

**Transportation Commission of Colorado**  
**Regular Meeting Minutes**  
**January 21, 2016**

**Chairwoman Kathy Connell convened the meeting at 9:05 a.m. at the CDOT Headquarters in Denver.**

PRESENT WERE: Kathy Connell, Chairwoman, District 6  
Gary Reiff, Vice Chair District 3  
Shannon Gifford, District 1  
Ed Peterson, District 2  
Heather Barry, District 4  
Kathy Gilliland, District 5  
Kathy Hall, District 7  
Sidny Zink, District 8  
Nolan Schriener, District 9  
Bill Thiebaut, District 10  
Steven Hofmeister, District 11

ALSO PRESENT: Shailen Bhatt, Executive Director  
Michael Lewis, Deputy Executive Director  
Josh Laipply, Chief Engineer  
Debra Perkins-Smith, Director of Transportation Development  
Maria Sobota, CFO  
Herman Stockinger, Government Relations Director  
Paul Jesaitis, Region 1 Transportation Director  
Dave Eller, Region 3 Transportation Director  
Johnny Olson, Region 4 Transportation Director  
Kerrie Neet, Region 5 Transportation Director  
Kathy Young, Chief Transportation Counsel  
Scott McDaniel, Staff Services Director  
David Specter, HPTE Director  
Ryan Rice, Operations Division Director  
Mark Imhoff, Director of Transit and Rail  
Vince Rogalski, STAC Chairman  
David Ulane, Director of Aeronautics  
Alicia Nolan, FHWA Representative

AND: Other staff members, organization representatives,  
the public and the news media

An electronic recording of the meeting was made and filed with supporting documents in the Transportation Commission office.

**Audience Participation**

Chairwoman Connell opened the meeting for general public comment. There were no public comments.

**Individual Commissioner Comments**

Commissioner Schriener went to the Aeronautics Board Meeting the month. He also met with the Airport of Colorado Springs to discuss a loan coming up and to learn

more about them. Commissioner Schriener also had numerous meetings with the Pikes Peak Area Council of Governments and Colorado Springs in an effort to get more involved in the area.

Commissioner Barry had nothing to report and wished everyone a Happy New Year.

Commissioner Gilliland attended the Grand Opening of the Diverging Diamond Interchange at McCaslin Boulevard. She stated it was very good to see the facility in action and that everyone is excited over all of US 36 come to fruition.

Vice Chair Reiff met with the Arapahoe County Commissioners this month and was very impressed with how forward thinking they are on transportation issues. Commissioner Reiff expressed an appreciation for CDOT staff for their interdisciplinary work. By not remaining in their silo's employees help the TC. He cited the example of Josh Laipply and Maria Sobota's teams working together very well on project planning and project delivery. Vice Chair Reiff appreciated staff's efforts addressing the FASTER audit. He also pointed out HPTE working very well with finance and operations outside of their respective silos on the PPSL project.

Commissioner Hall attended the Delta County yearly County Commissioner meetings. She that they were very happy with CDOT's efforts. She also spoke with the MGD group in Grand Junction about transportation funding working with the growth in the western slop. Finally she mentioned how impressed she was with the PPSL as she drove to the meeting over the mountains on I-70.

Commissioner Gifford had the opportunity to use the PPSL. Additionally she has received very favorable feedback on the lanes.

Commissioner Hofmiester had nothing to report.

Commissioner Thiebaut expressed his happiness to see Karen Rowe back at the meetings. He thanked Sassan and Ajun for their efforts in her leave.

Commissioner Peterson wished everyone a Happy New Year. He also echoed Commissioner Reiff's thoughts on the cooperation and evolution demonstrated within CDOT, and that makes it a very exciting time to be a part for the organization.

Commissioner Zink explained to the commission how much snow Durango has been receiving. She has been impressed with the notifications CDOT has being giving regarding road closures and snow operations. Commissioner Zink shared her thoughts on Region 5 Director Kerrie Neet's retirement, and that she has done a great job as a manager and an RTD for southwest Colorado.

Chairwoman Connell attended the Joint Budget and Transportation Committees at the State Capital. She was very proud of how staff handled themselves at the hearings. She expressed her displeasure with how the Transportation Committee members acted during the hearings. She gave an update on the Highway 9 improvement project. She said the road is wonderful, and that animals have in fact been using the overpasses built for the project.

## **Executive Director's Report**

Executive Director Shailen Bhatt stated he can be protective but demanding of his staff, so he likes appreciates hearing the sincere positive comments the commissioners shared. He acknowledged the efforts of the commission and thanked them for the level of care they put towards CDOT. Executive Director Bhatt also took a moment to welcome back Karen Rowe. Finally, he explained how though the winter has been mild in Denver, across the state the weather has been very bad elsewhere, and thanked staff for their diligence in working.

### **Chief Engineer's Report**

Chief Engineer Josh Laipply welcomed Karen Rowe back to the meeting, and expressed his sadness at Kerrie Neet's retirement. Central 70 had a TIFIA presentation in late December, with a C-470 TIFIA presentation in January. CDOT is leveraging this program as much as possible to build those projects out. PPSL team has worked very hard regarding how the lanes will react to situations, and their work has yielded great benefits so far. He also mentioned in the PPSL area, a bridge demolition was rescheduled at the request of the local area, demonstrating CDOT's efforts to deal with construction impacts.

US 36 opening was a great feather in CDOT's cap. Additionally, RoadX has reached an agreement with HERE to share data. This is an example of Colorado being the first DOT to pen an agreement on data sharing. Finally, Josh detailed a new agreement with CCA to help deliver an increased project load.

### **HPTE Director's Report**

HPTE director David Spector gave a brief report on the HPTE Board. He welcomed Jan Martin as a new full member on the HPTE Board. The Board is now full for the first time in a long time. In December, David reported to the State Capital on the US 36 Audit. He was happy to report 26 of the 29 recommendations were taken. The audit committee was happy to hear that as well.

