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I-70 EAST PROJECT SOURCES AND FLOW OF FUNDS

The purpose of this memorandum is to provide guidance in relation to the sources of funding for the I-70 East Project (the “**Project**”).¹ The structure of payments made to the developer of the I-70 East Project will be as follows:

1. During the construction period, there will be a series of Milestone Payments made from Colorado Bridge Enterprise (“**CBE**”) / High Performance Transportation Enterprise (“**HPTE**”) (collectively “**Procuring Authorities**”) payable upon the completion of certain clearly specified milestones set out in the Project Agreement (“**Project Agreement**”), including substantial completion of the Project (“**Milestone Payments**”); and
2. During the operations period (the time after substantial completion), each month a single Availability Payment will be made by the Procuring Authorities, which payment will be comprised of:
 - (a) a capital payment (“**Capital Payment**”), intended to provide a repayment, and return to the developer, of the debt and equity invested in the construction and development of the Project; and

¹ References to the Project in this memorandum are to the project that is the subject of the procurement process contemplated by the Request for Qualifications dated March 25, 2015 (as modified by an Addendum dated May 29, 2015, the “**RFQ**”) and the Request for Proposals dated [], 2015 (the “**RFP**”), both issued by HPTE and CBE. As noted in the RFQ and the RFP, this procurement process is proceeding concurrently with the ongoing National Environmental Policy Act of 1969 (“**NEPA**”) review process being conducted by the Federal Highway Administration (“**FHWA**”) with CDOT in relation to the I-70 East Corridor. The RFQ, the RFP and this memorandum anticipate that the NEPA process will conclude with a determination that the re-construction of the I-70 East Corridor should use a technical solution colloquially known as the “Partial Cover Lowered Alternative.” The Project as referred to in this memorandum, and which is the subject of the RFQ and the RFP, corresponds to the first phase of the Partial Cover Lowered Alternative. CDOT cannot definitively commit to the Partial Cover Lowered Alternative, or any other technical solution, until the conclusion of the NEPA process, and nothing in this memorandum shall be deemed to constitute such a commitment or indicate that any decision has been made in relation to the outcome of the NEPA process.

- (b) an OMR payment (“**OMR Payment**”), intended to provide a revenue stream to the developer to allow it to fund its operations, maintenance and rehabilitations responsibilities under the Project Agreement.

Each of these three payments has a clear source which has been, or will be, committed to this Project in various forms. Each of these payments, and its respective source, is discussed in detail below.

This memorandum also provides information on the statutory, appropriations and budgetary processes that need to be complied with to permit such funds to be available to make these payments.

The three State entities involved in the Project are CBE, HPTE, and the Colorado Department of Transportation (“**CDOT**”), although it has been agreed that CBE and HPTE will conduct the procurement of the Project on behalf of the State of Colorado (the “**State**”). Summary descriptions of each of these entities are set out in, respectively, Appendices 1, 2 and 3 to this memorandum. The City and County of Denver (“**Denver**”) will also participate in funding as the result of an intergovernmental agreement with CDOT, CBE, and HPTE, as will the Denver Regional Council of Governments (“**DRCOG**”).

I. SUMMARY OF FUNDING FOR THE I-70 EAST PROJECT

The funding for the Milestone, Capital, and OMR Payments (together with pre-financial-close development costs, such as right-of-way acquisition and environmental assessment (“**Owner Pre-Development Costs**”)), but excluding private financing and transaction costs) by source and amount, is as follows:

A. Milestone Payments During Construction, Capital Payments, and Owner Pre-Development Costs

1.	CBE	\$850 million (NPV)
2.	SB 09-228 Funds	\$184.59 million
3.	Federal CMAQ Congestion Mitigation and Air Quality Funds Through DRCOG	\$ 50 million
4.	It is intended that the remainder of the Project’s funding will be sourced from P3 Developer debt or equity funds.	

