

## **Resolution – HPTE #302**

**Approving five (5) Memorandum of Understandings with the Federal Highway Administration, the Colorado Department of Transportation and the High Performance Transportation Enterprise for the I-25 South Project (Monument to Castle Rock) (“The Gap”); the Central 70 Project; the I-25 North Project (Johnstown to Fort Collins); the C-470 Project; and the I-70 Mountain Express Lane (Westbound) Project.**

**WHEREAS**, the General Assembly created the Colorado High Performance Transportation Enterprise (“HPTE”), pursuant to C.R.S. § 43-4-806 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 C.R.S. § 43-4-806(2)(c)(I) to impose user fees on the travelling public for the privilege of using surface transportation infrastructure, and is further authorized pursuant to C.R.S. § 43-4-806(2)(c)(III) to contract with any governmental or non-governmental source of funding for loans to be used in support of HPTE’s functions; and

**WHEREAS**, HPTE, in partnership with CDOT, is undertaking several surface transportation projects (the “Projects”) across the State which generally consist of the completion of new tolled express lanes; and

**WHEREAS**, pursuant to 23 U.S.C. § 129(a)(1)(B), federal participation in the Projects is permitted for the initial construction of one (1) or more toll lanes that increase the capacity of a highway if the number of toll-free non-HOV lanes, excluding auxiliary lanes, after such construction is not less than the number of toll-free non-HOV lanes, excluding auxiliary lanes, before such construction; and

**WHEREAS**, 23 U.S.C. § 129(a) further sets forth certain additional conditions applicable to toll projects receiving federal participation, including, *inter alia*, limitations on the use of revenues, certain audit requirements, and equal access for over-the-road buses and public transportation buses; and

**WHEREAS**, 23 U.S.C. 166(b)(4) provides that a State agency may allow vehicles not otherwise exempt pursuant to 23 U.S.C. 166(b) to use a HOV facility by paying a toll; and

**WHEREAS**, HPTE desires to enter into Memorandum of Understandings (“MOU”) with the Federal Highway Administration (“FHWA”) and the Colorado Department of Transportation (“CDOT”) to memorialize HPTE’s commitment to comply with the requirements of 23 U.S.C. § 129(a) and 23 U.S.C. 166(b)(4), where applicable and as amended, as an ongoing condition to federal participation in the Projects.

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

Signed as of August 21, 2019

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Simon Logan  
Secretary, HPTE Board

**MEMORANDUM OF UNDERSTANDING (MOU)  
AMONG THE  
FHWA COLORADO DIVISION OFFICE (Division),  
THE HIGH PERFORMANCE TRANSPORTATION ENTERPRISE (HPTE) AND  
THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT)**

WHEREAS, HPTE (a government owned business within CDOT) is currently constructing the C-470 Tolloed Express Lanes Design-Build Project in Colorado, from I-25 to Wadsworth Boulevard along Colorado State Route 470, and can be more specifically described as: two new westbound tolled express lanes from I-25 to Colorado Boulevard, one new westbound tolled express lane from Colorado Boulevard to Wadsworth Boulevard, and one new eastbound tolled express lane from Wadsworth to I-25 (hereinafter referred to as the "Toll Project"); and

WHEREAS, HPTE desires to implement a fixed variable toll schedule for the C-470 Express Lanes Toll Project. The new lanes will be accessible to single occupant vehicles and high occupant vehicles for a fee and go from Wadsworth Blvd. to I-25, approximately 12 miles (hereinafter referred to as the "Toll Facility"); and

WHEREAS, the Division, CDOT, and HPTE desire to enter into this MOU in order to reflect the mutual understanding that 23 U.S.C. 129(a) applies to the Toll Project; and

WHEREAS, 23 U.S.C. 129(a)(1)(B) allows for Federal participation in initial construction of 1 or more lanes or other improvements that increase the capacity of a highway, bridge, or tunnel (other than a highway on the Interstate System) and conversion of that highway, bridge, or tunnel to a tolled facility, if the number of toll-free lanes, excluding auxiliary lanes, after construction is not less than the number of toll-free lanes, excluding auxiliary lanes, before the construction.

NOW THEREFORE, the Division, CDOT, and HPTE hereby agree as follows:

1. The Toll Project meets the toll eligibility requirements of 23 U.S.C. 129(a)(1).
2. CDOT and HPTE shall comply with all requirements of 23 U.S.C. 129(a), as amended, with respect to the Toll Project and the operation of the Toll Facility.