He went on to report that the HPTE Annual Report would be released on Feb. 15, with an update on the PPSL. Starting in March, the HPTE Board will start to create the price elasticity for Phase 2 of the US 36 project – the commission will be kept informed during this process. Finally, he reported that discussions in Washington, D.C. about TIFIA loans for C-470 and Central 70 went well. Finally, the I-25 north segment 2 prices will be set in March.

### **FHWA Division Administrator Report**

FHWA Division Administrator Alicia Nolan informed the commission on the passing of the FAST act by Congress. This is a five year federal funding bill, with a slight increase per year in funds of about 10% per year. The FAST act adds a new program for freight corridors, and Colorado is in good shape to receive those funds. Additionally, the appropriations bill passed in December, so the state will receive much more predictable federal funding. This will also allow TIGER VIII move forward in 2016. Finally, the US DOT is celebrating its 50<sup>th</sup> anniversary in 2016.

### **STAC Report**

Vince Rogoff of STAC reported that the Transportation Committee has approved a bill to go to the senate recommending that STAC report directly to the Transportation Committee in the future.

**Act on Consent Agenda**

Chairwoman Connell entertained a motion to approve the Consent Agenda. Commissioner Gilliland moved for approval of the resolution, and Commissioner Peterson seconded the motion. Upon vote of the Commission, the resolution passed unanimously.

**Resolution #TC-16-1-1**

BE IT HEREBY RESOLVED, that the Transportation Commission's Regular Meeting Minutes for Nov. 19, 2015, are approved.

**Resolution #TC-16-1-2**

BE IT HEREBY RESOLVED, that the Transportation Commission's Regular Meeting Minutes for Dec. 17, 2015, are approved.

**Resolution #TC-16-1-3**

**Resolution #TC-16-1-3**

Disposal of property to the Anthony Dam Trust.

**Approved by the Transportation Commission on January 21, 2016**

**WHEREAS**, CDOT acquired Parcel 16Rev and 17 in the late 1980's and early 1990's in Adams County as a part of CDOT Project # ID-1(CX)76-1(138) and FI 003-1(2) for use as I-76;

**WHEREAS**, CDOT in an effort to construct a portion of I-76, acquired several total take parcels;

**WHEREAS**, CDOT did not need all of the parcels for right of way resulting in several remainder parcels;

**WHEREAS**, CDOT did not declare 16Rev and 17 as remainder parcels;

**WHEREAS**, the Department of Transportation would like to sell Parcel 16Rev and a portion of 17 to the adjacent property owner, The Anthony Dam Trust;

**WHEREAS**, Parcel 16Rev consists of 8,962 square feet;

**WHEREAS**, Parcel 17 consists of 9,843 square feet;

**WHEREAS**, the combined Parcels 16Rev is now referred as Area 3 and a portion of 17 is now referred to as Area 2 consists of 18,805 square feet;

**WHEREAS**, CDOT discovered a portion of the private buildings encroaching upon CDOT property;

**WHEREAS**, the Anthony Dam Trust would like to resolve the encroachment and bring the private property up to code for residential/commercial development;

**WHEREAS**, the Department of Transportation would like to sell Parcel 16Rev and a portion of 17 to The Anthony Dam Trust;

**WHEREAS**, the disposal of Parcel 16Rev and a portion of 17 will not affect the operation, maintenance, use or safety of CDOT's facility;

**WHEREAS**, the Department of Transportation, Region 1 has declared through Joshua Laipply as Chief Engineer, that Parcel 16Rev and a portion of 17 are not needed for transportation purposes;

**WHEREAS**, pursuant to Colorado Revised Statutes (C.R.S) 43-1-210(5)(a)(I) The Department of Transportation is authorized, subject to approving resolution of the

Transportation Commission, to dispose of any property or interest therein which is no longer needed for transportation purposes;

**WHEREAS**, the Department has determined that Parcel 16 Rev consisting of 8,962 sf and a portion of Parcel 17 consisting of 9,843 sf of I-76 right of way is of use only to the adjacent property owner;

**WHEREAS**, pursuant to Colorado Revised Statutes (C.R.S) 43-1-210(5)(a)(III) when a parcel that is no longer needed for transportation purposes has value to only one adjacent owner, that owner shall have first right of refusal to purchase said property for fair market value;

**WHEREAS**, The Anthony Dam Trust desires to exercise its right of refusal to purchase the 18,805 sf of I-76 right of way which is no longer needed for transportation purposes;

**NOW THEREFORE BE IT RESOLVED**, pursuant to the provisions of the C.R.S, 43-1-210(5) and 23 CFR 710.403 the Department of Transportation be given authority to declare Parcels 16Rev and a portion of 17 as excess property and dispose of the 18,805 sf of I-76 right of way, which is no longer needed for transportation purposes for fair market value.

**BE IT FURTHER RESOLVED**, funds from the sale of the property shall be disbursed in accordance with Section 7.2.15 of the CDOT Right-of-Way Manual.

  
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Herman Stockinger, Secretary  
Transportation Commission of Colorado

  
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Date

**Resolution #TC-16-1-4**

**Resolution #TC-16-1-4**

Disposal of property to adjacent property owner.

