



DATE: September 5, 2014
TO: Transportation Commission of Colorado
FROM: Michael Cheroutes, Director of High Performance Transportation Enterprise
SUBJECT: Master Installment Purchase Agreement

Purpose

This workshop is to discuss a proposed agreement between HPTE and CDOT that would finance the acquisition by HPTE of tolling equipment and software for designated express lanes. CDOT would initially purchase the assets and then sell them to HPTE under the Master Installment Purchase Agreement. Payments would be made by HPTE from the toll revenues of the related express lanes. HPTE has been advised that it must own the tolling equipment and software used to operate its express lanes.

Action

HPTE is requesting that CDOT enter into an installment-purchase arrangement with HPTE to allow HPTE to finance the capital costs of the tolling equipment, both hardware and software, needed to implement user-fee systems on each of the projects described below.

Background

The Colorado Department of Transportation (CDOT) and the High Performance Transportation Enterprise (HPTE) are working together to complete, implement and operate several surface transportation infrastructure projects across the State that will include an express lanes component. As the entity specifically authorized by statute to impose user fees on the travelling public, HPTE is responsible for operating and maintaining the tolling equipment for these projects.

Details

The proposed installment-purchase arrangement requires CDOT to purchase the tolling equipment for each project and then grant HPTE the right to use and operate the equipment. In return for this right, HPTE will make installment payments to CDOT using user-fee revenues until the cost of the equipment and the accrued interest is paid in full, at which point title to the equipment transfers from CDOT to HPTE.

This arrangement has been documented in a Master Installment Purchase Agreement (Agreement) between CDOT and HPTE and is designed to cover the tolling equipment for the **I-25 North Express Lanes**, the **C-470 Express Lanes Project** and the **I-70 Peak Period Shoulder Lanes Project**. To account for the different times at which tolling equipment will be needed for each project and to take into consideration the differences in each corridor, the Agreement provides flexibility to allow CDOT and HPTE to order the tolling equipment for each project when needed and to document the specific financial terms applicable to each system of tolling equipment at different times. These specific terms will be documented in exhibits to the Agreement, which will include (a) a description of the tolling equipment; (b) an applicable repayment schedule; and (c) a description of how the revenues from the project will be used to make the installment payments.

While the agreement does provide this needed flexibility, each exhibit to the Agreement will require the approval of CDOT's Chief Financial Officer. In addition, the following financial parameters have been identified in the Agreement: (i) CDOT will charge an interest rate of 2.75% (the current SIB interest rate) that will accrue upon HPTE's acceptance of the equipment; (ii) installment payments must begin within two (2) years from the date the express lanes for which the tolling equipment has been ordered is put into service; (iii) the cost of the equipment and accrued interest must be paid in full within ten (10) years from the date HPTE accepts the equipment; (iv) HPTE can purchase the equipment prior to the expiration of the term; and (v) the total cost of the tolling equipment to CDOT, in the aggregate for all projects combined, cannot exceed the maximum amount of \$5,000,000.

Options and Recommendations

1. Staff Recommendation – Approve the Master Installment Purchase Agreement with HPTE
2. Deny approval for the Master Installment Purchase Agreement, which will require HPTE to explore separate financing options and may result in a delay in projects

MASTER INSTALLMENT PURCHASE AGREEMENT

THIS MASTER INSTALLMENT PURCHASE AGREEMENT (“Agreement”) is made this ___ day of _____, 2014, by and between the Colorado Department of Transportation (“CDOT”), an agency of the State of Colorado, and the Colorado High Performance Transportation Enterprise (“HPTE”), a government owned business within CDOT, hereinafter referred to collectively as the “Parties”.

RECITALS

A. The Colorado General Assembly created HPTE pursuant to Section 43-4-806, C.R.S. as a government-owned business within CDOT to pursue innovative means of completing important surface transportation projects that (i) will improve the safety, capacity, and accessibility of the surface transportation system, (ii) can feasibly be commenced in a reasonably amount of time, and (iii) will allow more efficient movement of people, goods, and information throughout Colorado.