B. OMR Payments

1.	City and County of Denver	\$ 37 million (NPV)
2.	CDOT	\$ TBD (amount to be finalized as OMR scope is refined)
3.	HPTE	\$TBD (amounts from toll revenue generated by the I-70 managed lanes)

The funding provided by CBE and HPTE is not subject to annual appropriation by the Colorado General Assembly.

The SB 09-228 funds are payable to CDOT from the State's general fund pursuant to existing legislation (SB 09-288) and, therefore, so long as SB 09-288 is in effect, do not need to be appropriated by the Colorado General Assembly on an annual basis.

The availability of the federal CMAQ funds is contingent on those funds being budgeted and appropriated by the federal government, but no State appropriation is required. However, the developer under the Project Agreement will not be required to assume the federal appropriations risk.

The funding from Denver, which begins upon substantial completion of the Project, is subject to annual appropriation by the Denver City Council (see further II.D below). However, the developer under the Project Agreement will not be required to assume this appropriations risk.

None of the payments shall be considered a debt of CDOT, CBE, HPTE, the State, or of Denver or DRCOG, except for the CBE and HPTE funding which, as described below, will be an obligation to pay the developer under the Project Agreement.

II. SOURCES OF FUNDING

A. CBE - \$850 Million (NPV)

CBE has committed to provide a maximum of \$850 million (net present value) of CBE revenues, primarily Bridge Surcharges (as defined in Appendix 2), for the Project. A portion of the CBE funds will be used for certain Owner Pre-Development Costs and the remaining portion will be used to pay a portion of the Milestone Payments and Capital Payments under the Project

Agreement. Currently, CBE has \$300 million of Series 2010A Bonds outstanding secured by a senior lien on the revenues of CBE. CBE revenues can be used only for CBE-eligible costs as described below. Under the CBE Bond Indenture, the Series 2010A Bonds and any additional senior bonds/obligations issued or incurred by CBE have a first priority lien on all CBE revenues (primarily the Bridge Surcharge revenues). It is CBE’s intent to preserve its ability to utilize revenues not committed to the Project for future debt on a senior or parity basis with any obligations issued for the Project.

CBE has committed up to fifty percent (50%) of its available revenues, after required debt service on the Series 2010A Bonds, to the Project, during the thirty year operational period of the Project following substantial completion to fund CBE-eligible costs on the Project.² CBE is further permitted to allocate additional funds in excess of fifty percent of available CBE revenues during the estimated five year construction period, provided that the minimum amounts set forth in the table below remain available for other CBE projects in each year during the Project construction period. Total CBE payments to the Project are further limited to the ranges set forth in the table below in each fiscal year, and the total CBE contributions to the Project during the estimated five year construction period shall not exceed a total of \$350 million. Subject to such limitations and the overall \$850 million (NPV) maximum commitment, all remaining CBE revenues, including CBE’s unallocated fund balances, are available for use on the Project.

CBE Funding Commitments During Project Construction Period (in millions)

	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Total
Minimum Available CBE Program Funding for non-I-70 East Projects	\$80	\$55	\$55	\$55	\$55	\$300
Maximum CBE Payments for I-70 East in Fiscal Year	\$0 - \$125	\$0 - \$175	\$0 - \$175	\$0 - \$175	\$0 - \$175	\$350

Annual Appropriation Not Required for CBE Revenues

All revenues received by CBE, including the Bridge Surcharges, must be deposited into the Special Revenue Fund (as defined in Appendix 2) held within the State Treasury. Moneys on deposit in the Special Revenue Fund are not subject to annual appropriation by the Colorado General Assembly or annual allocation by the State Transportation Commission (see Appendix 2).

² Resolution #BE 15-8-2 (Establishing CBE Funding Eligibility Criteria and Commitments for the I-70 East Project), adopted by the CBE Board of Directors on August 20, 2015.