**Approved by the Transportation Commission on January 21, 2016**

**WHEREAS**, CDOT acquired Parcel 1E-EX and access rights AC-1E-EX in the early 1950's in Adams County as a part of CDOT Project # SP-12 382-501 for use as US36 at Federal Blvd Interchange;

**WHEREAS**, CDOT redesigned and located the on-ramp further North for US36;

**WHEREAS**, the redesign created excess right of way;

**WHEREAS**, AC-1E-EX was imposed as a police power and therefore no money was paid to acquire it;

**WHEREAS**, the Department of Transportation requests approval to sell Parcel 1E-EX and relinquish AC-1E-EX to the adjacent property owner;

**WHEREAS**, Parcel 1E-EX consists of 15,815 square feet;

**WHEREAS**, the adjacent property owner would like to purchase the parcel to construct a restaurant;

**WHEREAS**, the disposal of Parcel 1E-EX and relinquishment of AC-1E-EX will not affect the operation, maintenance, use or safety of CDOT's facility;

**WHEREAS**, the Department of Transportation, Region 1 has declared through Joshua Laipply as Chief Engineer, that Parcel 1E-EX and AC-1E-EX are no longer needed for transportation purposes;

**WHEREAS**, pursuant to Colorado Revised Statutes (C.R.S) 43-1-210(5)(a)(I) The Department of Transportation is authorized, subject to approving resolution of the Transportation Commission, to dispose of any property or interest therein which is no longer needed for transportation purposes;

**WHEREAS**, the Department has determined that Parcel 1E-EX consisting of 15,815 sf of US36 right of way and AC- 1E-EX are of use only to the adjacent property owner;

**WHEREAS**, pursuant to Colorado Revised Statutes (C.R.S) 43-1-210(5)(a)(III) when a parcel that is no longer needed for transportation purposes has value to only one adjacent owner, that owner shall have first right of refusal to

purchase said property for fair market value;

**WHEREAS**, the adjacent property owner desires to exercise its right of refusal to purchase the Parcel 1E-EX and AC- 1E-EX which are no longer needed for transportation purposes;

**NOW THEREFORE BE IT RESOLVED**, pursuant to the provisions of the C.R.S, 43-1-210(5) and 23 CFR 710.403 the Department of Transportation be given authority to approve the relinquishment of AC-1E-EX and declare Parcel 1E-EX as excess property and dispose of the 15,815 sf of US36 right of way, which is no longer needed for transportation purposes for fair market value.

**BE IT FURTHER RESOLVED**, funds from the sale of the property shall be disbursed in accordance with Section 7.2.15 of the CDOT Right-of-Way Manual.

  
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Herman Stockinger, Secretary  
Transportation Commission of Colorado

  
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Date

**Discuss and Act on State Infrastructure Bank Greeley County Airport Loan Request**

Chief Financial Officer Maria Sobota requested approval for a COSIB loan to update the taxiways at the Greeley Airport.

Commissioner Hall asked what sort of revenue is being generated by the oil wells at the airport. Maria Sobota stated she will look into that for her, but reported they are confident the airport will be able to repay the loan.

Chairwoman Connell entertained a motion to approve the Loan Request. Commissioner Schriner moved for approval of the resolution, and Commissioner Reiff seconded the motion. Upon vote of the Commission, the resolution passed unanimously.

**Resolution #TC-16-1-5**

**Resolution #TC-16-1-5**

Approval of the Greeley-Weld County Airport COSIB loan.

**Approved by the Transportation Commission on January 21, 2016**

**WHEREAS**, the Colorado State Infrastructure Bank (bank) is a transportation investment bank with the ability to make loans to public and private entities for the formation of public transportation projects within the state; and

**WHEREAS**, the General Assembly passed Legislation (43-1-113.5 CRS) that made certain provisions for the bank and established within the bank, a highway account, a transit account, an aviation account and a rail account; and

**WHEREAS**, a loan application has been submitted by the Greeley-Weld County Airport (borrower), to borrow \$1,000,000 from the aviation account to correct drainage issues and resurface the taxiways; and

**WHEREAS**, the Transportation Commission has adopted rules, pursuant to 43-1-113.5 CRS, in 2 CCR 605-1 regarding the eligibility requirements, disbursement of funds, interest rates, and repayments of loans from the bank; and

**WHEREAS**, pursuant to 2 CCR 605-1, Rule VI, Section 4 the Review Committee has reviewed and is in support of the application; and

**WHEREAS**, 2 CCR 605-1, Rule VI, Section 6 (2) provides "loan agreements for construction will specify that funds will be disbursed in their entirety to a third party fiduciary or escrow agent" unless the Transportation Commission provides a specific exemption; and

**WHEREAS**, the borrower has expressed its intent to attain Wells Fargo Bank (the agent) as the third party fiduciary, escrow, or administrative agent to confirm proper documentation from the borrower for loan draws, with the Department's Division of Aeronautics, directly disbursing funds to the borrower upon receipt of the agent's confirmation; and

**WHEREAS**, the Division of Aeronautics and the Colorado Aeronautic Board has technically approved this aviation project; and

**WHEREAS**, a sufficient amount is available to loan in the aviation account; and

**WHEREAS**, the term of the loan is five (5) years with a 2.50% interest rate, set by the Transportation Commission semi-annually; and

**NOW THEREFORE BE IT RESOLVED**, the Transportation Commission authorizes the Department, under the guidance and direction of the Chief Financial Officer, to execute

a loan agreement with the borrower in an amount of \$1,000,000.00 under the terms and provisions set forth in the adopted rules.

Herman F. Stockinger III  
Herman Stockinger, Secretary  
Transportation Commission of Colorado

1-26-16  
Date

**Discuss and Act on State Infrastructure Bank Park County Loan Request**

Maria Sobota explained that this request was approve initially in Nov. of 2014, however Park County has received a new Escrow Agent. This loan is the same as the one that was passed in 2014, with a different escrow agent and an interest rate of 2.5% rather than 2.7%

Chairwoman Connell entertained a motion to approve the Loan Request. Commissioner Hofmeister moved for approval of the resolution, and Commissioner Peterson seconded the motion. Upon vote of the Commission, the resolution passed unanimously.

## **Resolution #TC-16-1-6**

### **Resolution #TC-16-1-6**

Revision to the November 2014 Park County State Infrastructure Bank Loan.

