



MEMORANDUM

TO: Transportation Commission
FROM: Scott Richrath, Chief Financial Officer
DATE: July 17, 2014
SUBJECT: Potential Certificates of Participation:
Timing and Reimbursement Resolution Considerations

Purpose:

You may recall that I first requested financing approval for the Region 4 Greeley Headquarters (R4 HQ) property several months ago when staff obtained your approval to move forward on development of that property. Executive Director Hunt and I withdrew that request, opting to finance from existing cash balances and return to the Commission if and when we are ready to bundle that property with the financing of a second property. Since that withdrawal, staff has met with CDOT financial advisors and bond counsel and has learned that should the Department ever wish to finance the Region 4 property with Certificates of Participation (COPs), staff must obtain your formal approval now. Staff would return to you again for approval of terms and conditions of the financing agreement if and when necessary.

The goal of this memorandum therefore is to provide general information to the Transportation Commission on the COP issuance process. Specifically, it will address the potential issuance of COPs for the financing of other potential projects at a future date. This memorandum will address timing considerations for the issuance of the COPs, the reimbursement rules as well as the need for a reimbursement resolution for the R4 HQ project currently underway. Information on the various projects and potential issues related to the financing of the related properties is also outlined.

Summary Of Discussion:

Considering the timing rules relating to reimbursements from COP proceeds, the Department, in consultation with its Financial Advisor, Stifel, Nicolaus & Company, Incorporated, recommends the adoption of a reimbursement resolution at its July or August meeting in order to maximize the amount of reimbursable expenses associated with the R4 HQ building. Through timely finalization of financing plans, the Department will be able to structure a



flexible plan of finance that may permit the Department to enter into a single COP financing to provide necessary funding not only for the Greeley R4 HQ building but also for any additional future projects. The current project budget is \$20.4M. The reimbursement resolution effectively limits the total amount the project can be reimbursed. Stifel, Nicolaus & Company have also recommended approving the resolution to include additional contingency in the project.

Options For TC Consideration:

1. Approve the reimbursement resolution for \$22M to include the additional contingency recommended by Stifel, Nicolaus & Company and require that staff return to TC if and when staff is ready to bundle the Greeley financing with another property. Funding of the properties is then defrayed over a 10+ year time period.
2. Reject resolution and preclude CDOT from ever financing the Greeley R4 HQ project, instead using surplus cash from other programs or several years worth of Property Management funding.
3. Request staff to provide additional analysis and return next month, still within the construction window for approval.
4. Approve the reimbursement resolution for the original project budget of \$20.4M and require that staff return to TC if and when staff is ready to bundle the Greeley financing with another property or requires additional funds in the Greeley project. Funding of the properties is then defrayed over a 10+ year time period.

Staff Recommendation:

The Department recommends Option 1.

Action Requested:

The Commission is asked to review the information presented in the memo and approve a resolution that will allow COP financing if and when CDOT is ready to do so.

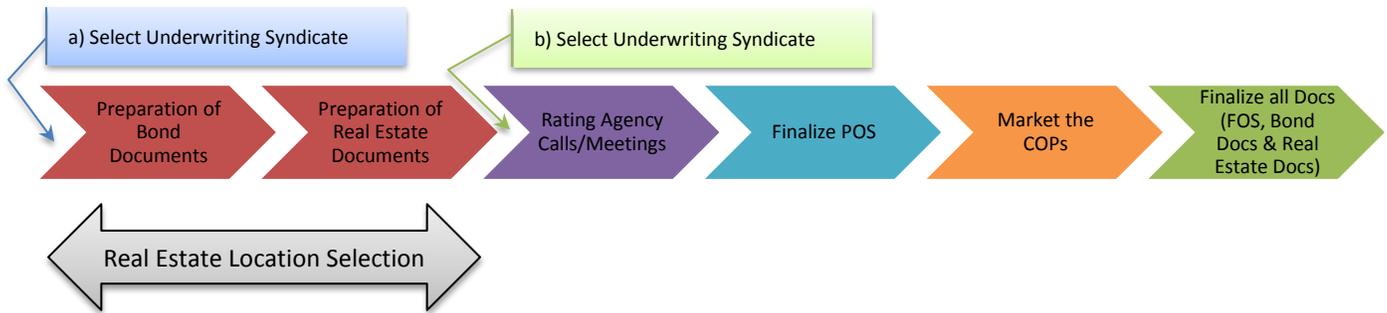
Context:

The current plan of finance contemplates the use of proceeds of the COPs to reimburse the Department for expenditures paid prior to the issuance of the COPs in connection with the project presently underway in Greeley; and to finance any other projects at a future date.

