



Date: December 14, 2016

To: High Performance Transportation Enterprise Board

From: Nicholas Farber, HPTE Operations Manager; Brent Butzin, HPTE General Counsel

Subject: Third Amendment to US36 Concession Project Intergovernmental Agreement with RTD

Purpose

The purpose of this memo is to summarize the Third Amendment to the Intergovernmental Agreement (IGA) between HPTE and RTD regarding the US 36 Phase 2 Project (Project) and to recommend its approval.

Action

The Board is asked to adopt a resolution that supports the staff recommendation to approve the IGA.

Background

Since the US 36 Phase 2 Project is coming to a close, HPTE and RTD are seeking to clean up the prior amendments to the US 36 Concession Project IGA to: 1) clarify exact amounts spent on RTD items on the Project; 2) add additional work that RTD wants done on the Project (adding conduit); and 3) releasing HPTE I-25 Central excess toll revenues for any lawful purpose of HPTE.

Recommendations

The staff recommends that the Board approve a resolution authorizing the execution of this IGA.

Attachment

Third Amendment to US36 Concession Project Intergovernmental Agreement

**Resolution – HPTE #217**

**Approving a Third Amendment to the US36 Concession Project Intergovernmental Agreement with the Regional Transportation District and CDOT**

**WHEREAS**, the General Assembly created the Colorado High Performance Transportation Enterprise ("HPTE") as a government-owned business within the Colorado Department of Transportation ("CDOT") to pursue public private partnerships and other innovative and efficient means of completing surface transportation infrastructure projects; and

**WHEREAS**, pursuant to Section 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; and

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

**WHEREAS**, HPTE, in partnership with the Regional Transportation District ("RTD") and CDOT, completed and is operating the US 36 Express Lanes Concession Project (the "Project"); and

**WHEREAS**, HPTE, RTD and CDOT previously entered into that certain US36 Concession Project Intergovernmental Agreement dated June 13, 2013 (the "IGA"), as subsequently amended on November 17, 2013 (the "First Amendment"), and on January 21, 2015 (the "Second Amendment"); and

**WHEREAS**, the parties now desire to enter into a Third Amendment to US36 Concession Project Intergovernmental Agreement (the "Third Amendment") to re-allocate certain project scope items set forth in the Second Amendment, and to modify the permissible uses of certain maintenance funds held by HPTE in accordance with the IGA.

**NOW THEREFORE BE IT RESOLVED**, the Board hereby authorizes the HPTE Director to execute and deliver the Third Amendment in the form presented, with such revisions or modifications, not inconsistent with this Resolution, and at such time, as the HPTE Director may determine to be necessary or appropriate.

Signed as of December 14, 2016

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Kari V. Grant  
Secretary, HPTE Board

THIRD AMENDMENT TO US36 CONCESSION PROJECT INTERGOVERNMENTAL  
AGREEMENT

This Third Amendment made this \_\_\_\_ day of \_\_\_\_\_ 2016, by and among the Colorado High Performance Transportation Enterprise (HPTE), the Colorado Department of Transportation (CDOT) and the Regional Transportation District (RTD) is to that Intergovernmental Agreement (IGA) dated June 13, 2013, for the US 36 Concession Project (the "US36 Concession Project IGA"), as amended November 17, 2013 (CDOT Routing # 14HAA61428) ("First Amendment") and January 21, 2015, erroneously entitled First Amendment to the US36 Concession Project Intergovernmental Agreement ("Second Amendment" or "January 21, 2015 Amendment").

1. In order to accurately reflect the breakdown of items contracted separately by RTD but included in the Project Scope and paid out of Phase I Project Contingency, the Parties amend the US36 Concession Project IGA as follows:

Paragraph 3(b) of the January 21, 2015 Amendment shall be modified as follows:

(b) the following items will be contracted separately by RTD but will be included in the Project Scope and paid out of Phase I Project Contingency

- approximately \$1,650,000 for station amenities which includes, but is not limited to, the installation, construction and repair of any feature or facility provided at the RTD US 36 BRT Stations for the use and benefit of RTD patrons such as street furnishings, safety and security equipment, walkways, fare ticketing, variable message signs, wayfinding signs, lighting, painting, railing, etc.;
- approximately \$250,000 for highway and vehicular traffic signage; and
- contingency in the approximate amount of \$100,000 on the foregoing,

for a combined amount not to exceed \$2 million. Once this Third Amendment is fully executed, RTD may invoice CDOT for completed work authorized under this Paragraph.

2. RTD shall pay CDOT \$439,770.15 for the inclusion of the additional conduit as stated in Change Order CO-177. This amount shall be added to and included in any invoices sent to RTD pursuant to Section B, Article II, Paragraph 8.

3. Section B, Article III, Paragraph 5 of the US36 Concession Project IGA shall be modified as follows:

Notwithstanding anything to the contrary contained in the IGAs, all surplus revenues in the I-25 Maintenance Account as described in the I-25 IGA (the "Maintenance Fund") shall remain with HPTE prior to Financial Close, and such funds are restricted to use in the Project or within the Project Right of Way. After Financial Close, HPTE has no obligation to provide any additional funds or toll proceeds to the Maintenance Fund. After the Full Services Commencement Date any funds remaining in the Maintenance Fund shall be available to HPTE to use for any lawful purpose of HPTE.

4. All provisions of the IGA remain unchanged except for those items specifically set forth above.

*[Remainder of page left intentionally blank. Signature page follows.]*

Agreed and Approved

For the Regional Transportation District (RTD)

By:

Name:

Title:

Approved as to legal form for RTD:

By:

Name:

Title:

For the High Performance Transportation Enterprise (HPTE)

By:

Name:

Title:

For the Colorado Department of Transportation (CDOT)

By:

Name:

Title:

Approved as to legal form for HPTE/CDOT:

By:

Name:

Title:

*[Signature page to the Third Amendment to the US36 Concession Project IGA.]*