#### **Approved by the Transportation Commission on January 21, 2016**

**WHEREAS**, the Colorado State Infrastructure Bank (bank) is a transportation investment bank with the ability to make loans to public and private entities for the formation of public transportation projects within the state; and

**WHEREAS**, the General Assembly passed Legislation (43-1-113.5 CRS) that made certain provisions for the bank and established within the bank, a highway account, a transit account, an aviation account and a rail account; and

**WHEREAS**, a loan application has been submitted by Park County, Colorado (borrower), to borrow \$570,000 to complete the Tarryall Road (County Road 77) project; and

**WHEREAS**, the Transportation Commission has adopted rules, pursuant to 43-1-113.5 CRS, in 2 CCR 605-1 regarding the eligibility requirements, disbursement of funds, interest rates, and repayments of loans from the bank; and

**WHEREAS**, pursuant to 2 CCR 605-1, Rule VI, Section 4 the Review Committee has reviewed and is in support of the application; and

**WHEREAS**, 2 CCR 605-1, Rule VI, Section 6 (2) provides "loan agreements for construction will specify that funds will be disbursed in their entirety to a third party fiduciary or escrow agent" unless the Transportation Commission provides a specific exemption; and

**WHEREAS**, the borrower has expressed its intent to attain Bankers Escrow Corporation (the agent) as the third party fiduciary, escrow, or administrative agent to confirm proper documentation from the borrower for loan draws, with the Department's Division of Highways, directly disbursing funds to the borrower upon receipt of the agent's confirmation; and

**WHEREAS**, the Division of Project Support has reviewed and acknowledged the highway projects significance to transportation goals for which the Borrower requests to borrow funds; and

**WHEREAS**, a sufficient amount is available to loan in the highway account; and

**WHEREAS**, the term of the loan is ten (10) years with a 2.50% interest rate, set by the Transportation Commission semi-annually; and

**NOW THEREFORE BE IT RESOLVED**, the Transportation Commission authorizes the Department, under the guidance and direction of the Chief Financial Officer, to execute a loan agreement with the borrower in an amount of \$570,000 under the terms and provisions set forth in the adopted rules.

  
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Herman Stockinger, Secretary  
Transportation Commission of Colorado

  
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Date

## **Discuss and Act on 7<sup>th</sup> Budget Supplement of FY 2016**

Maria Sobota pointed out the two items up for approval in Region 2. One of the items is a scope change on SH 21, with the second item being a bid adjustment on a bridge construction project. Additionally, included for information is RoadX information and information on I-76 resurfacing.

Chairwoman Connell entertained a motion to approve the Budget Supplement. Commissioner Gilliland moved for approval of the resolution, and Commissioner Gifford seconded the motion. Upon vote of the Commission, the resolution passed unanimously.

**Discuss and Act on the Resolution Approving the I-25 North IAA between CDOT and HPTE**

David Spector explained that the HPTE board unanimously approved a bank agent for completion of segment 3 of the North I-25 project. The project was able to secure very low loan rates. HPTE is asking the commission to approve the description on how CDOT and HPTE will work together, as well as asking CDOT to back up the loan if HPTE is unable to repay.

Chairwoman Connell entertained a motion to approve the I-25 North IAA. Commissioner Schriner moved for approval of the resolution, and Commissioner Hofmeister seconded the motion. Upon vote of the Commission, the resolution passed unanimously.

**Resolution #TC-16-1-8**

**Resolution #TC-16-1-8**

Approving an Intra-Agency Agreement between the Colorado Department of Transportation and the Colorado High Performance Transportation Enterprise for the I-25 North Express Lanes Project (Segment 3)

**Approved by the Transportation Commission on January 21, 2016**

**WHEREAS**, pursuant to Section 43-1-106(8), C.R.S, the Transportation Commission is responsible for formulating the general policy with respect to the management, construction, and maintenance of public highways and other transportation systems in the state; and

**WHEREAS**, the Transportation Commission promulgates and adopts all budgets for the Colorado Department of Transportation ("CDOT") and state transportation programs; and

**WHEREAS**, the General Assembly created the Colorado High Performance Transportation Enterprise ("HPTE"), pursuant to Section 43-4-806, C.R.S., as a government-owned business within CDOT to pursue innovative means of more efficiently financing important surface transportation projects that will improve the safety, capacity, and accessibility of the surface transportation system; and

**WHEREAS**, HPTE is authorized, pursuant to Section 43-4-806(2)(c)(I), C.R.S., to impose user fees on the travelling public for the privilege of using surface transportation infrastructure; and

**WHEREAS**, CDOT, in partnership with HPTE, is undertaking the I-25 North Express Lanes Project (Segment 3) (the "Segment 3 Project") to complete, implement and operate one new tolled express lane in each direction between approximately 120<sup>th</sup> Avenue and E-470; and

**WHEREAS**, the Transportation Commission supports the Segment 3 Project and recognizes the benefits it provides to the State, which include, but are not limited to, improving travel times, managing congestion in the I-25 North Corridor, and providing travelers with a choice of a new travel lane; and

**WHEREAS**, HPTE will enter into a loan agreement with Bank of America, N.A. (the "Segment 3 Loan Agreement") pursuant to which HPTE will borrow money to fund the payment of the lawful expenses and costs of planning, designing, engineering, acquisition, installation or construction of the Segment 3 Project and other lawful expenses and costs related thereto ("Segment 3 Loan"); and

**WHEREAS**, in connection with the Segment 3 Loan, HPTE will pledge to Bank of America, N.A. the user-fee revenues collected by HPTE from the Segment 3 Project as further detailed in the Segment 3 Loan Agreement; and

**WHEREAS**, pursuant to Section 43-4-806(4), C.R.S., the Transportation Commission may authorize the transfer of money from the state highway fund to HPTE to defray expenses of HPTE; and

