



Date: June 25, 2014
To: High Performance Transportation Enterprise Board
From: Michael Cheroutes, Director
Subject: Fee for Service Intra-Agency Agreement between HPTE and CDOT

Purpose

The purpose of this memo is to summarize the proposed *Fee for Service Intra-Agency Agreement* between HPTE and CDOT, which identifies the Scope of Work to be provided by HPTE to CDOT during the 2016 fiscal year, and in which CDOT agrees to compensate HPTE in the amount of \$2,000,000 for such services, which the parties have agreed represents the fair-market value of the services to be provided.

Action

The Board is asked to consider a resolution authorizing the execution of the *Fee for Service Intra-Agency Agreement*.

Background

HPTE was conceived as a government-owned business and an enterprise, which exempts it from the restrictions of Section 20 Article X of the Colorado Constitution (TABOR). HPTE has explored options for a sustainable source of operating revenue. In recognition of the specialized nature of the expertise and services HPTE provides to CDOT, a “fee for service” model has been determined to be the most appropriate option available for HPTE to recoup the value of the benefits it provides to CDOT. The fee for service model is similarly utilized by other state enterprises, particularly within the Department of Higher Education, and is supported by both case law and several Attorney General Opinions, which have found this approach to be consistent with the conception of enterprises as self-sufficient government-owned businesses.

Details

The Services to be provided by HPTE to CDOT in fiscal year 2016, and the value being compensated for each, are detailed in the Scope of Work attached as Exhibit A to the Agreement. Tasks generally fall into categories linked to the stage of development of the various surface transportation projects with which HPTE is involved. HPTE is also providing some program-wide services, including the implementation of the Aconex document management system. An overview of HPTE’s Scope of Work for fiscal year 2016 is as follows:

- **US 36 Managed Lanes / Bus Rapid Transit Project** - HPTE services related to facilitating and monitoring Plenary Roads Denver (PRD) operations and maintenance under the Concession Agreement.

Project Development: \$450,000

Project Procurement: \$50,000

- **I-70 East Corridor Design-Build-Finance-Operate-Maintain Project (DBFOM)** - HPTE services related to the I-70-East Project procurement, including support for the evaluation of Statements of Qualification (SOQs) leading to the shortlisting of no more than four proposers by July, and the issuance of a Request for Proposal (RFP) in the fall.

Project Development: \$100,000

Project Procurement: \$200,000

- **C-470 Express Lanes Project** - HPTE services related to securing both a TIFIA Loan and PABs for the proposed design-build procurement. This project is anticipated to be under construction by the summer of 2016.

Project Planning: \$200,000
Project Development: \$400,000

- **I-25 North Project Segment 2 and 3** - HPTE services related to this design-bid-build project. Segment 2 is scheduled to open for tolling in January 2016 and Segment 3 is scheduled to open for tolling in February 2016.

Project Planning: \$15,000
Project Development: \$50,000

- **I-70 West Peak Period Shoulder Lane Project (Eastbound)** - HPTE services related to the December 2014 Loan Agreement with Banc of America for \$25 million to facilitate the construction of the west bound Peak Period Shoulder Lane (PPSL) from Empire Junction to the Twin Tunnels on I-70, which will open for tolling around November 1, 2015.

Project Planning: \$30,000
Project Development: \$100,000
Project Construction: \$50,000

- **Increase Transparency and Education on Public-Private Partnerships: \$240,000**
- **Implement a Document Management System for P3 and Major Projects: \$200,000**
- **Development of a P3 Manual: \$225,000**

Key Benefits:

The *Fee for Service Intra-Agency Agreement* will provide HPTE a stable source of operating revenue to both support its operations going forward, as well as repay prior loans from the Transportation Commission within a 10-year period. Further, the fee for service model substantiates the business relationship between HPTE and CDOT and enables HPTE to recoup the fair market value of its services to CDOT in an exchange transaction.

Recommendations:

The staff recommends the Board approve the resolution authorizing the execution of the Fee for Service agreement for Fiscal Year 2016.

Next Steps:

The \$2,000,000 payment for services to be provided by HPTE in fiscal year 2016 was included in the FY 2016 budget for Fund 537 approved by the Board in May 2015. In future years, staff anticipates providing a scope of work and cost for HPTE services to CDOT in February, for budget action by the Transportation Commission in March, and approval by the Board in conjunction with HPTE's annual budgeting process for the following fiscal year.

Attachments

- Fee for Service Intra-Agency Agreement between HPTE and CDOT (Including as Exhibit A, HPTE Scope of Work for Fiscal Year 2016)
- Stifel Report on HPTE 10-Year Plan/Benefit to CDOT, dated January 14, 2015
- KPMG Guidance on HPTE Interagency Agreement and Scope of Work (for FY 2016)
- Attorney General Opinion Regarding Fee for Services Agreement Between HPTE and CDOT (Distributed Under Separate Cover)

Resolution – HPTE #

Approving a Fee for Service Intra-Agency Agreement with CDOT for Fiscal Year 2016

WHEREAS pursuant to Section 43-4-806, *et seq.*, C.R.S., 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”) 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 pursuant to § 43-4-806(6)(g), C.R.S., HPTE 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; and

WHEREAS HPTE is also empowered, pursuant to § 43-4-806(6)(h), C.R.S., to make and enter into all other contracts and agreements that are necessary or incidental to the exercise of its powers and performance of its duties; and

WHEREAS the Board has reviewed the Fee for Service Intra-Agency Agreement, including the recitals thereto, and by this resolution accepts and confirms the findings and statements contained therein; and

WHEREAS the Board has also reviewed the Scope of Work attached as Exhibit A to the Fee for Service Intra-Agency Agreement, and finds the compensation amounts set forth to constitute fair and reasonable compensation for the services to be provided by HPTE to CDOT during the 2016 fiscal year.

NOW THEREFORE BE IT RESOLVED that the Board of the High Performance Transportation Enterprise hereby approves the Fee for Service Intra-Agency Agreement with CDOT for Fiscal Year 2016.

BE IT FURTHER RESOLVED that the HPTE Board authorizes the HPTE Director to approve and execute Fee for Service Intra-Agency Agreement and, in accordance with HPTE’s bylaws, to approve and enter into any amendments thereto that do not exceed the estimate of available funds approved for the fiscal year by the Board, or cause a diminution in the same.

Signed as of June 25, 2015

Kari V. Grant
Interim Secretary, HPTE Board