As provided in SB 09-108, CBE constitutes an “enterprise” for the purposes of Section 20 of Article X of the State Constitution (commonly referred to as “**TABOR**”), and accordingly, is not subject to the debt, revenue and spending limitations of TABOR as long as it receives less than ten percent (10%) of its total revenues in grants from the state and local governments combined. The result is that the CBE can issue debt or incur multiple-fiscal year financial obligations without a vote of the electorate, and its revenue and spending is not subject to TABOR. (Note that TABOR limits the total revenue that the State may spend during a single fiscal year. Under TABOR, State revenues may not grow at a rate exceeding that of inflation plus population growth. Any revenue in excess of this calculation must be returned to taxpayers. These limitations do not apply to revenue and spending of enterprises.)

Recent litigation challenged CBE’s status as an enterprise and whether the Bridge Surcharge was a tax, rather than a fee, and therefore required a vote of the electorate. The Colorado Court of Appeals determined that CBE is an enterprise, and that the Bridge Surcharge is a fee. The Colorado Supreme Court has denied the request to hear an appeal. See TABOR Foundation v. Colorado Bridge Enterprise, 2014 COA 106, petition; cert. denied, No. 14SC766, 2015 Colo. 596 (Colo. June 29, 2015).

CBE funding, therefore, is not subject to the annual appropriations process of the State and the General Assembly. The CBE Board budgets and allocates Bridge Surcharges and its other revenues and, by signing the Project Agreement, will be obligated to budget and allocate moneys to Milestone Payments and Capital Payments payable to the developer under the Project Agreement.

Restrictions on Use of CBE Funding

The statutes establishing and governing CBE provide direct guidance on the permitted uses of CBE revenue. C.R.S. § 43-4-805(3)(c) provides broad authorization for CBE to expend moneys to fund, and to financially obligate itself to finance, the administration, planning, financing, repair, reconstruction, replacement, or maintenance of Designated Bridges (as defined in the statutes), and for the acquisition of land to the extent it is required in connection with any Designated Bridge project identified and authorized pursuant to C.R.S. § 43-4-805(5)(f). The Project includes a number of Designated Bridges, including the reconstruction of the existing I-70 viaduct from Brighton Boulevard to Colorado Boulevard and its replacement with the Partial Covered Lowered Alternative (“PCL”). A “Designated Bridge” is also defined to include “any roadways, sidewalks, or other infrastructure connected or adjacent to or required for the optimal functioning of the bridge.”

CBE’s broad statutory authorization would generally permit funding of any work broadly connected with the reconstruction of Designated Bridges. However, in order to provide consistency in bridge-eligibility designations statewide, as well as to maximize the reach and

effectiveness of Bridge Surcharge revenues, the CBE Board has adopted more conservative general project eligibility criteria, including the *Colorado Bridge Enterprise Cost Eligibility Criteria for the I-70 East Project* (the “CBE-Eligible Criteria”), effective August 20, 2015, which will be utilized to determine CBE-eligible costs for the Project. (Some modifications to CBE’s general criteria were required, as the general criteria contemplate an in-kind replacement of bridges, rather than the reconstruction of the viaduct with the below-grade PCL being considered for the Project.) The CBE-Eligible Criteria, which can be altered at any time at the CBE Board’s discretion, generally do not permit Bridge Surcharge revenues to be utilized for costs related to capacity expansions, new connections that are not required under an approved local transportation plan, or enhancements not required in by an approved environmental document.

Only CBE-eligible costs meeting the CBE-Eligible criteria within the limits of a Designated Bridge project are eligible for funding from Bridge Surcharge revenues. Because the below-grade PCL being considered to replace the existing viaduct would not be a Designated Bridge following reconstruction, subject to the completion of the NEPA process, post-construction OMR would not be considered a CBE-eligible expense.