**WHEREAS**, together with HPTE's approval of the Segment 3 Loan Agreement, HPTE has requested that CDOT enter into that certain I-25 North Express Lanes Project (Segment 3) Intra-Agency Agreement with HPTE (the "Segment 3 Intra-Agency Agreement") pursuant to which HPTE can request, and the Transportation Commission will agree to consider making, but is not obligated to make, one or more loans from the state highway fund to satisfy any of HPTE's payment obligations under the Segment 3 Loan Agreement, or to fund HPTE O&M Project Expenses (as such term is defined in the Segment 3 Intra-Agency Agreement), in the event user fee revenues are insufficient, or projected to be insufficient, to satisfy HPTE's obligations; and

**WHEREAS**, any loan that CDOT provides HPTE under the Segment 3 Intra-Agency Agreement shall, notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, constitute a loan from the Transportation Commission to HPTE and shall not be considered a grant for purposes of Section 20(2)(d) of Article X of the state Constitution; and

**WHEREAS**, the Transportation Commission recognizes and respects the legal principle that it cannot bind future Transportation Commissions with respect to budgetary and policy decisions, recognizes it cannot agree, in advance, to allocate and transfer state highway funds for a loan to HPTE, and agrees that any decision as to whether or not to allocate and transfer such funds for such purposes shall be made by the Transportation Commission, in its sole discretion, in the year in which the HPTE request occurs; and

**WHEREAS**, in the event the Transportation Commission elects, in its sole and absolute discretion, to make a loan to HPTE to satisfy any of the payment obligations under the Segment 3 Loan Agreement, CDOT can, but is not required to, fund such a loan using Federal-aid highway funds to assist HPTE in fulfilling its payment obligations under the Segment 3 Loan Agreement, but CDOT may not use Federal-aid highway funds to satisfy any HPTE O&M Project Expenses of the Segment 3 Project.

**NOW THEREFORE BE IT RESOLVED**, the Transportation Commission hereby approves and authorizes CDOT to enter into the Segment 3 Intra-Agency Agreement with HPTE in substantially the form presented to the Transportation Commission and authorizes the CDOT Executive Director or his delegee to execute the Segment 3 Intra-Agency Agreement with such changes therein and additions thereto, not inconsistent with this Resolution, as are approved by the CDOT Executive Director or his delegee (whose signature thereon shall constitute conclusive evidence of such approval).

**BE IT FURTHER RESOLVED**, the Transportation Commission hereby approves and authorizes the Segment 3 Loan Agreement in substantially the form approved by the HPTE Board of Directors and appended to the Segment 3 Intra-Agency Agreement, with such changes therein and additions thereto, not inconsistent with this Resolution, as are approved by the CDOT Executive Director or his delegee, which changes can include an increase or decrease in (i) the initial interest rate charged for the Segment 3 Loan so long as the initial interest rate for the Segment 3 Loan does not exceed 3%, provided that such rate may increase under certain circumstance as provided in the Segment 3 Loan Agreement; and (ii) the principal amount of the Segment 3 Loan so long as such principal amount does not exceed \$35 million.

**BE IT FURTHER RESOLVED**, the Transportation Commission hereby authorizes the CDOT Executive Director, the CDOT Chief Financial Officer, or any other officer of CDOT to execute and deliver such certificates and other documents and take such other actions as may be necessary or convenient to the accomplishment of the purposes of this Resolution, including, without limitation, the delivery of closing certificates and other documents required to be delivered by CDOT, if any, under the provisions of the Segment 3 Loan Agreement.

  
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Herman Stockinger, Secretary  
Transportation Commission of Colorado

1-26-16  
Date

**Approval of Policy Directive 704.0 “Policy Governing the Efficient Use of FASTER Revenue”**

Josh Laipply to the commission of the changes that were made to the resolution to include the continue efforts surrounding FASTER in workshops. Commissioner Barry requested changes to the language. This change was made to the resolution.

Chairwoman Connell entertained a motion to approve Policy Directive 704.0. Commissioner Barry moved for approval of the resolution, and Commissioner Thiebaut seconded the motion. Upon vote of the Commission, the resolution passed unanimously.

**Resolution #TC-16-1-9**

**Resolution # TC-16-1-9**

Adoption of Policy Directive 704.0 "Policy Governing the Efficient Use of FASTER Revenue."

**Approved by the Transportation Commission on January 21, 2016**

**WHEREAS**, pursuant to § 43-1-106(8)(a), C.R.S., the Colorado Transportation Commission ("Commission") is authorized to formulate general policy with respect to the management, construction, and maintenance of public highways and other transportation systems in the State; and

**WHEREAS**, in 2009, the General Assembly passed the Funding Advancements for Surface Transportation and Economic Recovery (FASTER) Act, § 43-4-801, *et seq.*, C.R.S.; and

**WHEREAS**, the FASTER Act was intended to provide funding for the repair and replacement of structurally deficient and functionally obsolete bridges and improve highway safety in the state;

**WHEREAS**, the FASTER Act, § 43-4-811, C.R.S. allocated additional FASTER funding for FASTER Transit Projects; and

**WHEREAS**, the Colorado Office of the State Auditor conducted an audit regarding the use of FASTER funding by state agencies including CDOT, and published its recommendations in an audit entitled "Collection and Usage of the FASTER Motor Vehicle Fees" dated August 2015; and

**WHEREAS**, the State Auditor's findings 1 through 7, 9 and 10 concern CDOT's processes and controls for the use of FASTER funds for eligible projects; and

**WHEREAS**, the Commission, by adopting Policy Directive 704.0, intends to provide sufficient guidance to the Department on the allocation of FASTER funding and set forth criteria the Department must follow to select eligible projects in order to effectively and efficiently use FASTER revenue; and

**NOW THEREFORE BE IT RESOLVED**, the Commission herein approves Policy Directive 704.0 "Policy Governing the Efficient Use of FASTER Revenue."

**NOW THEREFORE BE IT FURTHER RESOLVED**, in a continuing effort to bring focus to this important program, the Commission requests additional workshops with CDOT staff for the purpose of further review and possible refinement of applicable directives.

