



May 8, 2017

To: Members of the Board of Directors

From: Darrell Johnson, Chief Executive Officer

Subject: Interstate 405 Improvement Project Financing Update

Overview

Over the past year, the Orange County Transportation Authority has been working with its financing team to finalize a funding plan for the Interstate 405 Improvement Project. In January 2017, Notice to Proceed No. 1 was issued to OC 405 Partners to commence the design-build work for the project. Orange County Transportation Authority representatives have been negotiating a Transportation Infrastructure Finance and Innovation Act loan for the project with the Build America Bureau Credit Programs Office. This report provides an update on recent financing activities.

Recommendations

- A. Approve the use of a Letter of Credit/Line of Credit supported by Local Transportation Authority sales tax revenues in the principal amount of approximately \$900 million plus interest for the funding of the Interstate 405 Improvement Project, if required.
- B. Authorize the Chief Executive Officer to negotiate and execute Amendment No. 2 to Agreement No. C-5-3099 between the Orange County Transportation Authority and Nossaman LLP, in the amount of \$80,000, for additional bond counsel services related to the establishment of a Letter of Credit/Line of Credit for the Interstate 405 Improvement Project.
- C. Authorize the Chief Executive Officer to negotiate and execute Amendment No. 3 to Agreement No. C-1-3116 between the Orange County Transportation Authority and Sperry Capital, Inc., in the amount of \$80,000, for additional financial advisory services related to the establishment of a Letter of Credit/Line of Credit for the Interstate 405 Improvement Project, and to extend the current agreement term through

November 30, 2017, to allow time for the completion of the project-related financings.

Background

The Orange County Transportation Authority (OCTA), in cooperation with the California Department of Transportation, is implementing the Interstate 405 (I-405) Improvement Project between State Route 73 (SR-73) and Interstate 605 (I-605) (Project). The Project will add one general purpose lane from Euclid Street to I-605, consistent with Measure M2 (M2) Project K, and will add an additional lane in each direction that would combine with the existing high-occupancy vehicle lane to provide dual express lanes in each direction on I-405 from SR-73 to I-605, otherwise known as the 405 Express Lanes.

In May 2016, the OCTA Board of Directors (Board) approved the initial 405 Express Lanes Toll Policy and preliminary finance plan. The finance plan contained the following sources of funds to pay for the \$1.9 billion in Project costs: M2 funds in the amount of \$1.145 billion, federal funds of \$45.648 million, state funds of \$82 million, and a Transportation Infrastructure Finance and Innovation Act (TIFIA) loan secured by 405 Express Lanes toll revenues totaling \$627 million. The M2 funds were divided into cash on hand or pay-as-you-go funds and future M2 debt issuances. It was anticipated that M2 cash on hand could fund Project expenditures for a few years, while proceeds from M2 debt issuances in 2019 and 2021 would fund the remaining Project expenditures.

In November 2016, OCTA's Board awarded a design-build (DB) contract to the joint venture team, OC 405 Partners, for the Project. OC 405 Partners is a team of firms led by OHL USA, Inc. and Astaldi Construction Corporation. The contract award for Project design and construction totaled \$1.217 billion, with the total Project cost equaling \$1.9 billion.

On January 31, 2017, OCTA's Chief Executive Officer executed the DB contract with OC 405 Partners, and OCTA issued Notice to Proceed (NTP) No. 1 on that same date. Under the terms of the DB contract, OCTA will compensate the DB team up to \$50 million in documented Project expenses during the NTP No. 1 period for mobilization, administrative, and design efforts. Subject to OCTA having closed its Project financing, OCTA will issue NTP No. 2 the later of (a) 120 days after issuance of NTP No. 1 and (b) completion of all NTP No. 1 Project deliverables and contractual requirements by OC 405 Partners. Upon issuance of NTP No. 2 (120 days after issuance of NTP No. 1 or May 31, 2017), OC 405 Partners is allowed to perform all work associated with the Project and invoice OCTA on a monthly basis. Essentially,

NTP No. 1 is a limited NTP for up to \$50 million, and NTP No. 2 is a full notice to proceed for the full DB contract amount of \$1.217 billion.

Over the past couple months, OCTA has been working with Standard and Poor's, Moody's Investment Service, and Kroll Bond Rating Agency to receive investment grade ratings for the TIFIA loan associated with the Project. OCTA has provided the rating agencies detailed Project information, risk mitigations, right-of-way acquisition, utility relocation, design-build selection process, toll operating agreement, and a review of the traffic and revenue study. The rating agencies are awaiting a draft-final form of the TIFIA draft loan agreement to continue with their assessment of the ratings for the Project. It will take approximately three to four weeks to receive the ratings notification after they receive the draft loan agreement. OCTA will need to provide the investment grade ratings to the Build America Bureau (Bureau) Credit Programs Office in order to close on the TIFIA loan.

Although OCTA submitted a Letter of Interest (LOI) to the Bureau requesting a TIFIA loan for the Project in February 2016, there was no significant progress made with loan negotiations with the Bureau until the last week of February 2017. These negotiations have focused on rate covenants, events of default and remedies, and having all of the M2 funding at the time of closing of the loan, or prior to the disbursement of the loan.