B. SB 09-228 – Current Estimate \$184.59 Million in Fiscal Year 2015-2016

To the extent available, SB 09-228 funds will be used to make Milestone Payments, Capital Payments, and certain Owner Pre-Development Costs. In 2009, the General Assembly enacted Senate Bill 09-228 (“**SB 228**”), which updated State laws governing the State’s General Fund transfers. Among its provisions, the new law required that, when Colorado personal income (meaning the total personal income for Colorado) reaches or exceeds five percent (5%) annual growth, a five-year block of transfers is made from the General Fund to:

- 1) Highway Users Tax Fund (“**HUTF**”);
- 2) Capital Construction Fund; and
- 3) General Fund statutory reserve.

This transfer continues throughout the five years, even if personal income growth falls below five percent (5%) during that period. For transportation, the transfer is equivalent to two percent (2%) of total annual General Fund revenues. Only transfers to the HUTF are directly available for the Project. In accordance with SB 228, all transfers to the HUTF must be paid to CDOT via the State Highway Fund. Ten percent (10%) of the transfer to CDOT must be used for transit projects, leaving ninety percent (90%) of the annual transfer available for other transportation projects.

SB 228 funding could be reduced or eliminated due to a TABOR surplus (as defined in Appendix 2). If the TABOR refund in any State fiscal year (i.e. July 1 - June 30) is between one

and three percent (3%) of total General Fund revenues, CDOT's SB 228 transfer is reduced by 50 percent (50%) for that year. If the TABOR refund exceeds three percent (3%) of total General Fund revenues in any fiscal year, the transfer is eliminated for that year.

The Office of State Planning and Budgeting (“OSPB”) recently completed “The Colorado Economic Outlook, Quarterly Economic and Fiscal Review, June 19, 2015.” In summary, OSPB is projecting that, for the fiscal year 2015-2016, the numbers indicate that the transfers for transportation will not be reduced and, as a result, \$205.1 million will be available for transportation projects. Of that amount, ten percent (10%) is allocated to transit projects.

Therefore, it is projected that \$184.59 million will be available for the Project for fiscal year 2015-2016. However, for fiscal year 2016-2017, the projection is that no funds would be transferred. While the original projection was for \$180 million (\$90 million for each of these two fiscal years), the current projection is that \$184.59 million would be transferred in fiscal year 2015-2016, with no funds transferred in fiscal year 2016-2017.

The final TABOR calculation, determining the final amount of SB 228 funding available, will not be known until March 2016. It is possible that, even if the TABOR calculations do not change, the Colorado General Assembly will amend the statute and transfer some or all of the SB 228 funds to the General Fund. Should SB 228 funds be available, no more than 80 percent (80%) will be transferred to the HUTF in April 2016 and the remaining 20 percent (20%) no earlier than January 2017.

The OSPB Quarterly Economic and Fiscal Review stated the following, at page 54:

TABOR refund amounts will affect transfers to transportation and capital construction (SB 09-228 transfers) – In addition to activating distributions of refunds to taxpayers, projected revenue in excess of the Referendum C³ cap affects the transfers to transportation and capital construction created by Senate Bill 09-228, as specified by Section 24-75-219, C.R.S. Because total personal income in Colorado grew by more than 5 percent in 2014, this statute requires transfers of General Fund revenue to the Highway Users Tax Fund and the Capital Construction Fund for five years starting in FY 2015-16. However, these transfers are reduced by half if there is a TABOR refund in the same fiscal year in

³ Since 1992, state fiscal year spending has been subject to TABOR, which limits spending of TABOR revenue to the prior fiscal year's expenditures and reserve increases grown by inflation and population growth. Referendum C, approved by voters in 2005, allows the state to retain and spend money from existing revenue sources above the TABOR limit each year beginning in FY 2005-06. The state may spend all revenue subject to TABOR for five years through FY 2009-10. Beginning in FY 2010-11, the state may spend revenue above the TABOR limit up to a capped amount known as the “Referendum C cap.” The Referendum C cap grows from the prior year's cap instead of the prior year's spending by inflation plus population growth. In effect, Referendum C eliminated the “ratchetdown” effect, where spending decreases when revenue falls below the TABOR limit. (Colorado Legislative Council Staff Memorandum, July 6, 2009.)

an amount between 1 and 3 percent of total General Fund revenue. The transfers are suspended in full if there is a TABOR refund in excess of 3 percent of total General Fund revenue.

