



**DATE:** June 17, 2017  
**TO:** HPTE Board of Directors  
**FROM:** Tony DeVito, Central 70 Project Director  
David Spector, HPTE Director  
**SUBJECT:** Request for Approval of Central 70 Intra-agency Agreement

## Purpose

The purpose of this memorandum is to summarize recent revisions to the draft Intra-Agency Agreement (“IAA”) among CDOT, HPTE, and the Bridge Enterprise (“BE”) for the Central 70 Project, and to request HPTE Board approval.

## Action

The Central 70 Project team requests that the HPTE Board approve the Central 70 IAA.

## Background

Staff presented the draft IAA to the TC, BE Board and HPTE Board in April at a joint workshop. Since that time TIFIA has requested certain changes to the IAA, which are summarized below. The draft IAA and background memo from the April meeting can be linked to here [https://www.codot.gov/about/transportation-commission/documents/2017-commission/April%202017/1-central-70-iaa-workshop.pdf/at\\_download/file](https://www.codot.gov/about/transportation-commission/documents/2017-commission/April%202017/1-central-70-iaa-workshop.pdf/at_download/file).

## Revisions to IAA

The following revisions have been made to the IAA, either due to TIFIA comments or other CDOT/HPTE/BE feedback:

- Flexibility added to the makeup of the Project Executive Oversight Committee. (Section II.4)
- Discretionary modifications to the Pro-Rata Construction Cost allocation between CDOT and BE (as applied to Change Orders and Supervening Events) will require Developer consent if they increase BE’s proportionate share. (Sections III.7 and III.11) This change was requested by TIFIA to safeguard revenues pledged to repayment of debt under BE’s Master Trust Indenture.
- Flexibility added to sequence expenditure of funds from different sources so long as the total cumulative funding available per year during the Construction Period is not decreased. (Section III.9)
- Process for the budgeting and allocation of funds for the CDOT Backup Loans and CDOT Backup Loan Set-Asides has been clarified. (Section VII)
- The remedies available to CDOT for failure by the Enterprises to make payments under Backup Loan Agreements have been modified to reflect the different credit profile of Central 70 from other projects (e.g. C-470) (Sections VIII.2 and VIII.3)

## Commission Options / Decision Matrix

- 1) **Staff Recommendation: Approve the Central 70 IAA.**
- 2) Review, but do not approve the Central 70 IAA. Provide feedback on desired changes. Staff will go back to TIFIA with any such changes and report back to HPTE Board in July. Selecting this alternative would delay award of the project.

## Recommendation

The Central 70 Project team requests that the HPTE Board approve the Central 70 IAA.



## **Resolution HPTE #234**

Approving the Intra-Agency Agreement between the Colorado Department of Transportation, the Colorado High Performance Transportation Enterprise and the Colorado Bridge Enterprise for the Central 70 Project.

**WHEREAS**, the passage of FASTER legislation in 2009 established both the Colorado High Performance Transportation Enterprise (“HPTE”) and the Colorado Bridge Enterprise (CBE); and

**WHEREAS**, the 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 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 is further authorized pursuant to Section 43-4-806(2)(c)(III), C.R.S. to contract with any governmental or non-governmental source of funding for loans to be used in support of HPTE’s functions; and

**WHEREAS**, the General Assembly created CBE, pursuant to Section 43-4-805, C.R.S., as a government-owned business within CDOT to accelerate the repair and reconstruction of deficient bridges further defined as structures that are “poor”; and

**WHEREAS**, using the criteria outlined in the FASTER legislation, 128 bridges were originally determined to be eligible for the CBE program and the elevated portion of I-70 East corridor on a bridge, known as the Viaduct, was included on that list; and

**WHEREAS**, on February 19, 2016 the Transportation Commission approved a governance structure between CDOT, CBE and HPTE in which CBE is the managing partner of Central 70 Project (“Project”) and CBE and HPTE will enter into an anticipated agreement (“Project Agreement”) with a private partner (“Developer”); and

**WHEREAS**, in CBE Resolution #BE-15-2-3, the CBE Board of Directors, citing Transportation Commission Resolution #TC-15-2-5, directed staff to pursue delivery of the Project using a Design Build Finance Operate Maintain procurement process because the ability of this model to transfer more risk to the private sector and to offer a more predictable long term cost schedule

through the structure of availability payments, minimizing future contingency and cost overrun exposure to CDOT; and