Discussion

In late 2016, OCTA received authorization from the California Transportation Commission to use \$7.771 million in Transportation Corridor Improvement Funds (TCIF) for the Project. This new funding source lowered the amount needed from the M2 Program. The sources for the Project total:

Source of Funds	Amount in Millions
M2 Sales Tax: Pay-As-You-Go	\$244.581
M2 Sales Tax: Debt Issuances (2019 and 2021)	893.000
Federal Funds	45.648
State Funds (SHOPP and TCIF)	89.771
Toll Revenues: TIFIA Loan	627.000
Total	\$1,900.000

The \$893 million listed above in M2 future debt issuances for 2019 and 2021 is an area of focus for the Bureau in recent negotiations. The Bureau has insisted that the \$893 million in M2 debt issuances be committed funds at the time of closing the TIFIA loan. This approach was not included in OCTA's LOI submitted in February 2016, nor was it included in OCTA's subsequent presentations or

financial models submitted to the Bureau. The Bureau has asked due diligence questions regarding the proposed financing plans, and OCTA has always responded with the same financing schedule.

The Bureau has recommended to use short-term Bond Anticipation Notes (BANs) to bridge the timing gap. Whether OCTA issues BANs or issues the entire \$893 million in M2 debt in 2017, these options will cost OCTA significantly in unanticipated debt interest costs compared to the preliminary plan of finance prepared to fund the Project. For example, it is projected that issuing all of the M2 debt in 2017 will at a minimum cost approximately \$41 million in extra debt interest costs.

OCTA and its advisors have developed an alternative strategy that the Bureau has tentatively accepted, which is the issuance of a Letter of Credit or Line of Credit (LOC) for the entire amount of the M2 future debt issuances. Based upon preliminary estimates of approximately 50 basis points (0.50%), the estimated cost will be about \$4.5 million per year for an LOC. This is significantly less than issuing all of the M2 debt in 2017.

On May 1, 2017, OCTA issued a request for proposals (RFP) for LOC services. The evaluation committee will evaluate the RFP responses based upon qualifications of the firms and cost. The evaluation committee is expected to make a recommendation to the Board on the firm or firms on May 22, 2017.

Under this approach, OCTA can wait until 2019 and 2021 to issue the M2 debt as included in the preliminary finance plan, or OCTA can issue the debt earlier to eliminate the potential risk of rising interest rates. Since this approach was not included in the preliminary finance plan, OCTA will need to amend the bond counsel services agreement with Nossaman LLP (Nossaman) and the financial advisory services agreement with Sperry Capital Inc. (Sperry) to include funds to support the issuance of an LOC. This includes working on the RFP for LOC banks, drafting and reviewing legal documents, providing opinions, and closing the transaction. This approach will be pursued if the Bureau insists that all committed funds be available at the closing of the TIFIA loan. Funds will be expensed from these contracts on an as needed basis.

TIFIA Next Steps

In order to close the TIFIA loan and lock in the TIFIA interest rate, the Bureau will need to get approval from their Credit Review Team for the Project. Once the Credit Review Team provides an initial approval, they will invite OCTA to submit a formal TIFIA application. After the formal TIFIA loan application is submitted, Bureau staff will prepare a final Project report, make a second

presentation to the Credit Review Team, and seek approval on the application. If approved, the Credit Review Team will make a recommendation to the Council on Credit and Finance.

The next step would be a Council on Credit and Finance recommendation to the Secretary of Transportation (Secretary). A key member of the Council on Credit and Finance has not been confirmed by the United States Senate and that position is the Deputy Secretary of Transportation who serves as the Chair of the Council.

The Secretary makes the final determination on awarding the loan. OCTA is targeting a financial close for the TIFIA loan during the end of the second quarter of 2017. Staff will bring the final terms and conditions of the loan agreement to the OCTA Board for approval.

Procurement Approach

The procurement for financial advisory services was originally handled in accordance with OCTA's Board-approved policies and procedures for professional services. On February 27, 2012, the OCTA Board approved the award of the agreement with Sperry. The original agreement was awarded on a competitive basis and includes a three-year initial term with two, one-year option terms, in the amount of \$400,000. The initial term of the agreement expired on March 31, 2015. On January 26, 2015, the Board exercised the first option term in the amount of \$60,000, bringing the total contract value to \$460,000, and extending the term through March 31, 2016. On September 14, 2015, the Board approved an additional \$870,000, for additional financial advisory services related to the Project and extended the agreement term through June 30, 2017, to allow time for the completion of the project-related financings. This increased the maximum obligation of the agreement to a total contract value of \$1,330,000.

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, in the amount of \$215,000.

Fiscal Impact

The costs for the LOC will be included in OCTA's Fiscal Year 2017-18 Budget and will be funded through local funds.

Summary

Staff is providing the Board of Directors an update on the financing activities to date for the Interstate 405 Improvement Project.

Attachments

- A. Sperry Capital Inc., Agreement No. C-1-3116 Fact Sheet
- B. Nossaman LLP, Agreement No. C-5-3099 Fact Sheet

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