



**June 21, 2017**

**To:** Finance and Administration Committee

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

**Subject:** Transportation Infrastructure Finance and Innovation Act Loan Approval for the Interstate 405 Improvement Project

### **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. A large component of this funding plan includes a loan under the Transportation Infrastructure Finance and Innovation Act. Orange County Transportation Authority representatives have been negotiating the loan terms for the project with the Build America Bureau Credit Programs Office. A copy of the substantially final Loan Agreement, Master Indenture, and Supplemental Indenture is presented for Board of Directors review and approval.

### **Recommendations**

- A. Approve the substantially final form of the Transportation Infrastructure Finance and Innovation Act Loan Agreement between the Orange County Transportation Authority and the United States Department of Transportation in the amount of approximately \$627 million, the substantially final form of the Master Trust Indenture and Supplemental Indenture by and between Orange County Transportation Authority and the Trustee, and authorize the Chief Executive Officer to negotiate and execute a final Transportation Infrastructure Finance and Innovation Act Loan Agreement, Master Indenture, and Supplemental Indenture.
- B. Authorize the Chairman, Vice-Chair, Chief Executive Officer, Executive Director of Finance and Administration, and the Treasurer to sign all documents related to the Transportation Infrastructure Finance and Innovation Act loan, including the Transportation Infrastructure Finance and Innovation Act Loan Agreement and Bond, the Master Indenture, Supplemental Indenture, and any certificates, notices, receipts, or agreements in connection with the foregoing.

***Background***

The Orange County Transportation Authority (OCTA), in cooperation with the California Department of Transportation (Caltrans), 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 April 2015, the OCTA Board of Directors (Board) approved the terms and conditions negotiated with Caltrans that established the roles and responsibilities related to project delivery, funding and financing, and operations for the Project. The Board also authorized staff to pursue financing opportunities through the Transportation Infrastructure Finance and Innovation Act (TIFIA).

In February 2016, OCTA submitted a Letter of Interest (LOI) to the Build America Bureau (Bureau) Credit Programs Office (formerly known as the TIFIA Joint Program Office) requesting a loan for the Project. In March 2016, the United States Department of Transportation (USDOT) notified OCTA that the LOI met the requirements for TIFIA participation and was ready to advance to the next phase.

The next phase involved receiving an indicative investment grade rating opinion letter on the Project's plan of finance and the feasibility of the anticipated pledged revenue stream. In June 2016, OCTA presented an overview of the Project and the preliminary financial model in San Francisco to Standard & Poor's Global. In July 2016, OCTA received notification that their Credit Committee assigned the Project an indicative investment grade rating of "BBB-."

In July 2016, OCTA submitted a copy of the Standard & Poor's indicative rating letter, a detailed preliminary financial model, and the application fee to the Bureau's Credit Programs Office. OCTA also provided an oral presentation on the Project to Bureau representatives in Washington, D.C. in August 2016.

From the end of August 2016 through the beginning of October 2016, the Bureau assembled their team of consultants, which included outside legal counsel, a financial advisor, and a traffic and revenue advisor. Once their team was hired, OCTA began biweekly conference calls in October 2016, with the Bureau to monitor the progress of the TIFIA loan. The calls included OCTA staff from the Capital Projects division, Finance and Administration division, OCTA's Project team including Sperry Capital Inc., Nossaman, Bank of America Merrill Lynch,

Stantec, Woodruff, Spradlin & Smart, and representatives from the Bureau. The initial discussions revolved around the traffic and revenue study and the financial model.

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 \$1.2 billion. The total Project cost is \$1.9 billion and will be funded with a combination of local, state, and federal funds.

In early December 2016, Bureau staff requested 15 separate sensitivity scenarios of the Project's traffic and revenue model. These were extensive scenarios requiring weeks to complete. Stantec, OCTA's traffic and revenue consultant, ran those scenarios and completed the analysis in mid-January 2017. The results of these 15 scenarios were each entered into OCTA's financial model and were provided to the Bureau.

