

**Federal Highway Administration**  
**High-Performance Transportation Enterprise (HPTE)**  
**Project Oversight Agreement**  
**For the Public Private Partnership**



to  
Design, Build, Finance, Operate and Maintain  
US 36 Express Lanes Phase II  
November 15, 2013

# **SECTION 1. PURPOSE, BACKGROUND AND INTRODUCTION, TERMINOLOGY, AND SCOPE**

## **1.1. PURPOSE**

The purpose of this Stewardship and Oversight Agreement is to formalize the roles and responsibilities of the Federal Highway Administration (FHWA), Colorado Division, the Colorado Department of Transportation and the High-Performance Transportation Enterprise (HPTE) for administering the Federal-Aid Highway Program (FAHP) with regards to the US 36 Managed Lane/Bus Rapid Transit Phase II Project (Project).

This Stewardship and Oversight Agreement outlines a risk-based approach for the FHWA-Colorado Division and HPTE to effectively and efficiently manage the public funds and to ensure the Project is delivered in accordance with applicable laws, regulations, policies, and consistent with good business practices.

This Agreement outlines the framework by which FHWA and HPTE will administer the Project to maintain the US 36 Corridor and the existing I-25 Express Lanes, to optimize operations, improve safety, and provide for national security while protecting and preserving environmental resources. This Agreement addresses a collaborative approach to administer the Project through various Stewardship and Oversight activities including the delegation of specific roles and responsibilities to HPTE.

The FHWA and HPTE partnership ensures that federal funds will be expended cost-effectively and its implementation provides justification for continued disbursement of federal funds.

## **1.2. PROJECT BACKGROUND AND INTRODUCTION**

### **Phase II Project Overview**

The Colorado Department of Transportation (CDOT) and the Colorado High Performance Transportation Enterprise (HPTE) have entered a Public-Private Partnership (P3) to design, build, finance, operate and maintain facilities on US 36 and I-25. In the design build portion of the contract, 5.1 miles of US 36 from 88th Street in Louisville/Superior to Table Mesa/Foothills Parkway, in Boulder will be reconstructed. The design build portion extends Phase I and will mirror the same features:

- Add an express lane in each direction of US 36 for Bus Rapid Transit (BRT), High Occupancy Vehicles (HOV) and tolled Single Occupancy Vehicles (SOV);
- Reconstruct existing pavement on US 36 and widen the highway to accommodate 12-foot inside and outside shoulders;
- Add BRT improvements, including new electronic display signage at stations and bus priority improvements at ramps.
- Install Intelligent Transportation Systems (ITS) for tolling, transit, traveler information, active traffic management (ATM) and incident management;
- Install a separate commuter bikeway along much of the corridor; and
- Improve RTD stations along the corridor, including new canopies with enhanced weather protection.

The Colorado Department of Transportation (CDOT) and the High Performance Transportation Enterprise (HPTE) have selected Plenary Roads Denver (PRD) as the Concessionaire for phase II of the US 36 Express Lanes/Bus Rapid Transit project between 88th Street and Table Mesa, which will complete improvements to the entire US 36 corridor between Denver and Boulder. The

project is CDOT's first public-private partnership (P3), an innovative partnership where the public and private sectors team together to provide transportation improvements and services to the traveling public. HPTE entered into a 50-year agreement with PRD who will:

- Construct Phase 2 of the US 36 Corridor which includes:
  - Constructing an Express Lane in each direction of US 36 between 88th Street and Table Mesa for Bus Rapid Transit (BRT), High Occupancy Vehicles (HOV) and tolled Single Occupancy Vehicles (SOV);
  - Reconstructing two general purpose lanes in each direction between 88th Street and Table Mesa
  - Widening the highway to accommodate 12-foot-wide inside and outside shoulders;
  - Replacing the Coal Creek Bridge and rehabilitating and widening the S. Boulder Creek bridge and widening the McCaslin Boulevard bridge to accommodate a diverging diamond interchange;
  - Adding Bus Rapid Transit (BRT) improvements, including new electronic display signage at stations and bus priority improvements at ramps. The improvements also will allow buses to operate on the shoulders of US 36 between interchanges to decrease bus travel time;
  - Installing Intelligent Transportation Systems (ITS) for tolling, transit and traveler information, ATM and incident management;
  - Installing a separate commuter bikeway between 88<sup>th</sup> Street and Foothills Parkway of the corridor; and
  - Improving the RTD station at McCaslin Boulevard.
  
