

**High Performance Transportation Enterprise
Board of Directors Special Meeting Minutes
CDOT Headquarters Building, Rm. 284
August 24th, 2011**

PRESENT: Charlotte Robinson (via phone)
Trey Rogers (via phone)
Stan Matsunaka (via phone)
Dan Cleveland (via phone)
Tim Gagen (via phone)
Heather Barry (via phone)

ABSENT: Doug Aden

ALSO PRESENT: Michael Cheroutes, HPTE Director
Marina Krasny, HPTE Accountant
Jane Hickey, HPTE Executive Assistant
Kari Grant, HPTE Program Deputy
Kathy Young, HPTE Legal Counsel
David Scott, Hogan Lovells, Disclosure Counsel

AND: Other organization representatives.
All supporting documents are filed in the HPTE office.

1. Call to order and Roll Call

Chairwoman Robinson convened the HPTE Board of Directors special meeting at 8:10 a.m.

2. Discuss and Act on Revised FY12 Budget Amendment.

HPTE Director Mike Cheroutes explained this amendment is intended to increase the line item under HPTE staff which is necessary to accommodate the additional FTE that the Board discussed in last week's Executive Session.

Director Cleveland moved to approve the budget amendment, and Director Matsunaka seconded. Upon a vote of the Board, the budget amendment was passed unanimously.

Resolution HPTE-47

BE IT HEREBY RESOLVED, that the Revised Budget for the Fiscal Year 2011 – 2012 is approved by the High Performance Transportation Enterprise Board.

3. Discuss and Act on Resolution Authorizing Master Trust Indenture, 2011 Supplemental Trust Indenture, TIFIA Loan Agreement, and other necessary agreements for US 36 Managed Lane Project.

Mike said we are on track to close the TIFIA Loan on September 1. Fitch Ratings has given the project an investment grade rating, and RTD has also come to agreement to authorize a

\$120 million grant to the project. TIFIA is the only loan borrowing document, and is secured by a senior lien on the managed lanes. Mike noted that the loan will be in the amount of \$54 million. That loan will begin in 2015, at a 3.48% interest rate.

The Master Trust Indenture controls the US 36 Phase 1 and Phase 2 revenues, in a pledge of revenues in order of specific priorities, and sets the architecture for future borrowings. The Master Trust Indenture is friendly to a possible P3 solution for Phase 2, and also provides for bonding.

The 2011 Supplemental Indenture authorizes the specific TIFIA loan agreement, and specifies the use of I-25 excess revenues to pay the operation and maintenance costs on Phase 1, as well as a commitment by CDOT to cover any I-25 revenue shortfalls. This matter is now before the Board to authorize basic lending documents.

Chairwoman Robinson asked what the final rating from Fitch is, and Mike said it is BBB-. He noted this is actually a good rating for this kind of project. There were no other questions. Director Rogers moved to approve the Resolution authorizing the Master Trust Indenture, the 2011 Supplemental Indenture, the TIFIA Loan agreement and other necessary documents, and Director Cleveland seconded. Upon a vote of the Board, the motion passed unanimously.

High Performance Transportation Enterprise Resolution – HPTE- 48

WHEREAS the General Assembly created the Colorado High Performance Transportation Enterprise (HPTE) as a government-owned business within the Colorado Department of Transportation (CDOT), pursuant to Section 43-4-806 C.R.S.; and

WHEREAS the purpose of the HPTE is to aggressively pursue innovative means of more efficiently financing important surface transportation projects that will improve the safety, capacity, and accessibility of the surface transportation system, can feasibly be commenced in a reasonable amount of time, will allow more efficient movement of people, goods, and information throughout Colorado, and will accelerate the economic recovery of Colorado; and

WHEREAS such innovate means of financing projects include, but are not limited to, public-private partnerships, operating concession agreements, user fee-based project financing, and availability payment and design-build contracting; and

WHEREAS HPTE has been pursuing, with the US Department of Transportation (DOT), a Transportation Infrastructure Finance Innovation Act (TIFIA) loan for purposes of financing construction of the US 36 Managed Lanes Project; and

WHEREAS HPTE and US DOT representatives have been negotiating the terms of the TIFIA loan agreement and the accompanying Master Trust Indenture and First Supplemental Trust Indenture they are in substantially final form; and

WHEREAS the HPTE Board of Directors pursuant to Section 43-4-806(6)(a) and (h) has the power and duty to supervise the HPTE Director and to make and enter into all other contracts or agreements; and

NOW THEREFORE BE IT RESOLVED: the HPTE Board of Directors hereby approves and authorizes the HPTE to enter into the TIFIA Loan Agreement, the Master Trust Indenture, and the First Supplemental Trust Indenture and any and all other agreements necessary to implement the plan of finance for the US 36 Managed Lanes Project in substantially the form available at the meeting at which the resolution is being adopted, with such changes, not inconsistent with the resolution, as the HPTE Director determines are necessary to implement the financing plan and close. The HPTE Board of Directors hereby authorizes the HPTE Director to sign these documents on behalf of the HPTE.