The projected TABOR refund in FY 2015-16 represents an amount equal to 0.7 of General Fund revenue. Therefore, the transfers for transportation and capital construction should be made at an unreduced level of \$205.1 million and \$51.3 million, respectively, in FY 2015-16. However, a small increase in revenue subject to TABOR could push the TABOR refund above 1 percent of General Fund revenue, decreasing the transfers by one-half. According to current projections, the transportation transfer of \$218.5 million and capital construction transfer of \$54.6 million in FY 2016-17 will be reduced to zero because the TABOR refund is expected to be larger than 3 percent of total General Fund revenue. This forecast projects the refund to be 3.5 percent of total General Fund revenue in FY 2016-17.

SB 228 funds, when available under the statute, flow automatically to the HUTF, and then to the State Highway Fund. They are not annually appropriated by the Colorado General Assembly. They are subject to annual allocation by the Transportation Commission.

C. **Funding from Congestion Mitigation and Air Quality Funds (“CMAQ Funds”) through the Commitment to DRCOG - \$50 Million**

CMAQ Funds will be used to pay portions of the Milestone Payments and Capital Payments, and to fund certain Owner Pre-Development Costs.

CMAQ Funds are authorized in the federal multi-year transportation authorization bills, the most recent of which is MAP-21, and its numerous short-term extensions. The funds are authorized from the Federal Highway Trust Fund and technically flow to CDOT through DRCOG. However, the funds from DRCOG’s commitment will be in CDOT Region 1’s pool for the appropriate years as follows in the TIP: \$6 million in FY 2017, \$3 million in FY 2018, and \$16 million in FY 2019.⁴ Although DRCOG has not yet committed CMAQ Funds for the next TIP cycle in the FY 2020-23 period, the DRCOG Board of Directors unanimously passed a resolution at its June 25, 2014 meeting, establishing a commitment in principle to contribute up to \$50 million in controlled federal funds to CDOT towards the Project.

DRCOG is a nonprofit, voluntary association of 56 local governments in the Denver region. While DRCOG is a public agency, it is not a unit of government and does not have the statutory authority to require local governments to be members or follow its plans. DRCOG also serves as the Metropolitan Planning Organization (“MPO”) for Denver. As an MPO, DRCOG is

⁴ These are references to federal fiscal years (i.e. October 1 to September 30).

responsible for planning, programming, and coordinating federal investments. DRCOG does not have the statutory authority to tax, issue bonds, or legislate.

CMAQ Funds are not subject to the State's appropriation process. These funds do require DRCOG commitment (which as noted above has already been made) and inclusion in the TIP allocations, and they also require CDOT to identify them for a specific project. CMAQ Funds, as federal funds, require federal action and if Congress either does not continue to authorize them or does not find funds to add to the diminishing Federal Highway Trust Fund, then these funds may not be available in future years. Congress is currently considering various options for a long-term reauthorization bill but its form, structure, and passage remain uncertain. However, the developer will not be required to assume the risk of non-availability of such funds under the terms of the Project Agreement.

D. City and County of Denver Funds - \$37 Million (NPV)

Denver is a home rule city and political subdivision created by the Colorado Constitution. CDOT/CBE/HPTE and Denver have approved an inter-governmental agreement ("IGA"), pursuant to which Denver and the State have agreed upon a variety of items important to the Project, including an agreement on the valuation and payment amount for the State's acquisition of needed right-of-way for the Project, and Denver's agreement to waive permit and other fees for the Project. In return, the State has agreed to include as part of the Project certain transportation improvements and enhancements that Denver requested.

