

MEMORANDUM

TO: CTIO BOARD OF DIRECTORS
FROM: PIPER DARLINGTON, CTIO DIRECTOR
SUBJECT: APPROVAL OF LOAN AGREEMENT AND INTRA-AGENCY AGREEMENT FOR
THE I-70 MOUNTAIN EXPRESS LANES PROJECT
DATE: JANUARY 17, 2024

Purpose

To summarize a new loan agreement between the Colorado Transportation Investment Office (CTIO) ¹ and Wells Fargo Municipal Capital Strategies, LLC. (Wells Fargo) and present a new Intra-Agency Agreement (“IAA”) between the CTIO and the Colorado Department of Transportation (CDOT) for the I-70 Mountain Express Lanes (“MEXL”) Project.

Requested Action

CTIO is seeking TC approval of Proposed Resolution #435 authorizing the execution of a loan agreement with Wells Fargo and I-70 MEXL IAA between CTIO and CDOT.

History of the I-70 Mountain Express Lanes Project

In December 2014, CTIO borrowed \$25 million to help complete the I-70 MEXL Eastbound Project. To assist CTIO in securing more favorable loan terms needed for the project, CDOT entered into the Eastbound MEXL IAA in order to provide credit support to CTIO. As is the case on each of its projects, CTIO and CDOT entered into that IAA following a similar format and containing certain substantive provisions, including the backup loan structure. In January 2021, CTIO and CDOT entered into a new IAA that encompassed both the I-70 westbound and eastbound MEXL’s into one IAA and to account for CTIO’s refinance effort of the existing debt with a new lender Wells Fargo Municipal Capital Strategies (Wells Fargo). CTIO has decided to refinance the 2021 with Wells Fargo and as a result, it is updating the 2021 IAA to reflect the new 2024 loan agreement. The 75-page loan agreement is between HPTE and Wells Fargo Municipal Capital Strategies and is included as Exhibit B to the IAA.

General Background on CDOT-CTIO Project Intra-Agency Agreements

IAAs between CDOT and CTIO document the substantive terms of how CDOT and CTIO work together and allocate rights and responsibilities on shared projects. State law and best practices require an IAA for each project. IAAs can include provisions re: administrative payment procedures, commercial loan terms (if any), process for requesting a back-up TC loan (if any), terms governing shared operations as well as allocation of operations and maintenance costs.

Key Provisions of the IAA

Below is a summary of several key areas that are important for the Board to take into consideration while reviewing the attached IAA (Attachment A) and resolution. The IAA and resolution:

- (1) Incorporate an allocation of financial responsibility related to Operations & Maintenance (O&M).

¹ The High-Performance Enterprise (CTIO) remains the name for the Enterprise in all legal, contractual, and legislative documents, but following a rebranding in 2021 CTIO will be referred to as the Colorado Transportation Investment Office in all other documents.

- a. Sets forth that CTIO is responsible for operating and maintaining the constructed Express Lanes and CDOT maintains O&M responsibility for the general purpose lanes. Notably, this is the first IAA that changes the model for how O&M payments are calculated and processed. Previously, CDOT invoiced CTIO for all O&M based on a calculated share of Express Lane vehicles versus general lane vehicles. After proving cumbersome for both CTIO and CDOT staff, the Parties have decided that CDOT will provide CTIO a Scope of Work outlining the services to be rendered for the upcoming year. CTIO will then pay CDOT to conduct the services annually. The arrangement is similar to CTIO's Fee for Service agreement that it enters into annually with CDOT, but in the reverse.

(2) Recognizes that future Transportation Commission (TC) will not be bound by budgetary and policy decisions made by the current TC.

- a. Stipulates that the current TC cannot allocate and transfer future state highway funds for a loan to CTIO.
- b. Sets forth that any decision as to whether or not to allocate and transfer such funds to CTIO shall be made by the TC in the year in which the CTIO request occurs.
- c. Stipulates that in the event the TC elects to make a loan to CTIO in order to satisfy any of the O&M obligations under the IAA, CDOT may not use Federal-aid highway funds to satisfy any expenses related to the operations and maintenance of either Express Lane project.

Summary of the New Loan Agreement

CTIO's goal is to retain maximum flexibility under the new loan agreement as it works to close the TIFIA loan for the Floyd Hill project and save on interest costs where possible. With those goals in mind, CTIO selected a 36 month variable rate loan that is callable at any time. The variable rate option provides the most flexibility in repayment of the loan from the TIFIA loan and the potential for reduced interest costs should short-term interest rates fall while the loan is outstanding. With the Fed increasing the Fed Funds rate over the past 12+ months, short-term interest rates have reached levels not seen since the Great Recession. The current market consensus anticipates the Fed will ease monetary policy in 2024 and potentially begin cutting the Fed Funds rate. Should this occur, the variable rate on the loan would fall accordingly, reducing the annual interest cost associated with this loan. All other reporting requirements and obligations of CTIO remain the same from the 2021 loan agreement. The entire loan agreement can be found in Exhibit B to the IAA (Attachment A).

Options / Decision Matrix

1. **Staff Recommendation:** Approve the new loan agreement and IAA. CDOT and CTIO will execute the loan agreement and the IAA to complete the loan refinancing.
2. Do not approve the loan agreement and/or the IAA, explaining that staff should work to revise certain provisions in the documents or negotiate different terms.

Attachments

Attachment A: Colorado High Performance Transportation Enterprise I-70 Mountain Express Lanes Project Intra-Agency Agreement

Attachment B: Resolution #435