



March 10, 2021

To: Finance and Administration Committee

From: Darrell E. Johnson, Chief Executive Officer

Subject: Transportation Infrastructure Finance and Innovation Loan Interest Rate Reset Form of Financing Documents

Overview

On October 26, 2020, the Orange County Transportation Authority Board of Directors directed staff to proceed with pursuing an interest rate reset of the Orange County Transportation Authority's 2017 Transportation Infrastructure Finance and Innovation Act Loan for up to \$628.9 million for the Interstate 405 Improvement Project. The form of the financing documents for the proposed transaction is presented for 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 for up to \$628.9 million, the substantially final form of the Second Supplemental Indenture by and between the Orange County Transportation Authority and the Trustee, and the substantially final form of the Loan Pay-off and Termination Agreement between the Orange County Transportation Authority and the United States Department of Transportation.
- B. Authorize the Chief Executive Officer to negotiate and execute a final Transportation Infrastructure Finance and Innovation Act Loan Agreement, Second Supplemental Indenture, and Loan Payoff and Termination Agreement.
- C. Authorize the Chairman, Vice Chairman, Chief Executive Officer, Chief Financial Officer, Director of Finance and Administration, and Department Manager of Treasury and Public Finance to sign all documents related to the Transportation Infrastructure Finance and Innovation Act loan, including the Transportation Infrastructure Finance

and Innovation Act Loan Agreement, the Second Supplemental Indenture, Loan Pay-off and Termination Agreement, and any certificates, notices, receipts, or agreements in connection with the foregoing.

Background

Transportation Infrastructure Finance and Innovation Act Overview

The Transportation Infrastructure Finance and Innovation Act (TIFIA) of 1998 established a federal credit program for eligible transportation projects. The program is designed to leverage limited federal resources and stimulate capital market investment in transportation infrastructure by providing credit assistance to projects of national or regional significance. TIFIA is administered by the Build America Bureau (Bureau) on behalf of the Secretary of Transportation.

2017 TIFIA Loan

On July 26, 2017, the Orange County Transportation Authority (OCTA) and the United States (U.S.) Department of Transportation (DOT) Bureau Credit Programs Office (Bureau) executed a TIFIA loan for up to \$628.9 million (2017 TIFIA Loan) as a direct borrowing for the Interstate 405 (I-405) Improvement Project (Project).

The 2017 TIFIA Loan is non-recourse debt issued on a senior lien basis secured solely by net toll revenues of the 405 Express Lanes, which are estimated to open in 2023. Annual debt service payments are not required until five years after substantial completion, and interest-only payments are required for the first five years (years six through ten after substantial completion). Principal payments for the loan commence in year ten after substantial completion. As of June 30, 2020, OCTA has drawn \$287 million on the 2017 TIFIA Loan.

TIFIA Loan Reset Approval Process and Timeline

In August 2020, as a result of historically low U.S. Treasury rates, OCTA staff requested a meeting with the Bureau to explore options to lower the 2017 TIFIA Loan's 2.91 percent interest rate. It is expected that savings could be achieved if the 2017 Loan is replaced with a new TIFIA Loan (2021 TIFIA Loan), by resetting the 2.91 percent interest rate based on current 30-year U.S. Treasury bond yields. If successful, it is anticipated that the current interest rate of 2.91 percent could be reduced, resulting in debt service savings. Based on current U.S. Treasury bond yields, it is anticipated that a new TIFIA loan will result in net present value savings of approximately 14 percent,

or approximately \$90 million. This savings is less than what was anticipated and reported to the Board of Directors (Board) in October 2020. At that time, net present value savings was anticipated to be 25 percent or approximately \$190 million. The decrease in savings is due to rising 30-year U.S. Treasury bond yields. Yields on 30-year U.S. Treasury bonds have increased from approximately 1.4 percent in October 2020 to approximately 2.2 percent in March 2021. Fees and expenses for the transaction are estimated at \$755,000 and are necessary to cover the costs for credit ratings, financial advisory services, bond counsel, and Bureau costs.

Following several successful discussions with the Bureau, OCTA was invited to submit a Letter of Interest (LOI) requesting to reset the 2.91 percent interest on the 2017 TIFIA Loan. OCTA submitted a detailed LOI in August 2020, and in early October 2020, the Bureau approved the LOI and moved OCTA to the due diligence phase of the process. During this phase, the Bureau performed a detailed credit review of the Project's ability to repay the loan and invited OCTA to begin drafting an informal application while the Bureau conducted its procurement for outside legal counsel.

