



MEMORANDUM

TO: HPTE BOARD OF DIRECTORS
FROM: PIPER FRODE, ENTERPRISES BUDGET & POLICY ANALYST
DATE: FEBRUARY 14, 2018
SUBJECT: THIRD AMENDMENT TO THE FISCAL YEAR 2017-18 BUDGET

Requested Action

This memo provides information to the High Performance Transportation Enterprise (HPTE) Board of Directors regarding a proposed change to the current fiscal year (FY) 2017-18 budget for Fund 536 (Special Revenue Fund). Changes include (1) reflecting the re-payment of a Master Installment Purchase Agreement obligation for I-25 North, US36 to 120th (Segment II), and (2) the addition of a monthly margin rate payment on outstanding HPTE loans for the Mountain Express Lane (MEXL) and I-25 North, 120th Ave. to E-470/Northwest Parkway (Segment III).

The Board is asked to review the proposed changes to the Fund 536 budget and approve Resolution #259, included as Attachment A, authorizing the Third Budget Amendment of FY 2017-18.

(1) Master Installment Purchase Agreement

Background

In November 2014, CDOT and HPTE entered into a Master Installment Purchase Agreement (MIPA), allowing CDOT to purchase tolling equipment and software on behalf of HPTE using up to \$5.0 million of approved Transportation Commission funds. Specific Express Lane projects identified in the MIPA were I-25 North Segment II, I-25 North Segment III, C-470 and MEXL. Following the execution of the MIPA, HPTE was able to utilize financing proceeds to directly cover the expense of tolling equipment and software for several of the projects that were originally slated to use MIPA funds, including I-25 North Segment III, MEXL and the majority of C-470. However, MIPA funds were used to purchase tolling equipment and software on I-25 North Segment II and for some initial predevelopment expenses on C-470. In accordance with the terms of the MIPA, following toll commencement on I-25 North Segment II, CDOT and HPTE finalized a repayment schedule for the tolling equipment and software costs in January 2017. Under the current repayment schedule, HPTE has agreed to repay CDOT for I-25N Segment II tolling equipment and software by July 2019. CDOT and HPTE have not yet entered into a repayment schedule for the predevelopment expenses incurred for C-470 (the repayment schedule would normally be established at toll commencement).

Current Details

Last month, staff presented an analysis to the Board demonstrating that HPTE is able to pay off its MIPA obligation for I-25 North Segment II early and within the parameters for use of toll revenue set by the Board under the HPTE Revenue Use Guidelines. Key points justifying an early payoff of the I-25 North Segment II MIPA obligation:

- The Board identified paying off the MIPA obligation for Segment 2 as the number one priority when the Revenue Use Guidelines were established in January 2017.
- As of December 2017, net revenues on the corridor = \$6.6 million. The total amount of the payoff, \$1,580,744 will use 24 percent of current net revenue, well under the 30 percent threshold set by the Board under the Revenue Use Guidelines.
- By paying off the existing MIPA obligation prior to July 2019, HPTE will save over \$35,000 in interest.

Although not part of the current budget amendment, it is important to note that HPTE will also be repaying to CDOT, using project bond proceeds, the \$433,372 in pre-development costs that were incurred under the MIPA for the C-470 Express Lanes Project. Since HPTE is not using toll revenues to cover these items, staff does not need to seek Board approval for this action. These items are considered an eligible project cost and is therefore an appropriate use of bond funds.

(2) Margin Rate Increase

Background

Section 3.03 of the loan agreements for both MEXL and I-25 North Segment III, both with Bank of America Merrill Lynch (BAML); contain provisions allowing BAML to be made whole in the event there is a change in tax law that negatively impacts BAML's expected rate of return on the loans. These types of provisions are common in these agreements, and appear not just with tax exempt borrowers, but in commercial loan agreements as well. Lenders assert that if they are putting money at risk for an expected rate of return, a later change in tax law should not negatively impact the lender's expected rate of return.

Following passage of the federal Tax Cuts and Jobs Act in December 2017 (the "Tax Bill"), the maximum federal corporate tax rate was reduced from 35% to 21%. "This reduction increases the after-tax return on taxable investments currently held by bank lenders but does not affect the after-tax return on their tax-exempt investments. As a result, the change in law reduces the after-tax return on tax-exempt investments relative to the return on comparable taxable investments."¹ As a result of the Tax Bill, Section 3.03 of the loan agreements becomes effective, and HPTE must pay BAML a "Margin Rate Amount" to compensate BAML for the reduction in its after-tax return (relative to the comparable taxable investment).