Denver, in turn, has agreed to make annual payments of \$2,688,010 to the State for thirty years, beginning upon substantial completion of the Project, that are currently planned to be used to make a portion of the OMR Payments as they become payable under the Project Agreement. Denver's annual payments are subject to annual appropriation by the Denver City Council. However, the risk of non-appropriation will not be that of the developer, as the Procuring Authorities will bear the risk of the unavailability of such funds to make payments under the Project Agreement.

III. SOURCE OF FUNDING FOR OMR PAYMENTS

It is anticipated that Denver's annual payment of \$2,688,010 pursuant to the IGA will be used to fund a portion of the OMR Payments.

It is also expected that CDOT will continue to pay for operations and maintenance costs for the Project as it currently does for this part of the I-70 corridor, together with any rehabilitation costs, and will therefore contribute to the funding of the OMR Payments (although the obligation to make such payments under the Project Agreement will be an obligation of the Procuring Authorities).

In addition, HPTE anticipates contributing tolling revenue from the Project's managed lanes for the OMR Payments.

IV. ANNUAL APPROPRIATIONS - SUMMARY

The primary sources of funding for Milestone Payments and Capital Payments, namely CBE funds, Federal CMAQ Funds (DRCOG) and SB 228 funds, do not require annual appropriation, or any appropriations, by the Colorado General Assembly.

The Denver funds, to be used to pay a portion of the OMR Payments, are subject to annual appropriation by the Denver City Council (although the developer will not be required to assume the risk of non-appropriation). Any CDOT or HPTE funds that are used to pay a portion of the OMR Payments do not require annual appropriations, or any appropriations, by the Colorado General Assembly. Any CDOT contributions (but not HPTE contributions) are subject to annual allocation by the Transportation Commission. Any tolls collected by HPTE that are used to pay a portion of the OMR Payments do not require annual appropriations, or any appropriations, by the Colorado General Assembly or annual allocation by the Transportation Commission.

To the extent other funds are to be utilized for the Project, each source must be analyzed separately. However, if any additional CDOT funds are to be used from the HUTF, those funds do not require annual appropriation, or any appropriation, by the Colorado General Assembly, but will require allocation by the Transportation Commission.

Appendix 1

Colorado Department of Transportation (“CDOT”)

CDOT is an executive department of the State, with all of the powers, duties, and privileges permitted by Title 43, Colorado Revised Statutes, as amended. CDOT is under the direction of the Executive Director, who works in conjunction with the State of Colorado Transportation Commission (the “**Transportation Commission**”), which, among other matters, promulgates and adopts all budgets and all State transportation programs. The Transportation Commission is appointed by the Governor and confirmed by the Colorado Senate. In cooperation with the Transportation Commission, other State entities, and local, federal, and private entities, CDOT is responsible for the planning, development, and construction of public highways and other components of the transportation network for the State. CDOT has no taxing powers.

Appendix 2

Colorado Bridge Enterprise (“CBE”)

CBE was formed in 2009 as part of the Funding Advancement for Surface Transportation and Economic Recovery) (“**FASTER**”) legislation (SB 09-108) (C.R.S § 43-4-805). It operates as a government-owned business within CDOT. The Transportation Commission serves as CBE’s Board. Additionally, the CBE Director is appointed by the Transportation Commission with the consent of CDOT’s Executive Director. Currently, CDOT’s Executive Director serves as the CBE Director.

The purpose of CBE is to finance, repair, reconstruct, and replace bridges designated as structurally deficient or functionally obsolete, and rated “poor” according to federal guidelines. In order to accomplish this purpose, a bridge safety surcharge ranging from \$13 to \$32 has been imposed on most vehicles registered in the State based upon vehicle weight. Revenues from the bridge safety surcharge fee (the “**Bridge Surcharges**”) were approximately \$100 million for the fiscal year ended June 30, 2015. CBE has no taxing powers. The FASTER statute sets forth the limits of the Bridge Surcharges that can be imposed by CBE.