4. Discuss and Act on Resolution Authorizing Intra-Agency Loan Agreement for O&M Expenses for US 36 Managed Lane Project.

Mike said this is the Resolution that authorizes and agreement with CDOT, by which CDOT agrees and HPTE obligates itself to make and repay operation and maintenance loans from CDOT in the event that excess revenues from I-25 are not sufficient to pay O & M costs on US 36 Phase One. He said he does not expect this to happen, but the agreement is in place to formalize the commitments on both sides for TIFIA's purposes.

There were no questions or discussion on this item. Director Gagen moved to approve, and Director Matsunaka seconded, and the motion passed unanimously.

High Performance Transportation Enterprise – HPTE-49

Approving the Intra-Agency Loan Agreement for O&M Expenses for US 36 Managed Lanes as Part of HPTE's TIFIA Loan Process

WHEREAS, the High Performance Transportation Enterprise (HPTE) was authorized and created pursuant to C.R.S. 43-4-806 as a government-owned business, a TABOR-exempt enterprise and a division of CDOT charged with aggressively pursuing innovative means of financing surface transportation projects; and

WHEREAS, HPTE has been pursuing, with the US DOT, a Transportation Infrastructure Finance and Innovation Act (TIFIA) loan for purposes of financing construction of the US 36 Managed Lanes Project; and

WHEREAS, a key issue for approval of a TIFIA loan for the project is providing assurance to US DOT that the US 36 Managed Lanes, once constructed, will be properly operated and maintained; and

WHEREAS, the primary source for payment of operation and maintenance (O&M) expenses for the US 36 Managed Lanes is the excess revenue generated by the I-25 Express Lanes; and

WHEREAS, the I-25 Express Lanes currently generate sufficient revenues to cover O&M expenses for the US 36 Managed Lanes but the US DOT has requested a back-up source for O&M expenses if the I-25 Express Lanes revenues prove insufficient; and

WHEREAS, the US 36 Managed Lanes Project will not open for a number of years and HPTE will not know until some future date whether the I-25 Express Lanes revenues will be insufficient to pay O&M expenses; and

WHEREAS, C.R.S. 43-4-806(4) authorizes the Transportation Commission to transfer money from the state highway fund to HPTE to defray expenses of HPTE and provides that such a transfer shall be treated as a loan and shall not be considered a grant for purposes of TABOR; and

WHEREAS, an Intra-Agency Loan Agreement has been developed which details a process among HPTE, CDOT and the Transportation Commission in the event HPTE needs to request an O&M loan, in the future, for the US 36 Managed Lanes; and

WHEREAS, the HPTE Board of Directors has reviewed the Intra-Agency Loan Agreement and desires to state its intention, subject to the terms of this resolution and the Intra-Agency Loan Agreement, to request and accept a loan from CDOT if necessary in future fiscal years to cover US 36 Managed Lanes O&M expenses; and

WHEREAS, the HPTE Board of Directors recognizes and respects the legal principle that it cannot bind future HPTE Boards of Directors with respect to budgetary and policy decisions and agrees that any decision as to whether or not to request a loan from CDOT to cover US 36 O&M expenses shall be made by the HPTE Board of Directors, in its sole discretion, in the year in which the transfer is to occur.

NOW THEREFORE BE IT RESOLVED, the HPTE Board of Directors approves and authorizes the HPTE Director to enter into the Intra-Agency Loan Agreement for O&M Expenses for the US 36 Managed Lanes Project in substantially the form available at the meeting at which the resolution is being adopted, with such changes, not inconsistent with the resolution, as the HPTE Director determines are necessary or desirable, it being expressly understood that the Intra-Agency Loan Agreement details a process for HPTE to seek future O&M Loans from CDOT, and that any decision to request a loan to cover future US 36 Managed Lanes O&M expenses shall be made by the HPTE Board of Directors, in its sole discretion, in the year in which the loan is to be made.

5. Discuss and Act on Resolution Accepting Transfer of Federal Funds to HPTE for US 36 Managed Lane Project.

HPTE Legal Counsel Kathy Young explained that this Resolution is to transfer the remaining \$9.1 million in TIGER grant funds and other Federal funds to HPTE. Mike noted this is a transfer of non-TABOR revenue to the Enterprise.

There were no questions or further discussion. Director Rogers made the motion to approve the Resolution, and Director Matsunaka seconded. Upon a vote of the Board, the motion was approved unanimously.