Timing Considerations:

Given the timing uncertainty associated with other potential buildings and projects at a future date, and given the imminent construction of the Greeley R4 HQ building, the Department has at least two initial choices to structure its financing schedule: (1) select the underwriting

syndicate at the beginning of the process, to work in conjunction with the financing team, through completion of the financing; or (2) utilize the existing financing team to prepare the necessary lease and real estate documents while the real estate matters (including site selection) are being concluded, and hire the underwriting syndicate towards the end of the process to access the capital markets. The following diagram highlights these two alternatives with a generic schedule of events:



Reimbursement Resolution Discussion For Greeley R4 HQ:

The “reimbursement rules” of the federal tax code set forth two important timing requirements, and two exceptions, relating to the Department’s ability to use proceeds of the COPs to reimburse itself for capital expenditures paid prior to the date the COPs are issued.

First, the Department may not reimburse itself for capital expenditures originally paid more than 60 days prior to the date on which the Department adopts a “reimbursement resolution” (or, if later, the date on which the Department enters into the lease financing). A reimbursement resolution sets forth the Department’s intent to use COP proceeds to reimburse itself and establishes the date of the earliest reimbursable expenditures. The Department’s bond counsel will be able to prepare the reimbursement resolution.

Second, a reimbursement from COP proceeds is only permitted if the Department enters into the lease financing and formally allocates COP proceeds to the reimbursement not later than 18 months after the later of (a) the date of the original expenditure or (b) the placed-in-service date of the property to which the reimbursement relates; provided that in no case may that allocation occur more than three years after the date of the original expenditure. For example, COPs may be issued and their proceeds applied to reimburse capital expenditures made on a project placed in service 18 months prior to the date of issuance of the COPs, but only for capital expenditures that were made not more than 18 months before the placed-in-service date (three years before the issuance date).

The first exception to these two timing rules is that the rules do not apply to reimbursements that are solely for “preliminary expenditures” (also referred to as soft costs). Soft cost only

include costs that are paid prior to commencement of the project and include expenditures for architectural, engineering, surveying, soil testing, costs of issuance and similar costs that are incurred before the commencement of acquisition, construction or rehabilitation of the project. Soft costs do not include land acquisition, site preparation and similar costs related to the start of construction. Not more than 20% of the aggregate amount of the COPs may be used to reimburse for soft costs. The second exception is that the two rules do not apply to reimbursements if the total amount of such reimbursements is not more than \$100,000.

TIMELINE DETAILS

DATE	MILESTONE
6/20/14	Beginning Date for Greeley HQ Expenses ¹
8/19/14	Begin Construction (Greeley HQ) ²
8/11/14	Land Closing (Greeley HQ) ²
7/17/14	TC Meeting – July 17th
8/21/14	TC Meeting – August 21st (Adopt Reimbursement Resolution)
8/12/15	Construction Complete (Greeley HQ) ²
8/13/15	Greeley HQ Placed In Service ³
2/28/17	Final Possible Issuance/Reimbursement Date ⁴

The following timeline is a graphical depiction of the assorted milestones relating to the reimbursement of capital expenditures related to the Greeley HQ4 building. The timeline also contemplates the funding for additional projects, to be aggregated into one COP financing for all of the projects. The timing show below is an estimate and is subject to change.

CDOT COP Estimated Timeline



and occupancy of the building will not occur until 9/13/15

⁴ Based on an approximation of the lesser of three years from initial expenditure or 18 months from the placed-in-service date

Additional Considerations:

In addition to the adoption of a reimbursement resolution for the Greeley HQ4 building, there are several other issues to be aware of as the Department moves forward with these projects;

*Municipal Bond Spend Down Requirements*⁵: The Department must reasonably expect that at least 85% of the net proceeds of the COPs will be used to finance governmental purposes within three years of the date the COPs are issued.