As provided in FASTER, CBE constitutes an “enterprise” for the purposes of Section 20 of Article X of the State Constitution (commonly referred to as “**TABOR**”) and, accordingly, is not subject to the revenue and spending limitations of TABOR as long as it receives less than ten percent (10%) of its total revenues in grants from the State and local governments combined. Note that TABOR limits the total revenue that the State may spend during a single fiscal year. Under TABOR, State revenues may not grow at a rate exceeding that of inflation plus population growth. Any revenue in excess of this calculation must be returned to taxpayers.

In addition, as an enterprise, CBE is exempt from the restrictions that TABOR imposes on State entities incurring debt or multiple-fiscal year financial obligations. As a result, CBE can incur debt and enter into multiple-fiscal year financial obligations without a vote of the Colorado electorate.

All revenues received by CBE, including but not limited to any revenues from Bridge Surcharges, are required to be deposited into the Bridge Enterprise Special Revenue Fund (the “**Special Revenue Fund**”). The CBE Board may establish separate accounts within the Special Revenue Fund in connection with any specific designated bridge project. Under the indenture established for CBE’s Series 2010A Bonds (the “**CBE Bond Indenture**”), the General Account was established in the Special Revenue Fund. The following revenues are required to be deposited to the General Account and are pledged to the repayment of the Series 2010A Bonds.

As indicated in Section II.A above, the payments to be made by CBE under the Project Agreement will be made from the following sources:

- a) Bridge Surcharges;
- b) All money deposited into the General Account by CDOT from (i) moneys paid to CDOT by the U.S. Department of Transportation (“USDOT”) or (ii) moneys paid to a political subdivision of the State by the USDOT that are subsequently paid to CDOT;
- c) All money deposited into the General Account by CDOT from any source other than a source described in (b) above;
- d) All earnings from the investment of moneys held in any fund or account and all moneys on deposit in any other fund or account that, in either such case, are required to be transferred to or deposited into the General Account pursuant to the CBE Bond Indenture;
- e) Regularly scheduled payments to CBE or the trustee of the CBE Bond Indenture from the provider of any hedge agreement with respect to any Bonds (as defined in the CBE Bond Indenture) that exceed the corresponding regularly scheduled payments by CBE or the trustee of the CBE Bond Indenture to the provider of such hedge agreement;
- f) All amounts payable to CBE or the trustee of the CBE Bond Indenture from the provider of a Credit Facility (as defined in the CBE Bond Indenture);
- g) All termination payments and all other payments that are not regularly scheduled payments payable to CBE or the trustee of the CBE Bond Indenture from the provider of any hedge agreement with respect to Bonds;
- h) The proceeds of any loan borrowed by CBE;
- i) The proceeds from the sale or other disposition of any Designated Bridge (as defined in the CBE Bond Indenture); and
- j) All amounts paid to CBE from grants and other sources not included in (a) through (i) above, excluding, however, any such amounts that CBE determines are, pursuant to the arrangement under which such amounts are paid to CBE, required to be used for a purpose that is inconsistent with the deposit of such amounts into the General Account.

Note that annually transferred federal funding by the Transportation Commission to CBE is not available as a source of funds for the Project, unless deposited to the General Account.

Annual revenues received from the Bridge Surcharges are detailed in Table 1 below.