**WHEREAS**, CDOT and CBE have requested HPTE's involvement in the Project for a variety of benefits that CDOT will receive from implementing tolling on the Project, including, but not limited to, allowing CDOT to better manage congestion over the long term on I-70 and providing the traveling public with the choice of a new travel lane with more reliable and efficient travel times; and

**WHEREAS**, the Transportation Commission supports the Project and recognizes the benefits that CDOT and the State will receive from replacing the Viaduct and implementing tolling on the Project; and

**WHEREAS**, the Transportation Commission, the HPTE Board of Directors and the CBE Board of Directors all reviewed and approved the issuance of the Final Request for Proposals on the Central 70 Project during March 2017 board meetings; and

**WHEREAS**, CDOT, HPTE, and CBE now desire to enter into a Central 70 Intra-Agency Agreement ("Central 70 IAA" or "IAA") to further define their respective roles and responsibilities with respect to funding the construction of the Project, management of the Project and cooperation on the operation and maintenance of the Project and financial obligations to each party with respect to the Project; and

**WHEREAS**, specifically with regard to HPTE, the Central 70 IAA outlines that HPTE will be responsible for contracting tolling equipment for the Project during the construction period of the Project; and

**WHEREAS**, the Central 70 IAA outlines that HPTE will have primary responsibility for the operations period of the Project but CBE will be responsible for the Capital Performance Period ("CPP") and an Operations, Maintenance, and Renewal Payment ("OMRP") on a monthly basis to the Developer in consideration of work performed by the Developer; and

**WHEREAS**, the Central 70 IAA also outlines that HPTE will contribute an amount to the OMRP using the same methodology that has been used on other HPTE express lane corridors and this same methodology will be used to fund HPTE's portion of unanticipated costs that arise due to a change order or supervening event during the operating period; and

**WHEREAS**, under the IAA, HPTE will be primarily responsible for tolling, including enforcement, as well as administering the Project Agreement with the Developer and the IAA contemplates a structure where CDOT will reimburse HPTE for a proportionate share of annual costs to administer the Project Agreement through its Fee for Service Scope of Work or a similar successor arrangement; and

**WHEREAS**, the Central 70 IAA allocates responsibility for funding various termination amounts between CDOT, HPTE and CBE, both prior to and after financial close, depending on the situation that gives rise to a termination; and

**WHEREAS**, HPTE has entered into a Managed Lane Tolling Services Agreement dated May 7, 2015 (the "TSA") with the E-470 Public Highway Authority ("E-470") pursuant to which E-470 provided Tolling Services for HPTE Tolling Facilities, including, but not limited to, Toll Collection and Adjudication Services, conditioned upon payment by HPTE to E-470 of E-470's Expenses, including Transaction Costs, Reimbursable Costs, and/or costs per dollar of Gross Toll Revenue, all in accordance with the TSA; and

**WHEREAS**, pursuant to Sections 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**, the Central 70 IAA allows for HPTE to request financial support from the Transportation Commission in the form of a CDOT Backup Loan to assist HPTE in fulfilling or satisfy any of its obligations under the Project Agreement including amounts payable to E-470 in the event revenues, together with any reserves, are insufficient, or projected to be insufficient, to satisfy HPTE's obligations; and

**WHEREAS**, HPTE acknowledges that the Transportation Commission is not required by the Central 70 IAA to make any such loan, and that any determination by the Transportation Commission to make, and allocate funds for, any such loan shall be in the sole discretion of the Transportation Commission; and

**WHEREAS**, any loan that CDOT provides HPTE under the IAA 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.

**NOW THEREFORE BE IT RESOLVED**, the High Performance Transportation Enterprise Board hereby approves and authorizes HPTE to enter into the Central 70 Intra-Agency Agreement with CDOT and CBE in substantially the form presented to the HPTE Board and authorizes the HPTE Director to execute the Central 70 IAA with such changes therein and additions thereto, not inconsistent with this Resolution, as are approved by the HPTE Director (whose signature thereon shall constitute conclusive evidence of such approval).

Signed as of \_\_\_\_\_

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Kari V. Grant  
Secretary, HPTE Board