In order to close on the TIFIA loan, OCTA will need to provide at least two investment grade ratings to the Bureau. In December 2016, OCTA's Chair and Vice-Chair, along with OCTA staff and consultants met with five credit rating agencies in New York to discuss the Project and TIFIA loan. OCTA met with Standard and Poor's Global, Moody's Investment Service, Fitch Ratings, Kroll Bond Rating Agency, and DBRS. During the meetings, OCTA representatives discussed the background and importance of the Project, TIFIA loan, and the current schedule for Project funding.

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 for documented Project expenses during the NTP No. 1 period for mobilization, administrative, and design efforts.

In February 2017, OCTA representatives traveled to Washington, D.C. to meet face-to-face with Bureau representatives and negotiated commercial terms for the draft loan agreement. These negotiations focused on various topics, including rate covenants, events of default and remedies, timing of the repayment of principal and interest, the flow of funds, distribution of excess funds, and other areas.

In March 2017, OCTA elected to utilize the services of Standard and Poor's Global, Moody's Investment Service, and Kroll Bond Rating Agency for the investment grade ratings for the TIFIA loan associated with the Project. OCTA

provided the credit rating agencies detailed Project information, risk mitigations, right-of-way acquisition, utility relocation, design-build selection process, toll operating agreement, and a detailed review of the traffic and revenue study.

In April and May 2017, OCTA and Bureau staff spent time finalizing the key terms and conditions of the TIFIA loan. A negotiating point that required separate OCTA Board action was the selection of a line of credit provider. The Bureau insisted that approximately \$900 million in future M2 debt issuances be committed funds at the time of closing the TIFIA loan. Therefore, because of this requirement, OCTA issued a Request for Proposal for letter or line of credit services. On May 22, 2017, the Board selected Bank of America N.A. to provide a \$900 million line of credit to meet the Bureau's requirement.

The sources of funds for the \$1.9 billion Project include: M2 funds in the amount of \$1.138 billion, federal funds of \$45.648 million, state funds of \$89.771 million, and a TIFIA loan secured by 405 Express Lanes toll revenues totaling \$627 million. The M2 funds are comprised of pay-as-you-go funds (approximately \$245 million) and future M2 debt issuances (approximately \$893 million). It was anticipated that M2 cash on hand could fund Project expenditures for a few years while M2 debt issuances in 2019 and 2021 would fund the remaining Project expenditures.

Also in May 2017, the Bureau received approval from their Credit Review Team for the Project. During the meeting, the Credit Review Team invited OCTA to submit a formal TIFIA application, and the application was submitted in mid-May. After reviewing the application, Bureau staff prepared a final Project report and made a second presentation to the Credit Review Team on June 14, 2017. The Credit Review Team approved the application and made a recommendation to move forward with the loan to the Council on Credit and Finance.

### ***Discussion***

In June 2017, the Bureau and OCTA agreed on the remaining key terms on the draft loan agreement for the TIFIA loan. The Bureau submitted the latest version of the agreement (Attachment A) to OCTA. The Master Indenture (Attachment B) and Supplemental Indenture (Attachment C) prepared by OCTA's bond counsel are also provided for Board review and approval.

The financing documents below incorporate the loan structure. In order to proceed with the TIFIA loan, OCTA is required to execute several financing documents with related parties. A listing of the documents is provided below with an accompanying description:

TIFIA Loan Agreement – agreement between the USDOT and OCTA that describes the terms, conditions, repayment provisions, events of default, and reporting requirements for the approximate \$627 million loan.

Master and Supplemental Indenture - The Master Indenture and Supplemental Indenture are the written agreements that specify the terms and conditions for issuing any potential future 405 Express Lanes completion bond obligations on a senior lien parity with the TIFIA loan. The Indentures describe the maturity of the program and the protective covenants and other terms. The Indentures also describe the legal obligation of OCTA and the powers of the trustee. The Indentures are an agreement between OCTA and the trustee for the benefit of the bondholders, including TIFIA.