IN WITNESS THEREOF, the parties hereto have caused this MOU to be duly executed, on the date of the last signature below.

STATE OF COLORADO  
HIGH PERFORMANCE TRANSPORTATION ENTERPRISE

BY: \_\_\_\_\_  
Nicholas J. Farber, Director

DATE: \_\_\_\_\_

STATE OF COLORADO  
COLORADO DEPARTMENT OF TRANSPORTATION

BY: \_\_\_\_\_  
Shoshana M. Lew, Executive Director

DATE: \_\_\_\_\_

FEDERAL HIGHWAY ADMINISTRATION  
COLORADO DIVISION

BY: \_\_\_\_\_  
John M. Cater, Division Administrator

DATE: \_\_\_\_\_

**MEMORANDUM OF UNDERSTANDING (MOU)  
AMONG THE  
FHWA COLORADO DIVISION OFFICE (Division),  
THE HIGH PERFORMANCE TRANSPORTATION ENTERPRISE (HPTE) AND  
THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT)**

WHEREAS, HPTE (a government owned business within CDOT) is currently constructing the Central 70 Project, a 10-mile stretch of I-70 between Brighton Boulevard and Chambers Road that adds a new Express Lane in each direction (totaling 20 miles). The Project will remove the aging 55-year-old viaduct, lower the Interstate between Brighton and Colorado boulevards, and place a 4-acre park over a portion of the lowered Interstate (hereinafter referred to as the "Toll Project"); and

WHEREAS, HPTE desires to implement a fixed variable toll schedule for the Central 70 Toll Project Express Lanes. The lanes will be accessible to vehicles qualified under the Colorado High Occupancy Vehicle Program free of charge and all other vehicles for a fee. The toll limits are between Brighton Boulevard and Chambers Road (hereinafter referred to as the "Toll Facility"); and

WHEREAS, the Division, CDOT, and HPTE desire to enter into this MOU in order to reflect the mutual understanding that 23 U.S.C. 129(a) and 23 U.S.C. 166 applies to the Toll Project;

WHEREAS, 23 U.S.C. 129(a)(1)(C) allows for Federal participation in initial construction of 1 or more lanes or other improvements that increase the capacity of a highway, bridge, or tunnel on the Interstate System and conversion of that highway, bridge, or tunnel to a tolled facility, if the number of toll-free non-HOV lanes, excluding auxiliary lanes, after such construction is not less than the number of toll-free non-HOV lanes, excluding auxiliary lanes, before such construction; and

WHEREAS, 23 U.S.C. 166(b)(4) provides that a State agency may allow vehicles not otherwise exempt pursuant to 23 U.S.C. 166(b) to use a HOV facility by paying a toll.

NOW THEREFORE, the Division, CDOT, and HPTE hereby agree as follows:

1. The Toll Project meets the toll eligibility requirements of 23 U.S.C. 129(a)(1) and 23 U.S.C 166.
2. CDOT and HPTE shall comply with all requirements of 23 U.S.C. 129(a) and 23 U.S.C. 166, as amended, with respect to the Toll Project and the operation of the Toll Facility.

IN WITNESS THEREOF, the parties hereto have caused this MOU to be duly executed, on the date of the last signature below.

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HIGH PERFORMANCE TRANSPORTATION ENTERPRISE

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THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT)**

WHEREAS, HPTE (a government owned business within the Colorado Department of Transportation) is currently constructing the North I-25 tolled Express Lanes: Johnstown to Fort Collins Project, due to be completed in 2022, and can be more specifically described as providing 34 miles (both directions) of Express Lanes from State Highway 402 to State Highway 14; rehabilitation and reconstruction of two general purpose lanes; and construction of inside and outside shoulders in both directions (hereinafter referred to as the "Toll Project"); and

WHEREAS, HPTE desires to implement a fixed variable toll schedule for the I-25 North Express Lanes Toll Project. The lanes will be accessible to vehicles qualified under the Colorado High Occupancy Vehicle Program free of charge and all other vehicles for a fee. The toll limits are between State Highway 402 to State Highway 14 (hereinafter referred to as the "Toll Facility"); and

WHEREAS, the Division, CDOT, and HPTE desire to enter into this MOU in order to reflect the mutual understanding that 23 U.S.C. 129(a) applies to the Toll Project; and

WHEREAS, 23 U.S.C. 129(a)(1)(C) allows for Federal participation in initial construction of 1 or more lanes or other improvements that increase the capacity of a highway, bridge, or tunnel on the Interstate System and conversion of that highway, bridge, or tunnel to a tolled facility, if the number of toll-free non-HOV lanes, excluding auxiliary lanes, after such construction is not less than the number of toll-free non-HOV lanes, excluding auxiliary lanes, before such construction.

