for a 40-year lease term starting on December 1, 2023, and ending on December 1, 2063. The agreement is included as Attachment B. Some of the key provisions of the agreement include:

- OCTA has a 40-year lease to operate the express lanes as a congestion managed facility.
- OCTA collects toll revenues and sets toll policy using congestion management pricing while providing carpool and clean air vehicle incentives.
- OCTA operates, maintains, and funds related costs with toll revenues.
- OCTA is responsible for the maintenance of the 405 Express Lanes and for developing plans for the facility.
- OCTA sets priority for the use of excess toll revenues.
- OCTA, in partnership with Caltrans, shall develop and annually update an Expenditure Plan for potential excess toll revenue. Caltrans will have an opportunity to review and comment on the Expenditure Plan. The OCTA Board will be the approving body of the Expenditure Plan.
- At the end of the lease term, all 405 Express Lanes property, equipment, and systems shall be transferred back to Caltrans and become the property of Caltrans.

In May 2016, the OCTA Board adopted an initial toll policy which included provisions for HOV2, HOV3+, inherently low-emission vehicles, congestion management pricing, and violation processing. The toll policy was subsequently updated and approved by the Board in July 2023. OCTA hired Kapsch TrafficCom in February 2018 to provide the lane-system equipment that reads transponders, license plate images, and sends the information to the back-office system for processing. In addition, in November 2021, OCTA hired WSP USA Services, Inc. and Quarterhill Inc. to provide customer service center operations and back-office system software solutions, respectively. In November 2023, OCTA submitted facility plans to Caltrans for incident management and maintenance for the 405 Express Lanes. For freeway maintenance services, OCTA entered into an agreement with Caltrans in January 2024. The services under this agreement will commence once final acceptance is achieved for the Project which is anticipated in late 2024.

### TIFIA Loan Agreement

To fund the capital infrastructure costs associated with the 405 Express Lanes, OCTA executed a TIFIA loan agreement with the federal government in July 2017. The TIFIA loan was for an amount not to exceed \$628.93 million and has a final maturity date that is no later than 35 years following the Substantial

Completion Date (December 1, 2058). The TIFIA loan includes the following key provisions:

- The loan is payable solely from the net revenues resulting from OCTA's approved toll policy from congestion management pricing from the 405 Express Lanes. All toll revenue funds will flow through a third-party trustee selected by OCTA.
- The loan will have a senior lien on 405 Express Lanes net revenues.
- Interest during construction accrues until five years after substantial completion and full payment of principal and interest is payable ten years after substantial completion.
- The loan agreement requires a beginning and an annual minimum projection of 1.35 times debt service coverage ratio.
- Various reserve funds are required by the loan that will be funded by toll revenues and held at the trustee.
- Annual net revenues are to be deposited into a Distribution Lock-Up Fund that will keep excess net toll revenues until five years after substantial completion. After five years, 50 percent of the funds in the Distribution Lock-Up Fund must be used to repay the TIFIA loan, and the balance will be released to OCTA for future projects pursuant to an expenditure plan.

In 2017, OCTA hired US Bank as trustee bank for the 405 Express Lanes. With the opening of the 405 Express Lanes in December 2023, OCTA has been remitting toll revenues to US Bank for the payment of operating expenses and the funding of the required reserves. Excess monthly toll revenues are held in the Distribution Lock-Up Fund.

#### Expenditure Plan Requirement

The provisions of AB 194 and the toll operating agreement with Caltrans require the development of an expenditure plan for anticipated excess toll revenues. Based on the toll operating agreement, excess toll revenues are beyond the expenditure needs for the 405 Express Lanes operation and maintenance, debt service payments, enforcement, repair and rehabilitation, reserves, and administration. Access to excess toll revenues is subject to the creation of an expenditure plan, developed in cooperation with Caltrans and approved by the Board. The expenditure plan must be in place five years before the availability of excess toll revenues, as required by the toll operating agreement with Caltrans. Based on prior projections, excess toll revenues could be available starting in 2029. OCTA is updating the traffic and revenue forecast to determine estimated revenues for the 405 Express Lanes. This data will be available in early 2025 and will be input into OCTA's cash flow model to determine when excess toll revenues will be available.

Another factor in the determination of when excess toll revenues are available and ready for use under an expenditure plan is driven by the TIFIA loan. The TIFIA loan agreement stipulates that for the first five years after opening day, excess toll revenues must be held at the trustee in a Distribution Lock-Up Fund and cannot be used by OCTA. After the five years, assuming OCTA's compliance with loan terms, 50 percent of the accumulated balance in the Distribution Lock-Up Fund and future excess toll revenues must go towards repaying the TIFIA loan, with the remainder available for OCTA's use. Once the loan is fully repaid, OCTA can utilize all surplus toll revenues until the end of tolling authority on December 1, 2063.

Given these expenditure plan requirements and TIFIA loan restrictions, OCTA will need to develop an expenditure plan for using excess toll revenues. Before developing the required expenditure plan, certain key policy principles should be considered to guide the eventual plan. Staff expects to present the high-level principles for the development of an expenditure plan over the next month.

#### 405 Express Lanes Performance-to-Date

Since opening day in December 2023, the 405 Express Lanes has been processing transactions and providing free-flow travel to customers using the facility. There have been approximately 38.1 million transactions, which translates into 10.1 million trips since July 31, 2024. These transactions and trips have generated approximately \$20.2 million in total revenues which have been transferred to OCTA's trustee bank. Over 10,500 405 Express Lanes accounts have been opened and most of the transactions on the facility have been from interoperability partner accounts. The 405 Express Lanes is performing as expected and closely matching the previous forecasts.

#### ***Summary***

The 405 Express Lanes commenced operations on December 1, 2023. Now that the facility is in operations mode, the Orange County Transportation Authority has responsibilities of fulfilling the obligations of the various agreements in place and statutory requirements. One key component required is the development of a 405 Express Lanes Expenditure Plan.

***Attachments***

- A. Assembly Bill No. 194
- B. Caltrans/OCTA Toll Operating Agreement

**Prepared by:**



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