The TIFIA loan includes the following key provisions:

- The loan is sized at no more than 33 percent of the Project's eligible costs as defined by the Bureau;
- The loan interest rate is one basis point (0.01 percent) above the prevailing 30-year U.S. Treasury bond yield at the closing date;
- 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;
- The loan will have a senior lien on 405 Express Lanes net revenues;
- Interest during construction accrues until five years after substantial completion;
- Full payment of principal and interest is payable 10 years after substantial completion;
- The TIFIA loan agreement requires a beginning and an annual minimum projection of 1.35 times debt service coverage ratio;
- Completion bond obligations, on a senior lien parity with the TIFIA loan, may be issued up to 15 percent of the loan amount should additional funding be required due to unexpected circumstances;
- The TIFIA loan repayment is structured with a two percent growth factor;
- During the ramp-up period from 2023 to 2028, net revenues will fund the Debt Service Reserve Account. Due to the 2% increase in TIFIA debt service each year, the Debt Service Reserve Account will increase slightly each year and be increased to meet the higher requirement with net revenues;
- The Operations and Maintenance Reserve Fund and the Major Maintenance Reserve Fund will be funded with net revenues during the initial ramp up period. The Operations and Maintenance Reserve Fund Requirements and the Major Maintenance Reserve Fund Requirements

are based on future requirements and will be funded with net revenues pursuant to formulas in the TIFIA loan agreement;

- The 405 Express Lanes Pledged Revenues will be applied in the following order:
  - Operations and Maintenance Fund,
  - Rebate Fund established with respect to any future tax-exempt borrowing under the Master Indenture,
  - Senior Obligations Interest Account with respect to Outstanding Senior Obligations,
  - Senior Obligations Principal Account,
  - Senior Obligations Reserve Fund,
  - Senior Obligations Interest Account with respect to TIFIA Scheduled Debt Service,
  - Subordinate Obligations Interest Amount,
  - Subordinate Obligations Principal Account,
  - Subordinate Obligations Reserve Account,
  - Operations and Maintenance Reserve Fund,
  - Major Maintenance Reserve Fund, and
  - Distribution Lock-Up Fund
- Annual net revenues are deposited into a Distribution Lock-Up Fund that will keep excess net revenues until seven years after substantial completion. After seven years, 50 percent of the funds in the Distribution Lock-Up Fund will be used to repay the TIFIA loan and the balance will be released to OCTA for future projects pursuant to AB 194.

#### **Next Steps**

In order to close the TIFIA loan and lock in the TIFIA interest rate, the Bureau will need to get approval from the Council on Credit and Finance which is scheduled to meet on June 28, 2017. If approved at that meeting, the Council on Credit and Finance will make a recommendation to the Secretary of Transportation (Secretary). The Secretary makes the final determination on awarding the loan. OCTA is targeting a financial close for the TIFIA loan in July 2017 and awarding NTP No.2 to OC 405 Partners which will allow them to begin major construction of the Project.

#### **Summary**

The form of the financing documents for the Transportation Infrastructure Finance and Innovation Act loan for the Interstate 405 Improvement Project is

presented for approval to the Finance and Administration Committee and the Board of Directors.

***Attachments***

- A. United States Department of Transportation TIFIA Loan Agreement with Orange County Transportation Authority for the I-405 Improvement Project
- B. Master Indenture between Orange County Transportation Authority and US Bank Trust Company, National Association as Trustee, dated June 1, 2017
- C. First Supplemental Indenture between Orange County Transportation Authority and US Bank Trust Company, National Association as Trustee, dated June 1, 2017

**Prepared by:**



Kirk Avila  
Treasurer/General Manager  
Treasury/Toll Roads  
714-560-5674

**Approved by:**



Andrew Oftelie  
Executive Director,  
Finance and Administration  
714-560-5649