  
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Transportation Secretary  
Herman Stockinger

1-26-16  
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Date

**Recognition**

Karen Rowe gave recognition to the City of Colorado Springs for their collaboration on the I-25/ US 24 RAMP project. The City of Colorado Springs recognized the need for this project, and brought forward a significant amount of money. The project faced issues with the raising cost of construction. However through collaboration between CDOT and the city, more funds were able to be raised by the city, allowing the project to become a reality. The City also put a great deal of effort into the project in non monetary ways, through leveraging relationships, clearing processes and design input. Commissioner Schriener stated this interchange is the focal point of Colorado Springs, so that this project's completion is extremely important. Colorado Springs and a few individuals were presented with certificates.

Commissioner Zink acknowledged the actions of Mike McVaugh and Kerrie Neet. The three of them were driving over Wolf Creek pass, and saw a driver in distress. A woman had an incident while driving, she was weaving across the highway then

pulled off to the side of a lane. Mike went up to the car, seeing that the driver was unconscious with the car running, he put some rocks in front and behind the wheels of the car to immobilize it. After that, Kerrie and Mike was able to get the driver to open the windows after she regained consciousness. They then turned off the car and called her husband with her cell phone. Commissioner Zink stated that the calm, decisive and reassuring actions of Mike and Kerrie helped to manage and diffuse the extraordinary situation. Mike and Kerrie were presented with certificates of appreciation. Kerrie Neet stated that Mike is a man of action, who is often in the right spot helping whenever he can – Be it rock fall or a loose animal on the road. He is always helping.

Executive Director Bhatt recognized Ty Ortiz for his efforts in Oklahoma. The state experienced some rock fall issues during a recent flooding. The governor of Oklahoma called CDOT asking for some expertise. Ty took this call and immediately went to Oklahoma to help them deal with the issues. As a thank you, Governor Fallin of Oklahoma then sent Governor Hickenlooper a letter recognizing and thanking Ty for his help. Executive Director Bhatt expressed his thanks to Ty for answering the call and going above and beyond the call. He was presented with a framed copy of Governor Fallin's letter.

With the coming of the New Year, it is time to award the Executive Director's cup to one of the five CDOT Regions. Executive Director Bhatt stated that it was a very difficult decision, because there are 5 great regions with great RTD's. The regions are the areas where the rubber hits the road, so the cup is a good chance to share the accolades HQ receives with the people who do the work. This year, the Cup will be going to Region 5. Director Bhatt highlighted that people in region 5 are exemplary. Additionally, the region felt a great tragedy this year, and rebounded as a community wonderfully. Kerrie Neet accepted the award and thanked the people in her region for their extremely hard work.

### **Adjournment**

Chairwoman Connell closed the January Transportation Commission meeting at 10:25 a.m.



**COLORADO**

**Department of Transportation**

Division of Accounting and Finance

4201 East Arkansas Avenue, Room 262  
Denver, CO 80222

**MEMORANDUM**

**TO: TRANSPORTATION COMMISSION**  
**FROM: MARIA SOBOTA, CHIEF FINANCIAL OFFICER**  
**CC: DAVID SPECTOR, DIRECTOR OF HIGH PERFORMANCE TRANSPORTATION ENTERPRISE**  
**DATE: FEBRUARY 18, 2016**  
**SUBJECT: AMENDMENT TO THE INTRA-AGENCY AGREEMENT BETWEEN CDOT AND HPTE**

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Purpose

To present details regarding changes being made to the existing I-70 Peak Period Shoulder Lane Project Intra-Agency Agreement (IAA) between Colorado Department of Transportation (CDOT) and the High Performance Transportation Enterprise (HPTE).

Action

Staff is seeking TC approval of the resolution authorizing the proposed changes to the I-70 Peak Period Shoulder Lane (PPSL) Project IAA.

Background

In December 2014, HPTE borrowed \$25 million from Banc of America to help complete the I-70 PPSL Project. In order to assist HPTE in securing more favorable loan terms needed for this critical project, CDOT entered into an IAA in order to provide credit support to HPTE. Since that time, the need has arisen to modify specific items in the Loan Agreement itself as well as clarify how obligations between CDOT and HPTE will be determined.

Amendment Details

The IAA amendment conforms to two specific changes being made to the Loan Agreement between Banc of America and HPTE. The two changes to the Loan Agreement that are reflected in the IAA amendment are as follows:

1. The original Loan Agreement had a reporting requirement that specified that HPTE provide unaudited financial statements 30 days after July 1 and January 1 of each fiscal year. In practice, this is impossible due to the state's accounting system (CORE) and how long it takes to reconcile financial information. HPTE and Banc of America agreed that moving from 30 to 90 days after July 1 and January 1 was reasonable in order to accommodate these existing constraints.
2. It clarifies the definition on when our interest payment date occurs.



In addition to the changes that flow from the amendments to the loan agreement, the changes to the IAA more clearly define how obligations between CDOT and HPTE will be determined. The changes to the IAA are as follows:

1. It defines which Operations and Maintenance (O&M) costs are subject to the "pro-rata share." In the original IAA, a broad pro-rata split is all that was contemplated, but since that time, staff has gotten more specific about how that split will be determined. This IAA amendment will use essentially the same criteria that HPTE and CDOT have used in the recently approved I-25N Segment 3 IAA. Specifically, many items (such as snow and ice) will be treated on a pro-rata basis; whereas costs related only to the tolling and toll lane maintenance will be an HPTE-only expense and pre-existing costs unaffected by the managed lane (such as lighting) will be a CDOT-only expense.
2. It includes CDOT invoicing and HPTE payment processes of O&M obligations that were not addressed in the original IAA.

All necessary parties have agreed to the changes to the original Loan Agreement. Those are currently being integrated into the first amendment to HPTE's PPSL Loan with Banc of America. This amendment is being presented to the HPTE Board of Directors this month for authorizing and execution.