High Performance Transportation Enterprise HPTE-50

Approving Transfer of Remaining TIGER Grant Funds to HPTE together with CMAQ and METRO STP Funds for the US 36 Managed Lanes Project

WHEREAS, the High Performance Transportation Enterprise (HPTE) was authorized and created pursuant to C.R.S. 43-4-806 as a government-owned business, a TABOR-exempt enterprise and a division of CDOT charged with aggressively pursuing innovative means of financing surface transportation projects; and

WHEREAS, CDOT was awarded a \$10 million Transportation Investments for Generating Economic Recovery (TIGER) Challenge grant by the US Department of Transportation (US DOT) in February 2010 for the US 36 Managed Lanes Project; and

WHEREAS, the intent of the TIGER Challenge grant was to provide incentive to Colorado to pursue up to \$100 million in funding for the US 36 Corridor through the Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program; and

WHEREAS, HPTE has been pursuing, with the US DOT, a TIFIA loan for purposes of financing construction of the US 36 Managed Lanes Project; and

WHEREAS, the Transportation Commission previously approved, by Resolution #TC-1863 dated May 20, 2010, transfer of up to \$900,000 of the \$10 million TIGER Challenge grant by CDOT to HPTE to conduct work necessary to seek a TIFIA loan; and

WHEREAS, HPTE has and will continue to incur costs associated with the TIFIA loan, including possible payment of a credit subsidy to US DOT, closing costs and associated costs incurred for the TIFIA loan; and

WHEREAS, the balance of the TIGER Challenge grant, consisting of \$9.1 million, is appropriately transferred to and administered by HPTE to pay for its share of US 36 Managed Lanes Project costs, including HPTE costs for a possible credit subsidy payment to US DOT and other costs incurred in connection with closing on the TIFIA loan, with any remaining balance of the TIGER Challenge grant being used by HPTE for direct project costs for the US 36 Managed Lanes Project; and

WHEREAS, additional federal funds committed to the US 36 Managed Lanes Project, including \$16,715,000 in CMAQ and \$27,285,000 in METRO STP funds made available through the Denver Regional Council of Governments (DRCOG) are appropriately transferred to and administered by HPTE because the DRCOG funds were committed to the US 36 Managed Lanes Project to pay for the Bus/HOV/Managed Lanes elements of the project; and

WHEREAS, all of the funds contemplated for transfer to and administration by HPTE pursuant to this Resolution are federal funds and therefore do not constitute "state or local funds" for purposes of Article X, Sec. 20 of the Colorado Constitution; and

NOW THEREFORE BE IT RESOLVED, the HPTE Board of Directors hereby approves and accepts the transfer from the Transportation Commission of Colorado to HPTE of the remaining \$9.1 million in TIGER Challenge grant funds, to be utilized first for HPTE costs incurred in connection closing of the TIFIA loan with remaining TIGER funds to be used by HPTE for direct US 36 Managed Lanes Project costs; and

BE IT FURTHER RESOLVED, the HPTE Board of Directors hereby approves and accepts the transfer from the Transportation Commission of Colorado to HPTE of \$16,715,000 of CMAQ funds and \$27,285,000 in METRO STP funds committed by DRCOG for direct project costs of the US 36 Managed Lanes Project.

6. Discuss Matters Pertaining to I-70 West.

For the record, Mike advised the Board that the HPTE has received an unsolicited proposal according to recently-adopted procedures. The proposal is related to improvements to I-70 West from C-470 to Silverthorne, in a first phase. The staff is taking an internal look at the proposal to determine that it meets the established criteria in the procedures. If it does, then there is a more formal evaluation process. If the Enterprise determines to proceed further with the proposal, it will issue an RFP for comparable proposals. He noted that a press release will be issued later today. Since the proposer considers the unsolicited proposal to be proprietary information, Mike advised the Board they cannot talk about the proposal in any more detail than this.

Mike noted that CDOT is moving ahead with planned improvements at the Twin Tunnels. Although this does not directly involve the HPTE at this time, there is some consideration of congestion management through the tunnels.

7. Discuss Matters Relating to Revenue Sustainability.

Mike suggested a subcommittee of the Board focus on this over the next six months to come up with ideas on sustainable revenue sources for the Enterprise. Chairwoman Robinson agreed, and noted this is even more important in light of the receipt of the unsolicited proposal. Kathy Young said the Board could appoint such a committee now. It was determined that Chairwoman Robinson, and Directors Aden and Matsunaka would form the committee, and begin meeting with Mike after Labor Day. Any ideas or recommendations from the committee would be discussed at the next Regular meeting of the Board.

8. Adjournment.

Chairwoman Robinson adjourned the meeting at 9:05 a.m.