Table 1: Historical and Projected Annual CBE Bridge Surcharge Revenues

Fiscal Year	Actual Revenues Collected	Projected Revenues	Total Revenues Actual or Projected
2010	\$43,755,530		\$ 43,755,530
2011	\$65,328,855		\$ 65,328,855
2012	\$88,908,478		\$ 88,908,478
2013	\$92,839,475		\$ 92,839,475
2014	\$95,550,947		\$ 95,550,947
2015	\$42,820,662	\$48,179,338	\$ 91,000,000 ⁵

* FY2015 actual revenues based upon five months (July to November)

** Does not include any interest earnings or the Transportation Commission's transfer of \$15 million per year of pledged FHWA funding⁶

FASTER legislation sets limits on the annual Bridge Surcharge rate (see Table 2 below). As a result, unless FASTER is amended to increase the limits on the annual rates, the revenues derived from Bridge Surcharges will increase only to the extent that the number of vehicles registered increase. The CBE Board will have no control over such matters and CBE has no taxing authority.

Table 2: Bridge Surcharge Schedule

Registration Period Commencing During	Motorcycles/ Vehicles < 2,000 lbs	Vehicles 2,000 - 5,000 lbs	Vehicles 5,000 - 10,000 lbs	Passenger Bus/Vehicles	
				10,000 - 16,000 lbs	Vehicles >16,000 lbs
FY2009 - 2010	\$6.50	\$9.00	\$11.50	\$14.50	\$16.00
FY2010 - 2011	\$9.75	\$13.50	\$17.25	\$21.75	\$24.00
FY2011 - 2012 and thereafter	\$13.00	\$18.00	\$23.00	\$29.00	\$32.00

⁵ CDOT's Account Department and the State Controller's Office have not yet finalized the fiscal year 2015 Bridge Surcharge collections but the unaudited number indicates approximately \$89,600,000.

⁶ Source: FY2014 Annual CBE Report.

As indicated in Table 2, the Bridge Surcharges were phased in over a three-year period from calendar year 2010 to 2013, and are currently charged at the maximum allowed under FASTER legislation. It should also be noted that the 2010 Bond Indenture includes a covenant that “so long as any Bonds are Outstanding, the Bridge Enterprise shall not reduce any Bridge Surcharges below the maximum rates authorized by FASTER.”

FASTER also established certain exceptions with respect to the imposition of the Bridge Surcharges, as follows:

- a) Bridge Surcharges may not be imposed on any rental vehicle on which a daily vehicle rental fee is imposed pursuant to State law or on any vehicle for which the State Department of Revenue has issued a horseless carriage special license plate pursuant to State law;
- b) The amounts of the Bridge Surcharges on interstate commercial carriers are calculated based on vehicle weight and percentage of the total apportioned registration apportioned to the State; and
- c) The amounts of the Bridge Surcharges otherwise imposed are reduced by one-half in the case of trucks or truck trailers owned by a farmer or rancher and used commercially only to transport agricultural products or livestock in certain specified circumstances.

Appendix 3

High Performance Transportation Enterprise (“HPTE”)

HPTE was formed in 2009 as part of the FASTER legislation (C.R.S § 43-4-806). It operates as a government-owned business within CDOT, and is a division of CDOT. HPTE’s Board consists of seven members, four appointed by the Governor and three appointed by the Transportation Commission. The HPTE Board appoints the HPTE Director, with the approval of CDOT’s Executive Director.

The purpose of HPTE is to pursue public-private partnerships and other innovative and efficient means of completing surface transportation infrastructure projects. HPTE does not have the authority to impose taxes. It does have the authority to impose tolls, as it proposes to do on the managed lanes of the Project and also currently does on the US 36 Express Lanes Project which recently began operation of its first phase, and on the I-25 North Express Lanes.

As provided in FASTER, HPTE constitutes an “enterprise” for the purposes of TABOR and, accordingly, is not subject to the revenue and spending limitations of TABOR as long as it receives less than ten percent (10%) of its total revenues in grants from the State and local governments combined.

In addition, as an enterprise, HPTE is exempt from the restrictions that TABOR imposes on incurring debt or multiple-fiscal year financial obligations. As a result, HPTE can incur debt and enter into multiple-fiscal year financial obligations without a vote of the Colorado electorate.