- Operate and Maintain the following highways, which includes snow and ice removal:
  - The entire US 36 corridor between I-25 and Table Mesa
  - I-25 Express Lanes between downtown Denver and US 36

The project delivers much-needed capacity, while transferring all the revenue risk and debt and shifting operations and maintenance and replacement obligations to the Concessionaire for the next 50 years. The P3 arrangement also enables the project to be completed 20 years sooner than originally planned.

The Concession team includes the following partners:

The Plenary Group- team lead and managing partner

- Ames Construction, Inc.- construction
- Granite Construction- construction
- HDR- engineering design
- Transfield Services- maintenance
- Goldman Sachs- financial advisor

The second phase of the US 36 Express Lanes Project is expected to begin construction in late 2013 and will be complete by late 2015.

## Anticipated Phase II Schedule

Milestone	Date
Proposals due	March 2013
Contractor selected	April 2013
Financial close of contract	October 2013
Construction begins	Late 2013 – early 2014
Project open to Traffic	Dec 2015

### 1.3. STEWARDSHIP BACKGROUND AND INTRODUCTION

Federal funding is provided to assist states and federal agencies in providing transportation services through the various FAHPs. By law, the nature and the majority of these federal programs is in the form of federal assistance for state administered programs. The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991; the Transportation Equity Act for the 21st Century (TEA-21) of 1998; and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005, and the Moving Ahead for Progress in the 21st Century Act (MAP-21) of 2012 have all increased the role of State Transportation Agencies (STA) in project approvals.

### 1.4. TERMINOLOGY

In order to ensure that this Stewardship and Oversight Agreement is consistently interpreted, the following definitions are provided:

**Stewardship:** The efficient and effective management of the public funds that have been entrusted to the Federal Highway Administration.

**Oversight:** The act of ensuring that the FAHP is delivered consistent with laws, regulations and policies.

Stewardship reflects FHWA's responsibility for the development and implementation of the FAHP as it applies to the US 36 Phase II Project.

Oversight is the compliance or verification component of FHWA stewardship activities that in turn ensures high-quality transportation projects. Narrowly focused, oversight activities ensure that the implementation of these FAHPs is done in accordance with the applicable laws, regulations, and policies. More broadly applied oversight activities enable HPTE and FHWA to ensure the effective delivery and operation of the transportation system envisioned in their base statutes. FHWA project level oversight means that FHWA will participate in the project development and construction process at specific milestones to assure compliance with federal regulations, policies, procedures, standards and that those federal dollars are being spent appropriately.

HPTE/CDOT project level oversight will include taking the lead role in day to day reviews and approvals associated with design and construction. HPTE/CDOT will provide oversight and approval for the Project on the following except as noted:

- Scoping (planning);
- Environmental documentation – final approvals by FHWA;
- Design and Design Exceptions – design exceptions final approvals by FHWA;
- RFP – final approval by FHWA;
- Obligation of funding – approved by FHWA;
- Award of project – concurred by FHWA;
- Construction;
- Final Inspection/Acceptance – approved by FHWA; and,
- Project Closeout – final closure in FMIS approved by FHWA.

### 1.5. SCOPE

This Stewardship and Oversight Agreement outlines the roles and for the Project among the CO

Division, CDOT and HPTE. The Stewardship and Oversight Agreement also outlines the mechanisms that the parties will use to establish roles, responsibilities, and processes to ensure that all project actions will be carried out according to the appropriate laws, regulations, and policies.

FHWA will continue to provide Stewardship and Oversight of the Project to assure deployment of new technologies, as well as designated approvals. Each of these activities contributes to the intent that the FAHP operates with integrity and for the public's maximum benefit. This Stewardship and Oversight Agreement acknowledges that the FHWA Colorado Division, CDOT and HPTE are responsible for the effective and efficient use of Federal funds.

## **SECTION 2. STEWARDSHIP AGREEMENT -DELEGATED RESPONSIBILITIES, CONFLICT RESOLUTION, & MISCELLANEOUS STIPULATIONS**

Under Title 23, FHWA is ultimately accountable for all programs under the FAHP; however, the State may assume responsibility for project-level activities associated with 23 USC 106 on certain projects.

The provisions of this Stewardship Agreement do not modify FHWA's non-Title 23 program oversight and project approval responsibilities for activities such as required under the *Clean Air Act*; the *National Environmental Policy Act of 1969 (NEPA)* and other related environmental laws and statutes; the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*; and the *Civil Rights Act of 1964* and related statutes, unless expressly permitted by MAP-21.

