

Resolution – HPTE #244

Approving a Memorandum of Understanding with the Colorado Department of Transportation Regarding the RoadX Program

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 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, 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(6)(g), C.R.S., 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 and CDOT recognize the potential synergies between HPTE and RoadX, and desire to further collaboration between HPTE and RoadX to advance and promote their respective missions; and

WHEREAS, HPTE and CDOT have agreed to a Memorandum of Understanding (“MOU”) that outlines opportunities for HPTE to assist RoadX and further defines the roles and responsibilities of each.

NOW THEREFORE BE IT RESOLVED, the HPTE Board of Directors hereby approves the MOU in the form presented and authorizes the HPTE Director to execute the MOU, with such revisions or modifications, not inconsistent with this Resolution, as the HPTE Director may determine to be necessary or appropriate.

Signed as of October 18, 2017

Kari V. Grant
Secretary, HPTE Board

MEMORANDUM OF UNDERSTANDING

By and between the

COLORADO DEPARTMENT OF TRANSPORTATION

AND

HIGH PERFORMANCE TRANSPORTATION ENTERPRISE

THIS MEMORANDUM OF UNDERSTANDING, entered into as of the ____ day of _____, 2017, by and between the Colorado Department of Transportation (“CDOT”), an agency of the State of Colorado (“State”), and the High Performance Transportation Enterprise (“HPTE”), a government-owned business created as a Division of CDOT by the “Funding Advancements for Surface Transportation and Economic Recovery Act of 2009” (“FASTER”). CDOT and HPTE are referred to in this Memorandum of Understanding individually as a “Party” and jointly as the “Parties”.

RECITALS

WHEREAS, CDOT has the responsibility to plan, develop, construct, coordinate, and promote an integrated transportation system within the State; and

WHEREAS, the General Assembly of the State found and determined in FASTER (Section 43-4-806(1), C.R.S.) that:

- (a) It is necessary, appropriate and in the best interests of the State to aggressively pursue innovative means of more efficiently financing important surface transportation infrastructure projects that will improve the safety, capacity, and accessibility of the surface transportation system;
- (b) The HPTE should actively seek out opportunities for public-private partnerships for the purpose of completing surface transportation infrastructure projects;
- (c) The authority of the HPTE should be broadly construed to allow HPTE sufficient flexibility, consistent with the requirements of the state constitution, to pursue any available means of financing such surface transportation infrastructure projects that will allow the efficient completion of the projects;

(d) The types of innovative financing opportunities include, but are not limited to, public-private partnerships, operating concession agreements, user fee-based project financing, and availability payment and design-build contracting;

(e) RoadX is a program within CDOT focused on building partnerships, entrepreneurial relationships and delivering innovating solutions;

(f) RoadX looks to team with public and private partners to make Colorado one to the most technologically advanced transportation environments in the nation and a leader in safety and reliability;

(g) HPTE and CDOT are entering into this Memorandum of Understanding to assist RoadX with its roles and responsibilities as it relates to its mission; and

WHEREAS, FASTER (Section 43-4-806(2)(d), C.R.S.) provides that the HPTE shall constitute an “enterprise” for purposes of section 20 of article X of the State Constitution so long as it receives less than ten percent of its total revenues in grants from all Colorado state and local governments combined; and

WHEREAS, HPTE is authorized pursuant to Section 43-4-806(2)(c)(I), C.R.S. to impose user fees on the traveling 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, FASTER (Sections 43-4-806(2)(c), 6(f) and (h), C.R.S.) authorizes HPTE to enter into agreements with the Transportation Commission or CDOT in furtherance of the purposes for which HPTE was created; and

WHEREAS, CDOT and HPTE have determined that it will advance and promote the respective missions of CDOT and HPTE to define and set forth in this Memorandum of Understanding their operating roles and responsibilities as they relate to those missions.

NOW, THEREFORE, in consideration of the mutual covenants, obligations, and conditions expressed below, the Parties understand and agree as follows:

Article One

General Provisions

1.1 Definitions. Terms defined in FASTER (Section 43-4-803, C.R.S.) have the same meanings when used in this this Memorandum of Understanding.