For additional detail, a memo from Stifel detailing the impact to HPTE's current loan obligations and the addition of new monthly margin rate payment is included as Attachment B.

Current Details

As outlined in the memo provided by Stifel and shown as attachment B, HPTE will be paying an additional \$32,277 per month for the remainder of FY 2017-18. That breaks down to \$19,280 per month for the MEXL loan and \$12,998 for the I-25 North Segment III loan.

Summary of Budget Amendments

Changes to Fund 536 reflecting these two new items are highlighted in yellow on Exhibit A of Attachment A and are as follows:

I-25 North Managed Lane Cost Center

- Line 27: A new Margin Rate Payment line for \$77,987 has been added
- Line 33: A new line for Master Installment Purchase Agreement Debt Service for \$1,580,744 has been added.

I-70 West Mountain Express Lane Cost Center:

- Line 45: A new Margin Rate Payment line for \$115,677 has been added

In future fiscal years, HPTE will be paying an additional \$32,777 per month for the margin rate increase which will be reflected by corridor on the annual budgets brought before the Board for approval.

Key Benefits

- Complies with the loan agreements for MEXL and I-25 North Segment III.
- Consistent with the Revenue Use Guidelines established by the Board in January 2017.
- Retains a sufficient amount of toll revenues to cover all remaining operating expenses for the year for both MEXL and I-25 North Segment III.

Options and Recommendations

1. Act on Resolution #259 adopting the amended budget for 536. STAFF RECOMMENDATION
2. Request additional information regarding the MIPA or the margin rate.
3. Deny the request.

Next Steps

- Staff will apply the approved amount of I-25 North Segment II toll revenue to the outstanding I-25 North Segment II MIPA obligation.
- Staff will work with BAML to make the required monthly margin rate payments.

Attachment:

Attachment A: Resolution #259 Third Amendment to HPTE FY 2017-18 Budget

Attachment B: Stifel Memo: Tax Cut and Jobs Act Implications to HPTE Loans with Bank of America Merrill Lynch

¹ *Tax Issues When Fixing Rate and Fee Adjusters in Tax-Exempt Loans*, Orrick Public Finance Alert, January 25, 2018.

Attachment A

Resolution – HPTE #259

Approving and Adopting a Third Amendment to the Fiscal Year 2017-18 HPTE Budget

WHEREAS, the General Assembly of the State of Colorado created the Colorado High Performance Transportation Enterprise (“HPTE”) as a government-owned business within the Colorado Department of Transportation (“CDOT”); and

WHEREAS, Section 43-4-806(3)(a), C.R.S. created the Statewide Transportation Enterprise Special Revenue Fund in the state treasury (“Fund 536”) for the purpose of, *inter alia*, depositing user fee revenues received by the HPTE, and further provided for the establishment of separate accounts in connection with specific surface transportation infrastructure projects; and

WHEREAS, Section 43-4-806(4), C.R.S., separately created the Statewide Transportation Enterprise Operating Fund (“Fund 537”) for the HPTE; and

WHEREAS, pursuant to Section 43-4-806(6)(l), C.R.S., the HPTE Board of Directors (the “Board”) previously adopted annual budgets for fiscal year 2017-18 for Fund 536 and Fund 537; and

WHEREAS, the fiscal year 2017-18 budget for Fund 536 and/or Fund 537 was previously amended by resolution of the Board on October 18, 2017 (the “Second Amendment”); and

WHEREAS, the need has now arisen to further amend the budget for fiscal year 2017-18 for Fund 536 and/or Fund 537 (the “Third Amendment”) to authorize the expenditure of additional moneys not anticipated at the time of adoption of the budgets, to be funded out of such revenue sources as identified in herein; and

NOW THEREFORE BE IT RESOLVED, the amended fiscal year 2017-18 budget set forth in this Third Amendment for Fund 536, attached hereto as **Exhibit A** is hereby approved and adopted by the HPTE Board of Directors.