#### Key Benefits

Approval of the changes to the existing I-70 PPSL IAA will mirror the revisions being made to the existing Loan Agreement, ensuring consistency across all agreements related to this project. It will also reinforce the mutually beneficial partnership between CDOT and HPTE by clearly defining roles and responsibilities.

#### Options and Recommendations

1. Approve the amended IAA between CDOT and HPTE (STAFF RECOMMENDATION).
2. Do not approve the amended IAA and request additional information.
3. Reject the amended IAA.

#### Next Steps

If approved, execute amended IAA.

#### Attachments

Attachment A: First Amendment to HPTE I-70 PPSL Project Intra-Agency Agreement

Attachment B: Resolution Approving the First Amendment to the Intra-Agency Agreement between CDOT and HPTE for the I-70 Peak Period Lane (Mountain Express Lane) Project



**FIRST AMENDMENT TO  
HPTE I-70 PPSL PROJECT  
INTRA-AGENCY AGREEMENT**

THIS FIRST AMENDMENT (the “Amendment”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by and between the STATE OF COLORADO for the use and benefit of the COLORADO DEPARTMENT OF TRANSPORTATION, hereinafter referred to as “CDOT,” and the COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE, a government-owned business and a division of CDOT, hereinafter referred to as the “Enterprise” or “HPTE.”

**FACTUAL RECITALS:**

A. CDOT is an agency of the State of Colorado 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.

B. The Transportation Commission of Colorado (the “Transportation Commission”) is the budgetary and policy making body for CDOT with all powers and duties granted by the Colorado General Assembly pursuant to Section 43-1-106, C.R.S.

C. HPTE was created pursuant to Section 43-4-806(2), C.R.S. as a government-owned business within CDOT to pursue innovative means of completing important surface transportation projects that will improve the safety, capacity, and accessibility of the surface transportation system, can feasibly be commenced in a reasonable amount of time, and will allow more efficient movement of people, goods, and information throughout Colorado.

D. CDOT and HPTE previously entered into that certain *HPTE I-70 PPSL Project Intra-Agency Agreement*, dated December 19, 2014 (the “Agreement”), regarding the financing, construction, and operations and maintenance of the I-70 Mountain Express Lane Project, formerly known as the I-70 Peak Period Shoulder Lane Project (the “Project”).

E. CDOT and HPTE also previously entered into a Letter Agreement, dated March 5, 2015, concerning the invoicing and reimbursement of certain costs paid by CDOT for the construction of the Project, the terms of which are to be incorporated into this Amendment.

F. CDOT and HPTE now desire to amend the Agreement to clarify certain terms and conditions related to the operations and maintenance of the Project.

G. Pursuant to Section 6.13 of the Loan Agreement between HPTE and Banc of America Preferred Funding Corporation (the “Bank”), the Bank’s consent to the Amendment is required and, as of the date of this Amendment, such consent has been received.

H. This Amendment is executed by HPTE under the authority of Sections 29-1-203 and 43-4-806(6)(h), C.R.S., and by CDOT under the authority of Sections 43-1-110 and 43-1-116, C.R.S.

**NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS, THE PARTIES TO THIS AMENDMENT HEREBY AGREE AS FOLLOWS:**

1. Amendment to Operations and Maintenance Provisions. Section I (Operation and Maintenance of the Project) of the Agreement is hereby deleted in its entirety and replaced with the following:

**I. OPERATIONS AND MAINTENANCE OF THE PROJECT**

A. The I-70 PPSL Project is adjacent to a segment of the I-70 general purpose lanes (“I-70 General Purpose Lanes”) and HPTE and CDOT recognize the need to cooperate in carrying out the related operations and maintenance for the I-70 PPSL Project and the I-70 General Purpose Lanes. To that end, HPTE and CDOT agree to cooperate in ensuring that the operations and maintenance is performed and agree to the division of costs as set forth herein. As a general matter, HPTE shall be responsible for operating and maintaining the I-70 PPSL Project, and agree that CDOT shall be responsible for operating and maintaining the I-70 General Purpose Lanes. It is the intent of the parties that, except as specifically provided otherwise herein, CDOT shall perform such operations and maintenance of both the I-70 General Purpose Lanes and the I-70 PPSL Project, subject to reimbursement from HPTE for HPTE’s proportionate share of the overall operations and maintenance expenses, as further described herein.

B. Except as otherwise provided herein, the CDOT and HPTE agree to allocate costs based on a proportion of the total number of vehicles using I-70 within the Project area during the reference month, with HPTE’s portion being calculated to include all vehicles obligated to pay a fee for use of the I-70 PPSL Project, whether or not such user fee is actually collected, and CDOT’s portion being calculated to include all other vehicles (the “Pro-Rata O&M Cost Calculation”). For illustrative purposes only, if the total cost of operating and maintaining the segment of I-70 including the I-70 PPSL Project is \$500,000 per month, and 5% of the total vehicle count consisted of vehicles obligated to pay a user fee, HPTE would be responsible for \$25,000 of such operations and maintenance costs. The Pro-Rata O&M Cost Calculation shall apply to CDOT’s costs incurred with respect to: (i) snow and ice removal services; (ii) courtesy patrol; (iii) pavement resurfacing, life-cycle and capital maintenance, to the extent such activities reasonably include both the I-70 PPSL Project and the I-70 General Purpose Lanes; (iv) lane striping; and (v) any other operations and maintenance expense CDOT and HPTE agree in good faith is most fairly allocated utilizing the Pro-Rata O&M Cost Calculation method.

C. The Pro-Rata O&M Cost Calculation shall not apply to those operations and maintenance costs existing and regularly funded by CDOT prior to the

implementation of the I-70 PPSL Project, and for which the addition of the I-70 PPSL Project results in a *de minimus* impact on overall operations and maintenance expenses for I-70. Such costs include, but are not limited to, CDOT's costs incurred with respect to: (i) repair and replacement of guardrail; (ii) repair and replacement of lighting fixtures; and (iii) contracts with the State Patrol for safety enforcement within the corridor (but exclusive of additional enforcement contracted by HPTE for toll evasion enforcement, if any).