1.2 Effective Date and Term. This Memorandum of Understanding shall be effective immediately upon its execution and shall continue in effect until terminated in accordance with its terms.

Article Two

Coordination between CDOT and HPTE

2.1 The Board has the authority to establish policies for HPTE under which it will identify and prioritize HPTE projects and make and enter into agreements and contracts with private entities for the financing, design, construction, operations and maintenance of surface transportation infrastructure projects. As a division of CDOT, HPTE must coordinate and integrate its mission with CDOT in the fulfillment of its duties and the exercise of its powers.

2.2 Accordingly, HPTE can assist RoadX in the fulfillment of the respective missions of CDOT and HPTE. As a resource to RoadX, HPTE will be able to provide the following services for RoadX:

(a) Conduct early development activities, and support of RoadX with initial financial analyses. In coordination with RoadX, define initial project delivery structures to pursue.

(b) Support RoadX in financial planning for candidate RoadX projects and in coordination with the RoadX, determine the proper project delivery model with relevant CDOT/HPTE regions and/or divisions.

(c) Determine whether collaboration on a project is appropriate and desired, whether the project is one that HPTE is authorized to undertake under FASTER, and whether HPTE or RoadX will lead such project. Consideration will be given to factors including, but not limited to, the extent to which private sector partnership is likely and the revenue generating potential of the project.

- i. If HPTE leads, the procurement will be undertaken in accordance with HPTE guidelines and policies.

- ii. If RoadX leads, the procurement will follow the state procurement code and CDOT policies.
- iii. On any collaboration HPTE's participation may include (i) providing expertise to RoadX, which may be reimbursed through the existing fee for service arrangement with CDOT; or (ii) to the extent consistent with the nature of the project and FASTER, through the imposition of user fees (see Section 2.2(h)) and/or the issuance of revenue bonds (as defined in FASTER, see Section 2.2(d)).
- iv. The roles and responsibilities of each party shall be set out in a project specific agreement.

(d) In collaboration with RoadX, HPTE may determine to issue bonds or other multiple fiscal year financial obligations, payable from HPTE's transportation special fund.

(e) Pursue public-private partnerships and other innovative and efficient means of completing RoadX projects in accordance with Section 43-4-806(c), C.R.S.

(f) Accept unsolicited proposals on behalf of RoadX, and in coordination with RoadX, evaluate each under HPTE's policies and procedures.

(g) Establish a non-profit entity or entities pursuant to Section 24-1-107.5, C.R.S. for the purpose of completing a surface transportation project.

(h) To the extent a RoadX project is a surface transportation project on which opportunities exist for HPTE to impose a fee for the privilege of utilizing surface transportation infrastructure, consistent with HPTE's statutory purpose, HPTE and RoadX may agree to a collaboration whereby HPTE may impose and collect a user fee, and utilize the revenues collected for lawful purposes of HPTE as set forth in the FASTER statute.

(i) Engage HPTE's consultants that have experience in developing early financial project viability or analysis, determining proper project delivery methods, procuring public private partnerships, financing projects based on user fees, and establishing non-profit entities.

2.3 The RoadX Director and the Director of HPTE will be responsible for developing and implementing operating procedures and protocols for coordinating the activities of the RoadX and HPTE and for communicating with and reporting to the Executive Director and Transportation Commission and to the HPTE Board.

Article Three

Termination

3.1 This Memorandum of Understanding may be terminated at any time by mutual agreement of the parties.

Article Four

Amendments

4.1 Amendments to this Memorandum of Understanding must be in writing and must be duly authorized and approved by the Transportation Commission and the Board.

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

STATE OF COLORADO
JOHN W. HICKENLOOPER, Governor

COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE

By: _____
SHAILEN P. BHATT
Executive Director
DEPARTMENT OF TRANSPORTATION

By: _____
DAVID I. SPECTOR
HPTE Director

APPROVED:

CYNTHIA H. COFFMAN
Attorney General

By: _____
Assistant Attorney General