Signed as of February 14, 2018

Kari V. Grant
Secretary, HPTE Board

**Exhibit A to HPTE Resolution #259
Amended (Third Amendment) FY 2017-18 Budget- Fund 536**

Amended Fiscal Year 2017-18 Final Budget Fund 536					
Statewide Transportation Enterprise Special Revenue Fund (C.R.S. 43-4-806(3)(a)) 536					
Line		Estimated Revenues	Estimated Expenses	Revised Estimated Revenues	Revised Estimated Expenses
1	US 36 Express Lanes (Cost Center T8620-536)				
2	Fiscal Year Revenues				
3	Express Lanes Advertising Reimbursement from Plenary	\$ 70,000		\$ 70,000	
4	Interest Earnings	\$ 175,000		\$ 175,000	
5	Annual Concessionaire Management Fee	\$ 400,000		\$ 400,000	
6	Total US 36 FY 2017-18 Available Revenue	\$ 645,000		\$ 645,000	
7	Additional Budget from FY 2016-17 Roll Forward			\$ 3,637,247	
8	Total Current Available FY 2017-18 Operating Budget			\$ 4,282,247	
9	Fiscal Year Expenses				
10	CDOT Staff Consulting		\$ (15,000)		\$ (15,000)
11	Project Oversight		\$ (400,000)		\$ (400,000)
12	Toll Processing Oversight		\$ (200,000)		\$ (200,000)
13	Annual Audit		\$ (5,100)		\$ (5,100)
14	Attorney General Fees		\$ (10,000)		\$ (10,000)
15	Miscellaneous Corridor Studies				\$ (100,000)
16	Total US 36 FY 2017-18 Estimated Expenses		\$ (630,100)		\$ (730,100)
17	US36 Remaining Balance		\$ 14,900		\$ 3,552,147
18	I-25 North Express Lanes (Cost Center T8630-536)				
19	Fiscal Year Revenues				
20	Tolling Revenue	\$ 10,896,066		\$ 10,896,066	
21	Transponder Revenue	\$ 450,000		\$ 450,000	
22	Interest Earnings			\$ 1,500	
23	I-25 North Loan Funds for Debt Service Payment	\$ 470,237		\$ 470,237	
24	Total I-25 N FY 2017-18 Available Revenue & Funds	\$ 11,816,303		\$ 11,817,803	
25	Fiscal Year Expenses				
26	I-25 North Loan Payment		\$ (470,237)		\$ (470,237)
27	Margin Rate Payment				\$ (77,987)
28	CDOT Staff Consulting		\$ (15,000)		\$ (15,000)
29	Attorney General Fees				\$ (10,000)
30	General Reimbursable Expenses and Toll Processing Costs		\$ (2,330,284)		\$ (2,330,284)
31	Corridor Operations & Maintenance		\$ (500,000)		\$ (500,000)
32	Note Registrar		\$ (1,000)		\$ (1,000)
33	Master Installment Purchase Agreement Debt Service				\$ (1,580,744)
34	Total I-25 N FY 2017-18 Estimated Expenses		\$ (3,316,521)		\$ (4,985,252)
35	I-25 N Remaining Balance		\$ 8,499,782		\$ 6,832,551
36	I-70 West Mountain Express Lane (MEXL) (Cost Center T8640-536)				
37	Fiscal Year Funds and Revenue				
38	Tolling Revenue	\$ 1,938,285		\$ 1,938,285	
39	Interest Earnings			\$ 1,000	
40	MEXL Loan Funds for Debt Service Payment	\$ 697,500		\$ 697,500	
41	Additional Budget from FY 2016-17 Roll Forward			\$ 463,555	
42	Total I-70 West MEXL FY 2017-18 Available Revenue & Funds	\$ 2,635,785		\$ 3,100,340	
43	Fiscal Year Expenses				
44	MEXL Loan Payment		\$ (697,500)		\$ (697,500)
45	Margin Rate Payment				\$ (115,677)
46	CDOT Staff Consulting		\$ (15,000)		\$ (15,000)
47	Attorney General Fees				\$ (10,000)
48	General Reimbursable Expenses and Toll Processing Costs		\$ (172,264)		\$ (172,264)
49	Corridor Operations & Maintenance		\$ (383,625)		\$ (383,625)
50	Note Registrar		\$ (1,000)		\$ (1,000)
51	Total I-70 W MEXL FY 2017-18 Estimated Expenses		\$ (1,269,389)		\$ (1,395,066)
52	I-70 W MEXL Remaining Balance		\$ 1,366,396		\$ 1,705,274
53	C-470 Express Lanes (Cost Center T8650-536)				
54	Fiscal Year Funds and Revenue				
55	C-470 Bond Proceeds for Debt Service			\$ 8,500,000	
56	Total C-470 FY 2017-18 Available Funds			\$ 8,500,000	
57	Fiscal Year Expenditures				
58	Bond Debt Service				\$ (8,500,000)
59	Total I-70 W MEXL FY 2017-18 Estimated Expenses		\$ -		\$ (8,500,000)
60	I-70 W MEXL Remaining Balance		\$ -		\$ -
	Total Fund 536 Revenues & Funds	\$ 15,097,088		\$ 27,700,390	
	Total Fund 536 Expenses	\$ (5,216,010)		\$ (15,610,418)	
	Remaining Unbudgeted Funds	\$ 9,881,078		\$ 12,089,972	