Sale of CDOT-Owned Property: As the Department is aware, anytime plans are made to dispose of a property (either through a sale or lease), the property must first be offered at a market rate to adjacent property owners and to political subdivisions of the State within whose boundaries the property lies (C.R.S. 43-1-210.5).⁶ The Department anticipates encountering issues associated with this statute in connection with the conveyance to the trustee for the COPs of the property that is to be the subject of the COP lease at closing. Sufficient time should be set aside to permit the Department and the working group to structure the financing to accommodate the statute.

Timing Considerations Associated with Aggregate COP Financing: The February 2017 issuance date for the COPs is relevant for determining the earliest expenditures that may be reimbursed for the Greeley HQ4 building. The issuance date, however, does not otherwise limit the issuance of the COPs. If the timing for any additional projects slips, a single aggregate COP financing may still be accomplished, but a portion of the expenditures paid by the Department for the Greeley HQ4 building will no longer be eligible for reimbursement from proceeds of the COPs. Alternatively, the Department could decide to complete the COP financing for the Greeley HQ4 building before beginning the COP financing for any remaining projects.

If you have any questions, please feel free to contact me by phone at (303) 757-9793 or email at scott.richrath@state.co.us.

⁵ <http://www.irs.gov/pub/irs-pdf/p4079.pdf>

⁶ <http://www.lexisnexis.com/hottopics/colorado?app=00075&view=full&interface=1&docinfo=off&searchtype=get&search=C.R.S.+43-1-210.5>

**Transportation Commission of Colorado
June 19, 2014**

Resolution Number TC-XXX

A RESOLUTION OF THE COLORADO STATE TRANSPORTATION COMMISSION DECLARING THE OFFICIAL INTENT OF THE COLORADO DEPARTMENT OF TRANSPORTATION TO REIMBURSE ITSELF FROM THE PROCEEDS OF A FUTURE LEASE PURCHASE FINANCING FOR CAPITAL EXPENDITURES AND PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the Colorado Department of Transportation (“CDOT”) is an executive department of the State of Colorado; and

WHEREAS, the Colorado State Transportation Commission (the “Commission”) is the governing body of CDOT; and

WHEREAS, CDOT presently intends to acquire, renovate and construct certain properties to house CDOT operations (the “Project”), including but not limited to facilities in Greeley Colorado; and

WHEREAS, CDOT currently intends and reasonably expects to participate in a lease purchase financing to finance the Project, including an amount of approximately \$[_____] (the “Reimbursement Amount”) for reimbursing CDOT for capital expenditures made by CDOT for the Project prior to the date when funds for the Project are available from such financing; and

WHEREAS, the initial expenditure of funds of CDOT for the Project occurred on a date that is within 60 days prior to the date hereof; and

WHEREAS, such lease purchase financing is to occur within 18 months of either the date that CDOT first expended funds for the Project or the date that the Project is placed in service, whichever is later (but in no event more than three years after the date of the original expenditure of CDOT funds for the Project); and

WHEREAS, the Commission hereby desires to declare the official intent of CDOT, pursuant to 26 C.F.R. § 1.150-2, to reimburse itself for the expenditure of CDOT funds for the Project from the proceeds of a future lease purchase financing of CDOT;

NOW, THEREFORE, BE IT RESOLVED BY THE COLORADO STATE TRANSPORTATION COMMISSION:

Section 1. Dates of Capital Expenditures. All of the capital expenditures covered by this Resolution were or will be made not earlier than 60 days prior to the date of this Resolution.

Section 2. Declaration of Official Intent. CDOT presently intends and reasonably expects to participate in a lease purchase financing within 18 months of either the date of the first expenditure of funds by CDOT for the Project or the date that the Project is placed in service, whichever is later (but in no event more than three years after the date of the original expenditure of CDOT funds for the Project), and to allocate an amount approximately equal to the Reimbursement Amount of the proceeds thereof to reimburse CDOT for its expenditures in connection with the Project.

Section 3. Confirmation of Prior Acts. All prior actions of the officials and agents of CDOT that are in conformity with the purpose and intent of this Resolution and in furtherance of the Project shall be and the same hereby are in all respects ratified, approved and confirmed.

Section 4. Effective Date of Resolution. This Resolution shall take effect immediately upon its passage.

INTRODUCED AND ADOPTED at a regular meeting of the Commission on July 17, 201

**Herman Stockinger, Secretary
Transportation Commission of Colorado**