B. CDOT is a State agency authorized pursuant to Section 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.

C. Consistent with their respective missions and statutory powers, CDOT and HPTE are cooperating to complete, implement and operate several transportation infrastructure projects across the State of Colorado, including (without limitation) the following: (1) on Interstate 25 between US 36 and the Wagon Wheel Park-and-Ride (“Segment 2”) and between the Wagon Wheel Park-and-Ride and E-470 (“Segment 3”), which generally consists of converting the inside shoulder area of Interstate 25 into tolled express lanes in each direction (including Segment 2 and Segment 3, “I-25 North Express Lanes”); (2) on I-70 eastbound from Empire Junction to Hidden Valley, which generally consists of upgrading existing CDOT right-of-way by adding an express lane that will operate as a third travel lane during peak travel periods (“I-70 PPSL”); and (3) on C-470 from I-25 to Kipling, which generally consists of adding express lanes in each direction (“C-470 Express Lanes Project”). The I-25 North Express Lanes, the I-70 PPSL, and the C-470 Express Lanes Project are referred herein, collectively, as the “Projects” and each a “Project”.

D. HPTE is specifically authorized pursuant to Section 43-4-806(c)(I), C.R.S. to impose user fees on the travelling public for the privilege of using surface transportation infrastructure, and HPTE intends to implement a user-fee system on each of the Projects.

E. In furtherance of this effort, HPTE has requested that CDOT enter into an installment-purchase arrangement with HPTE to allow HPTE to finance the capital costs of the equipment, both hardware and software, needed to implement user-fee systems on each Project (“Tolling Equipment”), and CDOT has agreed to enter into an installment-purchase arrangement with HPTE for this purpose.

F. This Agreement is executed under the authority of Sections 29-1-203, 43-1-106, 43-4-806(4), and 43-4-806(6)(h), C.R.S.

IN CONSIDERATION OF THE FOREGOING AND THE VARIOUS TERMS, COVENANTS, AND CONDITIONS SET FORTH HEREIN, AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES NOW AGREE THAT:

1. **Overview.** The Parties acknowledge that each Project will be completed and operational, and that the corresponding Tolling Equipment will be needed, at different times. HPTE and CDOT agree to coordinate as necessary to order the appropriate Tolling Equipment for the Projects and HPTE will be deemed to have accepted the corresponding Tolling Equipment upon completion of installation and testing, which shall be memorialized in a written notice from HPTE to CDOT. The cost of installation and testing shall be considered part of the cost of the Tolling Equipment and, prior to HPTE's acceptance of any Tolling Equipment, the Parties shall prepare and agree upon Exhibits A-C or the supplements thereto (as applicable) through the Exhibit Adding Process described below. Each Exhibit and each supplement thereto, including all financial terms, require the approval of CDOT's Chief Financial Officer or designee. Upon acceptance of the Tolling Equipment, such exhibits or supplements thereto shall be deemed to be part of this Agreement. It is contemplated by the Parties that a set of Exhibits (A-C) will be added or supplemented (as applicable) each time Tolling Equipment is accepted by HPTE for a Project, provided that each Party shall have obtained the necessary approvals needed to authorize such adding or supplementing prior to doing so.

2. Tolling Equipment.

a. The Parties agree that the total cost of the Tolling Equipment (including testing and installation) to CDOT, in the aggregate for all Projects combined, shall not exceed the maximum amount of Five Million and 00/100 Dollars (\$5,000,000). While CDOT's obligations under this Agreement to purchase Tolling Equipment may extend beyond the current State Fiscal Year, the Parties understand and agree that any obligation on the part of CDOT in any given future State Fiscal Year constitutes a then-current year expense of CDOT, payable exclusively from CDOT's then-current annual allocation by the Transportation Commission of the State of Colorado. The act of allocating by the Transportation Commission is an act solely within the discretion of the Transportation Commission and no provision of this Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of CDOT, within the meaning of any constitutional or statutory debt limitation.

