



MEMORANDUM

TO: HPTE BOARD OF DIRECTORS
FROM: KELLY BROWN, TOLLING OPERATIONS MANAGER
DATE: JULY 18, 2018
SUBJECT: REQUEST FOR APPROVAL OF 3-YEAR EXTENSION OF E-470 TOLLING SERVICES AGREEMENT

Purpose and Requested Action

This memorandum requests that the High Performance Transportation Enterprise (HPTE) Board of Directors APPROVE the Second Amendment to the Managed Lanes Tolling Services Agreement with the E-470 Public Highway Authority (E-470 TSA), which will extend the expiration date until June 30, 2023.

Background and Details

The Managed Lanes Tolling Services Agreement with the E-470 Public Highway Authority was entered into on May 7, 2015 for a term of 5 years, expiring on June 30, 2020. Under the terms of the Managed Lanes Tolling Services Agreement, the E-470 Public Highway Authority provides lane tolling equipment installation and integration, back office transaction processing, customer service call center, violation enforcement and toll collection services for the Mountain Express Lane and I-25 North Segment 2 Express Lanes for HPTE. Task Orders have been issued under the E-470 TSA for E-470 to perform the lane tolling equipment installation and integration for the new Express Lanes on C-470 and I-25 North Segment 3 that are currently under construction. HPTE has several other Express Lanes projects that are currently in the design phase that will be in the lane tolling equipment installation and integration stages of construction when the current Managed Lanes Tolling Services Agreement with the E-470 Public Highway Authority expires on June 30, 2020.

Following previous discussions with the HPTE Board of Directors, HPTE and E-470 believe it is mutually beneficial to extend the E-470 TSA term for a period of three (3) years, to June 30, 2023, under the same terms and conditions, so that Task Orders can be issued under the E-470 TSA for E-470 to perform the lane tolling equipment installation and integration for the Express Lane projects that will be opened prior to the new expiration date of June 30, 2023.

Board Options and Recommendations

Staff requests that the Board approve the 3-year extension the Managed Lanes Tolling Services Agreement with the E-470 Public Highway Authority.

- If the 3-year extension is approved by the Board, the Managed Lanes Tolling Services Agreement with the E-470 Public Highway Authority will expire on June 30, 2023. **RECOMMENDED OPTION**
- If not approved, the Managed Lanes Tolling Services Agreement with the E-470 Public Highway Authority will expire on June 30, 2020.

Next Steps

- If approved, Staff attorneys will process for execution the Second Amendment to the Managed Lanes Tolling Services Agreement with the E-470 Public Highway Authority extending the expiration date to June 30, 2023.

Attachments

The Second Amendment to the Managed Lanes Tolling Services Agreement with the E-470 Public Highway Authority.

HPTE Resolution #269 - Approving a Second Amendment to the Managed Lanes Tolling Services Agreement with the E-470 Public Highway Authority

**SECOND AMENDMENT TO
MANAGED LANES TOLLING SERVICES AGREEMENT
BY AND BETWEEN
HIGH PERFORMANCE TRANSPORTATION ENTERPRISE
AND
E-470 PUBLIC HIGHWAY AUTHORITY**

Dated _____, 2018

DRAFT

SECOND AMENDMENT TO
TOLLING SERVICES AGREEMENT

THIS SECOND AMENDMENT TO TOLLING SERVICES AGREEMENT (“Second Amendment”) is made and entered into this _____ day of _____, 2018 by and among the **E-470 PUBLIC HIGHWAY AUTHORITY**, a political subdivision of the State of Colorado and a body corporate (the “**Authority**”) and **HIGH PERFORMANCE TRANSPORTATION ENTERPRISE** of the State of Colorado Department of Transportation (“**HPTE**”) (singularly a “**Party**” and collectively the “**Parties**”).