### **2.1. DELEGATED PROJECT RESPONSIBILITIES**

HPTE has the authority to establish policies for itself; identify and prioritize its own projects; make and enter into agreements and contracts with private entities for the financing, design, construction, operations and maintenance of surface transportation infrastructure projects. Nevertheless, as a division of CDOT, HPTE must coordinate and integrate its mission with CDOT in the fulfillment of its duties and the exercise of its powers.

With the approval of the Executive Director, HPTE may utilize the professional and administrative services of CDOT employees or agents and CDOT facilities in connection with activities required to successfully deliver and manage the project. In an IGA between CDOT and HPTE specifically for Phase II, CDOT has agreed to take any action, and to refrain for any action necessary to satisfy the obligations required by the Concession Agreement

#### **2.1.1. CDOT Responsibilities**

For the US 36 Phase II project, ongoing contract management, reviews, approvals and acceptances of design and construction, and final acceptances will largely be the responsibility of CDOT employees. A project team of CDOT employees will co-locate with the design-build contractor and review and respond to contractor submittals as required in the Concessionaire agreement.

In order to complete this task, CDOT has appointed a Project Manager, a Design Manager, a Construction Manager and various specialty staff full time to the US 36 Phase II project. These individuals will be responsible for the day to day management of the project and will oversee the contractor to assure compliance with the Contract. CDOT personnel not co-located with the design-build contractor will also be available review any aspect of the project.

The Concessionaire Agreement includes a comprehensive list of actions required by the Concessionaire to assure to CDOT and HPTE that the project is being designed and constructed in a way that is consistent with CDOT standards and Federal requirements.

A Table in Appendix A lists those required submittals, the timeframe required, and the action required by CDOT, usually review, acceptance or approval.

## 2.1.2. HPTE Responsibilities

### *Financing*

The General Assembly of the State of Colorado determined that HPTE should actively seek opportunities for public-private partnerships for the purpose of completing surface transportation infrastructure projects. To fulfill this, HPTE led the effort to enter into a public-private partnership to construct the improvements described in the US 36 Record of Decision.

To implement the US 36 Phase II project, HPTE conducted a financial analysis and determined the method of project delivery that would be used.

For the US 36 Phase I project, HPTE prepared and submitted a budget and financial plan for the TIFIA loan agreement and project financing. HPTE is responsible for the administration of the Phase I TIFIA loan including all accounting, reporting, preparation of draws and submittals, document retention and any and all reporting required thereunder.

For Phase II, the Concessionaire will be assigned and assume the Phase I TIFIA loan per the Concession Agreement. HPTE will be responsible for reviewing the Concessionaires Financial Model to determine whether or not the concessionaire is able to execute the financial obligations described in the contract.

HPTE is responsible for issuing Private Activity Bonds in the amount the Concessionaires underwriters are prepared to underwrite. HPTE will also have the ability to participate in the PABs marketing and pricing process, each in advance of the Financial Close of the PABs.

HPTE is responsible for preparing the Supplemental Financial Plan and any necessary annual updates to the supplement.

PRD is responsible preparing the Financial Plan and the annual update of the financial plan for Phase 2. Once the Phase 1 project is accepted, PRD will be responsible for annual updates of a combined Phase 1 and Phase 2 financial plan.

HPTE is responsible for updating the Project Management Plan as needed throughout the construction of the project.

### *Tolling*

The Concessionaire will enter into a Tolling Services Agreement that will set the terms by which tolls are collected and transferred to the Concessionaire. The tolling system on US 36 must be compatible with tolling on other state highways and will utilize the service of the E-470 tolling authority. Per the Concession Agreement, the Concessionaire will have the right to propose Tolls for the Managed Lanes to be established by HPTE and to receive HPTE's Toll Revenues

### *Maintenance*

The Concession Agreement includes provisions under which the Concessionaire will maintain the US 36 Managed Lanes constructed both during Phase I and Phase 2, the US 36 General Purpose Lanes, the I-25 Express Lanes, and the I-25 bridge structures. HPTE will responsible for monitoring the Concessionaire's maintenance effort to ensure that this effort complies with the terms of the Agreement. HPTE intends to enter into a contract with a private consultant to manage and conduct inspections and reporting required to properly monitor the maintenance requirements.

HPTE will conduct a routine annual roadway condition survey as part of the CDOT statewide annual pavement condition data collection services performed by a contracted service provider. This routine annual pavement condition survey will serve as a quality control check of the



Concessionaire in order to ensure that the Concessionaire is consistently monitoring the pavement condition in accordance with the Concession Agreement. HPTE may conduct additional monitoring at any time.