b. The Parties agree that the Tolling Equipment for each Project will be described on Exhibit A, which the Parties expect to attach at a future date. As a result of the Tolling Equipment being needed and ordered at different times, the Parties may add, expand and/or supplement Exhibit A by the initialing of pages without other action to effect such additions, expansions, and /or supplements. By way of example, if Segment 2 of the I-25 North Express Lanes is the first Project completed, the Parties will add an Exhibit A to this Agreement describing the corresponding Tolling Equipment by initialing the pages and attaching them hereto. When Tolling Equipment for the next Project is accepted, Exhibit A will be

supplemented with an Exhibit A-1, then with Exhibit A-2 for the following Project, and so on (“Exhibit Adding Process”).

c. Subject to the terms and conditions of this Agreement and upon HPTE’s acceptance from CDOT of the Tolling Equipment for each Project, CDOT will be deemed to have granted HPTE the right to use and operate the Tolling Equipment for the applicable Project for the applicable Term, as described in Section 4 (below). Except as set forth in Section 8 (below), HPTE acknowledges and agrees that CDOT has not and will not make any representation or warranty, expressed or implied, with respect to any Tolling Equipment accepted by HPTE pursuant to this Agreement.

3. Installment Payments.

a. In exchange for its use of Tolling Equipment, HPTE promises to pay CDOT installment payments that will be described on an Exhibit B to be attached to this Agreement (“Installment Payments”). The Parties agree that Exhibit B will be added and supplemented through the Exhibit Adding Process described in Section 2 (b) above (except applied to Exhibit B and not Exhibit A) and that Exhibit B for each Project will address: (i) the amounts of each Installment Payment, including the portion that is paid as principal and the portion that is paid as interest; (ii) by when each Installment Payment will be made by HPTE; and (iii) the amount or calculation that will be used to determine how much HPTE will pay CDOT in order to exercise its Purchase Option (defined below). Exhibit B for each Project shall be consistent with the following: (y) the Parties agree to apply an interest rate of 2.75% to the cost of the Tolling Equipment, which is the current State Infrastructure Bank interest rate as of the date of this Agreement, from and after the date the Tolling Equipment is accepted by HPTE; (z) the Installment Payment for each Project shall commence no later than two (2) years after the express lane for which the Tolling Equipment was ordered is placed into service and shall not go beyond ten (10) years after the Tolling Equipment is accepted by HPTE.

b. The Parties acknowledge that the Installment Payments will be made by HPTE using revenues generated from the Project to which the Installment Payments relate. HPTE agrees, during the Term (as defined below), to apply such revenues in the order that will be set forth on Exhibit C. The Parties agree that Exhibit C will be added and supplemented through the Exhibit Adding Process described in Section 2 (b) above (except applied to Exhibit C and not Exhibit A).

4. **Term.** This Agreement as it applies to each set of Tolling Equipment will commence on the date HPTE accepts the set of Tolling Equipment and shall continue until all Installment Payments related to that set of Tolling Equipment have been made (“Term”), unless earlier terminated pursuant to Section 5 (below). The Term for each Project shall not exceed ten (10) years from the date the Tolling Equipment is accepted by HPTE.

5. **Early Purchase Option.** HPTE shall have the option to purchase each set of Tolling Equipment from and after the commencement of the applicable Term (“Purchase Option”) at any time prior to the expiration of the applicable Term by giving notice to CDOT of such intention. HPTE shall be deemed to have exercised such Purchase Option, and the Tolling Equipment shall

be deemed to be the property of HPTE pursuant to Section 6 (below), upon HPTE's payment in full of the Purchase Option amount indicated in the applicable portion of Exhibit B (as supplemented from time to time).

6. Title to Equipment. Each set of Tolling Equipment is and shall at all times during the applicable Term remain the sole property of CDOT, subject to HPTE's right to use and operate the Tolling Equipment and subject to HPTE's Purchase Option. Upon CDOT receiving the final Installment Payment from HPTE for a set of Tolling Equipment under this Agreement or upon HPTE exercising its Purchase Option, the title to the set of Tolling Equipment shall be deemed to transfer to HPTE and CDOT agrees to execute any such further documents as may be reasonably required by HPTE to ensure that the set of Tolling Equipment is transferred (with all Vendor (as defined below) warranties) from CDOT to HPTE free from all liens and encumbrances.