D. HPTE shall be solely responsible for costs incurred with respect to: (i) toll processing and collection; (ii) Level I and Level II maintenance of toll equipment; (iii) contracts for toll evasion enforcement with the State Patrol or other law enforcement entity, if any; (iv) daily lane sweeping/cleaning in preparation for opening the I-70 PPSL Project; and (v) CDOT staff time dedicated to monitoring traffic flows and determining opening/closing times and variable toll rates for the I-70 PPSL Project, in accordance with guidance set forth and approved by HPTE; and (vi) HPTE overhead and administrative costs related to the operations and maintenance of the I-70 PPSL Project. Such costs, together with those costs attributable to HPTE under the Pro-Rata O&M Cost Calculation, shall constitute the "HPTE O&M Project Expenses."

E. To the extent either CDOT or HPTE provides services to the other (either through a third party or directly) that results in one party covering the costs that is agreed to be the responsibility of the other, the party covering such costs will invoice the other and such invoice shall include a reasonably detailed breakdown of the costs for which the invoicing party is seeking reimbursement.

F. CDOT shall submit to HPTE on or before January 15 and July 15 of each year an invoice describing the HPTE O&M Project Expenses due to CDOT with respect to the I-70 PPSL Project for the prior six month period. To the extent the user fee revenues generated from the I-70 PPSL Project as they are required to be applied are, or are estimated to be, inadequate to cover the HPTE O&M Project Expenses, HPTE can request a CDOT Backup Loan to fund all or a portion of the HPTE O&M Project Expenses pursuant to Section II below. Before HPTE submits to CDOT the written notification described in Section II.B below, CDOT and HPTE agree to cooperate in estimating the expected cost of operating the I-70 PPSL Project for the upcoming fiscal year. This estimate, and the expected available revenue from the I-70 PPSL Project for the HPTE O&M Project Expenses shall serve as a basis for submitting the notification described in Section II.B.

G. In consideration of the various terms, covenants, and conditions set forth herein (including the benefits that CDOT will receive as a result of the Project, CDOT hereby provides to a non-exclusive license over, under, upon and in the site of the Project ("License") for HPTE to operate the I-70 PPSL Project. CDOT acknowledges and agrees that HPTE may sublicense the License as needed to operate and maintain the Project. Subject to the License, CDOT reserves the right of use, occupancy and ownership over, under, upon and in the lands comprised of the I-70 PPSL Project.

2. Eastbound PPSL Construction Package 3. On December 18, 2014, the Transportation Commission approved a budget action of \$20.85 million to pay for the Eastbound PPSL Construction Package 3, of which \$17.5 million was available to HPTE to pay for the construction of ITS infrastructure, interchange improvements at mile marker 241 East Idaho Springs, asphalt overlay, and fiber installation for the Project. In a Letter Agreement dated March 5, 2015, CDOT and HPTE agreed that CDOT shall invoice HPTE, and HPTE shall remit payment to CDOT, for those aforementioned elements of the Eastbound PPSL Construction Package 3. CDOT and HPTE agree that all invoicing and payment obligations with respect to the Eastbound PPSL Construction Package 3 have been satisfied in their entirety.

3. General Provisions. With the exception of those terms and conditions specifically modified herein, the Agreement shall remain in full force and effect in accordance with all of its terms and provisions. In the event of any conflict between the terms and provisions of the Agreement and the term and provisions of this Amendment, the terms and provisions of this Amendment shall control. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, and all of such counterparts shall constitute one agreement.

*[Signature page follows.]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment as of the day and year first above written.

STATE OF COLORADO  
JOHN HICKENLOOPER, Governor

COLORADO HIGH PERFORMANCE  
TRANSPORTATION ENTERPRISE

By: \_\_\_\_\_  
SHAILEN P. BHATT  
Executive Director  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
DAVID I. SPECTOR  
HPTE Director

APPROVED:

CYNTHIA COFFMAN  
Attorney General

By: \_\_\_\_\_  
Assistant Attorney General

**Resolution # TC-16-2-**

**Approving the First Amendment to Intra-Agency Agreement between CDOT and HPTE for the I-70 Peak Period Shoulder Lane (Mountain Express Lane) Project.**

**WHEREAS**, the Transportation Commission is responsible, pursuant to Section 43-1-106(8), C.R.S., for formulating the general policy with respect to the management, construction and maintenance of public highways and other transportation systems in the State; and

**WHEREAS**, the General Assembly created the Colorado High Performance Transportation Enterprise (“HPTE”), pursuant to Section 43-4-806, C.R.S., as a government-owned business within CDOT to pursue innovative means of more efficiently financing important surface transportation projects that will improve the safety, capacity, and accessibility of the surface transportation system; and

**WHEREAS**, HPTE, in partnership with CDOT, completed and is operating the I-70 Mountain Express Lane Project, formerly known as the I-70 Peak Period Shoulder Lane Project (the “Project”) over a 13 mile segment of eastbound I-70 through the I-70 Mountain Corridor; and

**WHEREAS**, by Resolution #TC-3216, dated December 19, 2014, the Transportation Commission previously approved the HPTE I-70 PPSL Project Intra-Agency Agreement (the “Agreement”) between CDOT and HPTE regarding the Project; and

**WHEREAS**, CDOT and HPTE now desire to further define the allocation of costs and responsibilities for operations and maintenance of the Project, as well as set forth invoicing and payment procedures not described in the original Agreement.

**NOW THEREFORE BE IT RESOLVED**, the Transportation Commission hereby approves the First Amendment to the I-70 PPSL Project Intra-Agency Agreement between CDOT and HPTE and authorizes CDOT’s Executive Director to sign the First Amendment on behalf of CDOT.

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Herman Stockinger, Secretary  
Transportation Commission of Colorado

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Date