To: High Performance Transportation Enterprise Board (the “Board”)
 Cc: David Spector, *Director*, High Performance Transportation Enterprise (“HPTE”)
 From: Stifel
 Date: January 29, 2018
 Subject: Tax Cut and Jobs Act Implications to HPTE Loans with Bank of America Merrill Lynch

Following the change in corporate tax rates resulting from the Tax Cuts and Jobs Act passed in December 2017, Stifel has provided the Board with an update on its private placements with Bank of America Merrill Lynch.

OUTSTANDING LOAN SUMMARY

In December 2014, the HPTE entered into a loan agreement with Bank of America Merrill Lynch (“BAML”) for \$25 million for the purposes of financing the design and construction of the Peak Period Shoulder Lane along the eastbound corridor of I-70. The loan is structured with an initial interest rate of 2.79%, stepping up to 7.00% in 2022. In February 2016, HPTE entered into another loan agreement with BAML for \$23.63 million for the purposes of financing the construction of tolled express lanes in each direction of I-25 North Segment III. The loan is structured with an initial interest rate of 1.99%, which steps up to 7.00% in 2023.

TAX CUT AND JOBS ACT SUMMARY

In December 2017, Congress passed the Tax Cuts and Jobs Act, a major overhaul to the federal tax code. The new tax legislation contains several changes that affect the municipal bond market, including the prohibition of tax-exempt advance refundings. Most importantly to HPTE, the new legislation reduces the federal corporate tax rate from 35% to 21%, ultimately affecting the after-tax yield that lenders like BAML and municipal investors alike expect to earn from past investments, as well as future investments.

IMPLICATIONS TO HPTE LOANS

Both the 2014 and 2016 loan agreements with BAML have provisions within the loan documents that protect the lender from changes to the corporate tax code to ensure the lender maintains the full tax-exempt benefit (after-tax yield) on existing loans. Recently, Orrick¹ published an article describing these provisions to borrowers and future borrowers, summarized below and included as an attachment;

“The recently enacted reduction of the maximum federal corporate tax rate may trigger contractual provisions that provide for a significant increase in the interest rate on tax-exempt debt privately placed with a bank lender or require issuers or conduit borrowers to pay a significant fee. In each case, this adjustment is meant to compensate a bank lender for the reduction in after-tax return relative to a comparable taxable investment. We advise you to consult bond counsel before amending or allowing the waiver of any contractual provisions providing for interest rate increases or fees resulting from the change in the maximum federal corporate tax rate.”

As summarized in the table below, HPTE is required to pay an additional \$155,000 per year (approximately \$32,277 per month) in total for both loans through the interest-only periods on both loans. We have included a detailed cash flow as an appendix to this memorandum.

Tax Cut and Jobs Act Loan Implications Summary

Fiscal Year Ending June 30	Aggregate Principal	Aggregate Gross Interest	Aggregate Margin Rate Amount	Aggregate Total Debt Service	Monthly Addition
2018	-	583,869	193,664	777,532	32,277
2019	-	1,167,737	387,327	1,555,064	32,277
2020	-	1,167,737	387,327	1,555,064	32,277
2021	-	1,167,737	387,327	1,555,064	32,277
2022	-	1,167,737	387,327	1,555,064	32,277
2023	-	1,062,169	352,311	1,414,480	29,359
TOTAL	\$ -	\$ 6,316,985		\$ 8,412,269	\$ 174,607

¹ <https://www.orrick.com/Insights/2018/01/Tax-Issues-When-Fixing-Rate-and-Fee-Adjusters-in-Tax-Exempt-Loans>