7. Maintenance and Repair. All maintenance and repair costs to the Tolling Equipment shall be paid by HPTE and CDOT is hereby relieved from any responsibility to maintain or repair said equipment, except as set forth in Section 8 (below). HPTE agrees that it will maintain, preserve, and keep the Tolling Equipment in good repair and working order, in accordance with manufacturer's recommendations. HPTE will not install, use, operate, or maintain the Tolling Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement.

8. Vendor Warranties. CDOT hereby irrevocably appoints HPTE its agent and attorney-in-fact during the applicable Term, so long as HPTE shall not be in default hereunder, to assert from time to time whatever claims and rights (including, without limitation, warranties) relating to the Tolling Equipment that CDOT may have against the manufacturer or supplier of the Tolling Equipment ("Vendor"). HPTE's sole remedy for the breach of such warranty, indemnification or representation shall be against Vendor of the Tolling Equipment, and not against CDOT. Any such matter shall not have any impact whatsoever on the rights and obligations of HPTE under this Agreement, including the right to receive full and timely Installment Payments.

9. Casualty and Risk of Loss. Notwithstanding any loss, theft, destruction or damage to the Tolling Equipment, HPTE shall continue to make the Installment Payments.

10. Assignment. Neither Party shall be entitled to assign this Agreement, or any portion hereof, to any third party without the prior written consent of the other Party.

11. Default by HPTE. Time is of the essence under this Agreement and any of the following events shall constitute a default on the part of HPTE hereunder: (a) failure of HPTE to make any payment within thirty (30) days after receiving notice from CDOT regarding same; or (b) any breach or failure of HPTE to perform any of its material obligations under this Agreement within sixty (60) days after HPTE receives notice from CDOT setting forth in reasonable detail the nature and extent of the failure, or within a longer period of time as may be necessary for such cure so long as HPTE shall promptly commence and diligently prosecute curing the breach or failure identified in the notice. Upon default and after the expiration of any cure period, CDOT may take possession of the set of Tolling Equipment to which the default

relates and hold, sell or otherwise dispose of the Tolling Equipment without affecting the obligations of HPTE as provided in this Agreement. No waiver by CDOT of performance by HPTE shall be considered a continuing waiver or shall preclude CDOT from exercising its rights in the event of a subsequent default. No acceptance by CDOT of a partial payment tendered by HPTE shall be deemed a waiver of the balance of the amount due even if the tender states that acceptance will constitute payment in full.

12. Severability. To the extent that this Agreement may be executed and performance of the obligations of the Parties may be accomplished within the intent of the Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

13. Notice. All communication, notices, and correspondence shall be addressed to the individuals identified below. Either Party may, from time to time, designate in writing new or substitute representatives.

If to CDOT:

Director
Office of Major Project Development
Colorado Department of Transportation
4201 E. Arkansas Ave.
Denver, CO 80222

If to HPTE:

Director
High Performance Transportation
Enterprise
Colorado Department of Transportation
4201 E. Arkansas Ave.
Denver, CO 80222

14. Governing Law. This Agreement shall be governed by the laws of the State of Colorado.

15. Modification and Amendment. Except as otherwise provided herein, no modification to this Agreement shall be effective unless agreed to in writing by the Parties in an amendment to this Agreement that is properly executed and approved in accordance with applicable law.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first above written.

STATE OF COLORADO
JOHN HICKENLOOPER, Governor

COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE

By _____
DONALD HUNT
Executive Director
DEPARTMENT OF TRANSPORTATION

By _____
MICHAEL CHEROUTES
HPTE Director

APPROVED:
JOHN SUTHERS
Attorney General

By _____
First Assistant Attorney General

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller of the State of Colorado approve all State Contracts. This Installment Purchase Agreement is not valid until signed and dated below by the State Controller or delegate.

<p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p>Date: _____</p>
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EXHIBIT A
TOLLING EQUIPMENT

To be completed by CDOT CFO after completed negotiations

EXHIBIT B
INSTALLMENT PAYMENTS

To be completed by CDOT CFO after completed negotiations

EXHIBIT C
REVENUE WATERFALL

To be completed by CDOT CFO after completed negotiations