NOW THEREFORE, the Division, CDOT, and HPTE hereby agree as follows:

1. The Toll Project meets the toll eligibility requirements of 23 U.S.C. 129(a)(1).
2. CDOT and HPTE shall comply with all requirements of 23 U.S.C. 129(a), as amended, with respect to the Toll Project and the operation of the Toll Facility.

IN WITNESS THEREOF, the parties hereto have caused this MOU to be duly executed, on the date of the last signature below.

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WHEREAS, HPTE (a government owned business within CDOT) is currently constructing a new tolled Express Lane in each direction (totaling 36 miles) from Monument to Castle Rock on I-25 (the “Gap”) to add capacity to the existing general purpose lanes. Improvements also include: grading, paving and installation of permanent center barriers; bridge replacements at Upper Lake Gulch Road, Spruce Mountain Road and Plum Creek; and adding new wildlife crossings (hereinafter referred to as the "Toll Project"); and

WHEREAS, HPTE desires to implement a fixed variable toll schedule for the I-25 Gap Express Lanes. The new lanes will be accessible to vehicles qualified under the Colorado High Occupancy Vehicle Program free of charge and all other vehicles for a fee. The toll limits are between Monument and Castle Rock, approximately 18 miles (hereinafter referred to as the “Toll Facility”); and

WHEREAS, the Division, CDOT, and HPTE desire to enter into this MOU in order to reflect the mutual understanding that 23 U.S.C. 129(a) applies to the Toll Project; and

WHEREAS, 23 U.S.C. 129(a)(1)(C) allows for Federal participation in initial construction of 1 or more lanes or other improvements that increase the capacity of a highway, bridge, or tunnel on the Interstate System and conversion of that highway, bridge, or tunnel to a tolled facility, if the number of toll-free non-HOV lanes, excluding auxiliary lanes, after such construction is not less than the number of toll-free non-HOV lanes, excluding auxiliary lanes, before such construction.

NOW THEREFORE, the Division, CDOT, and HPTE hereby agree as follows:

1. The Toll Project meets the toll eligibility requirements of 23 U.S.C. 129(a)(1).
2. CDOT and HPTE shall comply with all requirements of 23 U.S.C. 129(a), as amended, with respect to the Toll Project and the operation of the Toll Facility.

IN WITNESS THEREOF, the parties hereto have caused this MOU to be duly executed, on the date of the last signature below.

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WHEREAS, HPTE (a government owned business within CDOT) desires to create an approximate 12-mile tolled peak period shoulder lane on westbound I-70 between the Veterans Memorial Tunnels and the US 40/I-70 interchange, with the general purpose lanes and shoulder to be resurfaced and widened in select locations to accommodate the 11-foot peak period shoulder lane to be open for use only during peak periods, and which will otherwise serve as the shoulder of the Interstate (hereinafter referred to as the "Toll Project"); and

WHEREAS, HPTE desires to implement a dynamic variable toll schedule for the westbound I-70 Toll Project accessible to single occupant vehicles and high occupant vehicles for a fee on approximately 12 miles of I-70 between Veterans Memorial Tunnel and the US 40 interchange, (hereinafter referred to as the "Toll Facility"); and

WHEREAS, the Division, CDOT, and HPTE desire to enter into this MOU in order to reflect the mutual understanding that 23 U.S.C. 129(a) applies to the Toll Project; and

WHEREAS, 23 U.S.C. 129(a)(1)(C) allows for Federal participation in initial construction of 1 or more lanes or other improvements that increase the capacity of a highway, bridge, or tunnel on the Interstate System and conversion of that highway, bridge, or tunnel to a tolled facility, if the number of toll-free non-HOV lanes, excluding auxiliary lanes, after such construction is not less than the number of toll-free non-HOV lanes, excluding auxiliary lanes, before such construction.

NOW THEREFORE, the Division, CDOT, and HPTE hereby agree as follows:

1. The Toll Project meets the toll eligibility requirements of 23 U.S.C. 129(a)(1).
2. CDOT and HPTE shall comply with all requirements of 23 U.S.C. 129(a), as amended, with respect to the Toll Project and the operation of the Toll Facility.

IN WITNESS THEREOF, the parties hereto have caused this MOU to be duly executed, on the date of the last signature below.

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