RECITALS

WHEREAS, the Parties entered into that Tolling Services Agreement, dated May 7, 2015 (the “**Agreement**”), to establish the overarching terms and conditions under which the Authority would provide certain toll collection, violations enforcement and customer service functions for the HPTE Tolling Facilities; and

WHEREAS, the Parties entered into a First Amendment to Tolling Services Agreement, dated _____, 2017 (“**First Amendment**”), that amended the Agreement to allow annual updates to the Performance Standards and to update certain other outdated portions of the Agreement; and

WHEREAS, the Parties now wish to amend the Agreement to extend its term for a period of three (3) years under the same terms and conditions; and

WHEREAS, Section 29(a) of the Agreement currently provides that changes to any provision in the Agreement require a written amendment, which may take the form of a Task Order, signed by the State Controller or the State Controller’s designee; and

WHEREAS, Section 30(f) also provides that the Agreement may be amended only if in writing executed by HPTE and the Authority; and

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the Parties agree as follows:

TERMS AND CONDITIONS

1. **Recitals.** The Recitals set forth above are hereby incorporated into the covenants and agreements set forth below.
2. **Section 26(a)(ii).** Section 26(a)(ii) of the Agreement is hereby amended and restated as follows:
 - ii. For a period of the eight (8) years from the date the Term commences, the Authority shall only be entitled to terminate this Agreement for cause and may not terminate the Agreement without cause. Thereafter, the Authority shall be entitled to terminate this Agreement without cause by providing a Termination Notice to HPTE, indicating that the termination is made without cause and specifying the

date the Agreement shall terminate, which date shall be twenty-four (24) months from the date of the Termination Notice, unless otherwise agreed by the Parties.

3. **Attachment 1.**

a. The definition of “Expiration Date” in Attachment 1 to the Agreement is hereby amended and restated as follows:

“**Expiration Date**” shall mean 12:01 p.m. Denver, Colorado time on June 30, 2023.

4. **Effective Date.** This Second Amendment shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (the date of which approval shall be the “**Effective Date**”).

5. **Full force and Effect.** Except as expressly modified by this Second Amendment, all provisions of the Agreement shall remain in full force and effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK, SIGNATURE BLOCKS TO FOLLOW]

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Second Amendment as of the date first written above.

E-470 PUBLIC HIGHWAY AUTHORITY

By: Tim Stewart

Its: Executive Director

APPROVED AS TO FORM:

ICENOGLE SEAVER POGUE
A Professional Corporation

General Counsel

Director of Finance

DATE APPROVED BY THE BOARD OF DIRECTORS: _____

[Signature page 1 of 2 to the Second Amendment to the Tolling Services Agreement]

HIGH PERFORMANCE TRANSPORTATION
ENTERPRISE

By: David Spector

Its: Director

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

Section 24-30-202, C.R.S. requires that the State Controller to approve all agreements. This Agreement is not valid until the State Controller, or such assistant as he may delegate, has signed it.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____

Date: _____

[Signature page 2 of 2 to the Second Amendment to the Tolling Services Agreement]

Resolution – HPTE #269

Approving a Second Amendment to the Managed Lanes Tolling Services Agreement with the E-470 Public Highway Authority

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, on May 7, 2015, HPTE entered into a *Managed Lanes Tolling Services Agreement* (the “TSA”) with the E-470 Public Highway Authority (“E-470”), which established overarching terms under which E-470 provides certain toll collection, violations enforcement and customer service functions for HPTE managed lane facilities; and

WHEREAS, at its October 17, 2017 meeting, the HPTE Board of Directors approved the First Amendment to the TSA to allow for routine annual updates to the Performance Standards that E-470 is required to meet in the performance of its obligations under the TSA; and

WHEREAS, HPTE and E-470 now find it in each party’s best interest to extend the TSA term for a period of three (3) years, under the same terms and conditions, prior to its expiration on June 30, 2020; and

NOW THEREFORE BE IT RESOLVED, the HPTE Board of Directors hereby authorizes the HPTE Director to execute and deliver the Second Amendment to the Managed Lanes Tolling Services Agreement with the E-470 Public Highway Authority 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 July 18, 2018

Anthony Meneghetti
Interim Secretary, HPTE Board