

Resolution #TC-2023-04-04

Approving Memorandum of Understandings with the Federal Highway Administration, the Colorado Department of Transportation and the High Performance Transportation Enterprise for the I-70 Floyd Hill Project.

Approved by Transportation Commission on April 20, 2023

WHEREAS, the Transportation Commission is charged with formulating the general policy concerning the management, construction and maintenance of public highways and other transportation systems in the State;

WHEREAS, under § 43-1-106 (8), C.R.S., the Transportation Commission promulgates and adopts all budgets for the Colorado Department of Transportation (“CDOT”) and state transportation programs;

WHEREAS, CDOT is an agency of the State authorized under § 43-1-105, C.R.S., to plan, develop, construct, coordinate, and promote an integrated transportation system in cooperation with federal, regional, local, and other state agencies;

WHEREAS, under § 43-1-110, C.R.S., the executive director of CDOT, is authorized to execute certain agreements on behalf of CDOT;

WHEREAS, the High Performance Transportation Enterprise (“CTIO”) was created under § 43-4-806(2), C.R.S. and operates as a government-owned business within CDOT;

WHEREAS, under § 43-4-806 (6) (g), C.R.S., CTIO is empowered to enter into contracts or agreements with any public entity to facilitate a public-private partnership, including, but not limited to, an agreement in which the Enterprise, on behalf of CDOT, provides services in connection with a surface transportation infrastructure project;

WHEREAS, CTIO is further empowered, under § 43-4-806 (6) (h), C.R.S., to make and enter into all other contracts and agreements, including intergovernmental agreements under § 29-1-103, C.R.S., that are necessary or incidental to the exercise of its powers and performance of its duties;

WHEREAS, the business purpose of CTIO, as provided for in § 43-4-806 (2) (c), C.R.S. is to pursue public-private partnerships and other innovative and efficient means of completing surface transportation infrastructure projects, which CTIO may agree to complete for CDOT under agreements;

WHEREAS, the Floyd Hill to Veterans Memorial Tunnels project (“Project”) is on I-70 West of Denver Metro in Clear Creek and Jefferson Counties. This corridor is critical for commuters, recreational travelers, and commerce and is the primary east-west route through Colorado. The Project is currently only moving forward with the Canyon Viaduct Alternative, which is the preferred alternative in the Environmental Assessment completed for the Project;

WHEREAS, the Project is currently projected to cost upwards of \$700 million dollars. CDOT has identified \$460 million in total funding, including \$135 million in SB17-267 strategic funds, and

estimated enterprise financing. It is anticipated that the Bridge and Tunnel Enterprise (BTE) and CTIO will partner to finance approximately \$325 million in project costs based on the results of the Floyd Hill Funding Gap Study and preliminary BTE eligibility reviews, using toll backed revenue. This total includes a maximum of \$260 million in BTE-eligible project scope to address two deficient bridges based on preliminary cost estimates;

WHEREAS, in May of 2020, CTIO embarked on a Floyd Hill Funding Gap Study with the assistance of the I-70 Collaborative Effort to determine how much CTIO could contribute to the project. The study assumed a full-time Express Lane on the Floyd Hill project and on the continuation of both the eastbound and westbound Mountain Express Lane day and hour restrictions. The Funding Gap Study finished earlier this year and identified that CTIO may be able to contribute an estimated \$60 and \$80 million through toll-backed revenue bonds or around an estimated \$165 million through a TIFIA loan. Based on the results of the Funding Gap Study, CTIO plans to pursue a TIFIA loan for the Floyd Hill project through the USDOT Build America Bureau (BAB);

WHEREAS, pursuant to 23 U.S.C. § 129(a)(1)(B), federal participation in the Projects is permitted for the initial construction of one (1) or more toll lanes that increase the capacity of a highway if the number of toll-free non-HOV lanes, excluding auxiliary lanes, after such construction is not less than the number of toll-free non-HOV lanes, excluding auxiliary lanes, before such construction; and

WHEREAS, 23 U.S.C. § 129(a) further sets forth certain additional conditions applicable to toll projects receiving federal participation, including, *inter alia*, limitations on the use of revenues, certain audit requirements, and equal access for over-the-road buses and public transportation buses; and

WHEREAS, 23 U.S.C. 166(b)(4) provides that a State agency may allow vehicles not otherwise exempt pursuant to 23 U.S.C. 166(b) to use a HOV facility by paying a toll; and

WHEREAS, to memorialize the above understanding a Memorandum of Understandings (“MOU”) between the Federal Highway Administration (“FHWA”), CDOT, and CTIO has been proposed affirming CDOT and CTIO’s commitment to comply with the requirements of 23 U.S.C. § 129(a) and 23 U.S.C. 166(b)(4), as amended, as an ongoing condition to federal participation in the Project; and

WHEREAS, the Transportation Commission has reviewed the MOU and found the commitments stated to be accurate and in the best interest of the State Transportation System.

NOW THEREFORE BE IT RESOLVED, the Transportation Commission hereby approves the MOU in the form presented and authorizes the CDOT Executive Director or their designee to execute the MOU, with such revisions or modifications, not inconsistent with this Resolution, as the CDOT Executive Director may determine to be necessary or appropriate.

Herman
Stockinger

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Herman Stockinger
Date: 2023.04.25
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Herman Stockinger, Secretary
Transportation Commission of Colorado

Date