Following Board direction to pursue an interest rate reset, in November 2020, OCTA submitted an informal application to the Bureau. Also, in November 2020, the Bureau notified OCTA that Nixon Peabody LLP, was selected as the Bureau's legal counsel for the proposed transaction. Once draft legal documents were provided to OCTA in late January 2021, OCTA and the Bureau began weekly conference calls starting in early February 2021 to monitor the progress of the TIFIA loan.

As part of the Bureau's due diligence process, two investment grade ratings are required prior to closing. In late January 2021, OCTA provided preliminary ratings information to Kroll Bond Rating Agency, and Moody's Investor Services (Rating Agencies), and in late February 2021, OCTA conducted detailed rating agency presentations. During these conference calls, OCTA provided detailed information covering the TIFIA loan, funding and financial plan updates, current project status, and estimated timeline to close.

On February 10, 2021, the Bureau received approval from their Credit Review Team (CRT) for the Project, and OCTA was invited to submit a formal application. OCTA submitted the formal application on February 11, 2021, which was approved by CRT with a recommendation to move forward to the Council on Credit and Finance (CCF) for approval and submission to the Secretary of Transportation, who makes the final determination on approving the 2021 TIFIA Loan. Based on the estimated timeline provided by the Bureau, OCTA is targeting a financial close for the 2021 TIFIA Loan in late March 2021.

Discussion

Approval of Financing Documents

In order to proceed with the 2021 TIFIA Loan, OCTA is required to execute financing documents with third parties. A listing of the documents is provided below with an accompanying description:

- Form of the TIFIA Loan Agreement (Loan Agreement) - Agreement between the U.S. DOT and OCTA, for up to \$628.93 million, for the I-405 Improvement Project. The Loan Agreement describes the terms, conditions, repayment provisions, events of default, and reporting requirements for the 2021 TIFIA Loan. See Attachment A.
- Form of the TIFIA Loan Pay-off and Termination Agreement (Termination Agreement) - Agreement between the U.S. DOT and OCTA. The Termination Agreement specifies the terms, conditions, and prepayment provisions for terminating the 2017 TIFIA Loan agreement prior to entering into the new 2021 TIFIA Loan. See Attachment B.
- Form of the Second Supplemental Indenture (Indenture) - Agreement between OCTA and the Trustee for the benefit of the bondholders, including TIFIA. The Indenture specifies the terms and conditions for issuing any potential future 405 Express Lanes bond obligations on a parity basis with the 2021 TIFIA Loan, the maturity of the 2021 TIFIA Loan, and the protective covenants and other terms. The Indenture also describes the legal obligation of OCTA and the powers of the trustee. See Attachment C.

Next Steps

If the Board approves the form of the financing documents for the proposed transaction, then in order to close the 2021 TIFIA Loan by the end of March 2021, OCTA will need to provide two investment grade ratings to the Bureau (expected be released by the Rating Agencies within 14 days of financial close). Also, the Bureau will need to obtain approval from the CCF. If approved by the CCF, then the Secretary will make the final determination on awarding the 2021 TIFIA loan.

Additionally, pursuant to the Termination Agreement, OCTA will need to initiate the cancellation process for the existing 2017 TIFIA Loan by paying off the existing loan. OCTA would repay \$287 million, the total TIFIA loan disbursements, plus capitalized interest, prior to closing the 2021 TIFIA Loan.

Simultaneously with the closing of the 2021 TIFIA Loan, OCTA would be able to submit a reimbursement request, supported by prior eligible project expenditures, for the \$287 million in order to be reimbursed.

Summary

The form of the financing documents for the 2021 Transportation Infrastructure Finance and Innovation Act loan for the Interstate 405 Improvement Project are presented for approval.

Attachments

- A. United States Department of Transportation TIFIA Loan Agreement, For Up to \$628,930,000 with Orange County Transportation Authority for the I-405 Improvement Project
- B. Second Supplemental Indenture between Orange County Transportation Authority and U.S Bank National Association as Trustee
- C. I-405 Improvement Project TIFIA Loan Pay-off and Termination Agreement

Prepared by:



Robert Davis
Department Manager
Treasury and Public Finance
(714) 560-5675

Approved by:



Andrew Oftelie
Chief Financial Officer
Finance and Administration
(714) 560-5649