



Date: October 16, 2019

To: High-Performance Transportation Enterprise Board / Colorado Transportation Commission

From: Nicholas Farber, Director, HPTE; Andrew Gomez, HPTE General Counsel

Subject: Intra-Agency Agreement Between HPTE and CDOT regarding WB Peak-Period Shoulder Lane and I-25 South Gap Project

Purpose

To present the Transportation Commission (TC) with key details under, and seek approval of, the Intra-Agency Agreements (IAA) between the Colorado Department of Transportation (CDOT) and the High Performance Transportation Enterprise (HPTE) for the west bound Peak-Period Shoulder Lane Project and the I-25 South Gap Project.

Action

The HPTE Board and Transportation Commission are asked to adopt a resolution that supports the staff recommendation to approve the IAAs.

General Background on CDOT-HPTE Project Intra-Agency Agreements:

IAAs between CDOT and HPTE document the substantive terms of how CDOT and HPTE work together and allocate rights and responsibilities on shared projects. State law and best practices require an IAA for each project. IAAs can include provisions re: administrative payment procedures, commercial loan terms (if any), process for requesting a back-up TC loan (if any), terms governing shared operations as well as allocation of operations and maintenance costs.

IAAs and contracts are necessary when HPTE and CDOT engage in any joint work together in order to preserve HPTE's enterprise status and to comply with TABOR. The timing of when a particular IAA is brought before the TC and HPTE Board for approval can be driven by a variety of factors such as the project procurement schedule, the need to secure financing or the opening of a managed lane corridor.

Overview of the IAAs

Below is a summary of several key areas that are important for the Board and Commission to take into consideration while reviewing the attached IAAs (Attachment A) and resolution (Attachment B). The IAAs and resolution:

- (1) Incorporate an allocation of financial responsibility related to Operations & Maintenance (O&M).
 - a. Sets forth that HPTE is responsible for operating and maintaining the constructed Express Lanes and CDOT maintains O&M responsibility for the general purpose lanes. O&M costs will be based on the total number of vehicles using all lanes along the Express Lanes in both projects. HPTE's portion of O&M costs will be calculated using total number of revenue vehicles that are legally obligated to pay a toll traveling in the tolled express lane. CDOT's portion will be calculated using all other non-revenue vehicles, including High Occupancy Vehicles (HOV - Gap Project only), and vehicles traveling in the general purpose lanes.
 - b. Outlines invoicing and payment procedures whereby CDOT shall submit an invoice to HPTE on or before January 15 and July 15 of each year for the HPTE O&M obligations due to CDOT for the prior six month period.
- (2) Recognizes that future Transportation Commissions will not be bound by budgetary and policy decisions made by the current TC.
 - a. Stipulates that the current TC cannot allocate and transfer future state highway funds for a loan to HPTE.

- b. Sets forth that any decision as to whether or not to allocate and transfer such funds to HPTE shall be made by the TC in the year in which the HPTE request occurs.

Stipulates that in the event the TC elects to make a loan to HPTE in order to satisfy any of the O&M obligations under either IAA, CDOT **may not use** Federal-aid highway funds to satisfy any expenses related to the operations and maintenance of either Express Lane project.

Options / Decision Matrix

1. **Staff Recommendation:** Approve the IAAs. CDOT and HPTE will execute the IAAs, and tolling will commence summer 2021 for WB PPSL and fall 2022 for the Gap Project.
2. Do not approve the IAAs. Reject the IAAs, explaining that Staff should work to revise certain provisions in the agreement. Staff will return in November with revised IAAs for approval.

Attachment

Attachment A: Westbound Peak-Period Shoulder Lane Express Lane Project Intra-Agency Agreement and I-25 South Gap Express Lane Intra-Agency Agreement.

Attachment B: Resolution Approving the Intra-Agency Agreements between the Colorado Department of Transportation and the High Performance Transportation Enterprise for the Westbound Peak-Period Shoulder Lane and the I-25 South Gap Express Lane Project.