### **2.1.2. FHWA -Colorado Division Oversight Responsibilities**

Under Title 23 and non-Title 23, FHWA is responsible for the stewardship and oversight of all programs and projects under the FAHP. US 36 Managed Lane/Bus Rapid Transit Phase II Project is considered to be a major project because funding for this project includes Federal financial assistance through a TIFIA loan. In compliance with the SAFETEA-LU Section 1904(a) a Project Management Plans (PMP) and a Financial Plan (FP) were completed for the Project. An annual FP is also required for the Project. FHWA Oversight Involvement -FHWA will continue to be responsible for the oversight of all Title 23 aspects of the Project and will review and approve project designs, perform construction inspections, participate in the final inspection, and approve changes in contract (change orders, supplemental agreements, design exceptions, claims, etc.). An Operations Engineer (OE) from the CO Division will be assigned to the project and facilitate the office and agency involvement.

1. HPTE Delegated Oversight Involvement-FHWA oversight responsibilities will be limited to ensuring compliance with non-Title 23 requirements and certain Title 23 requirements

2. Technical Assistance -The Colorado Division will provide technical assistance to HPTE on any aspect the Project. Technical assistance activities will be decided on a case-by-case basis in consultation with HPTE,;

3. Non-Title 23 Responsibility -Colorado Division will continue to assume responsibility for Federal actions required under laws outside of Title 23, as noted in Section 3 in the respective sections: such as:

4. The Colorado Division is responsible for reviewing and approving the financial plan and annual updates with prior concurrence from the Project Delivery Team and TIFIA through the life of the loan. The Operations Engineer is responsible for involving the FHWA Financial Manager and others with expertise as needed.

5. The Colorado Division is responsible for review TIFIA requisitions and making a recommendation to TIFIA regarding the Title 23 eligibility of the request. The Operations Engineer is responsible for involving others with expertise as needed.

6. The Colorado Division will review selected design documents. Design topics will be selected using a risk based approach.

7. The Colorado Division will perform construction inspection and process reviews throughout the construction of the project. Topics will be selected using a risk based approach.

8. Change orders tracking data sheets and back up documentation will be made available for FHWA review if needed. FHWA involvement in Change Orders is required for any of the following:

- 1) *Project Termini Extensions, regardless of oversight (as defined in 23 CFR 635.102 and CDOT's Construction Manual, 120.7.7.3)*

- 2) *Major Design Changes (as defined in CDOT's Construction Manual, 120.7.7.1, "significant" to be determined via discussions between Operations Engineer and CDOT)*
- 3) *Material Change to the Scope of Work (i.e. additional capacity, additional access, major extra work, deletion of work, etc.)*
- 4) *Changes affecting Environmental Commitments*
- 5) *Administrative Settlement of Claims (excluding Dispute Review Board Recommendations)*

All CMOs on FHWA oversight projects requiring FHWA approval follow the procedure below. The following bullet points describe the general process that should be followed for CMO approval.

- When a major CMO is required on a FHWA Full-oversight project, the CDOT Project Engineer notifies the applicable Operations Engineer (OE) as soon as possible of the proposed change prior to the work commencing. This is to start the early coordination between FHWA and CDOT. Upon notification, the OE will determine the appropriate level of FHWA involvement. If the change is determined to be a Major CMO, the following process applies.
- The CDOT Project Engineer will submit to the OE an electronic draft of the CMO
- (CDOT Form 90 in Construction Manual Appendix A) and draft of the Letter of Explanation ( see section 120.7.7 of the Construction Manual), which includes a detailed description of the work, location of change, description of materials, construction requirements, method of measurement, and basis of payment including any contract time extensions, etc.
- The OE will review the CMO and supporting documentation in accordance with the "Evaluation of Change Orders" section of the FHWA procedures.
- The OE will notify CDOT of any needed additional information, or provide comments to CDOT within 5 business days. The OE shall verify that all pertinent information relating to the CMO, along with an independent cost analysis (as described in section 120.7.6.2 of the Construction Manual), is included in the submittal. The method and degree of analysis can vary by project, but it must support the final compensation determination.
- The OE will not provide prior approval, but will discuss the CMO with CDOT so that they may prepare the final CDOT Form 90 (Appendix A) and gather necessary CDOT signatures
- The CDOT Project Engineer will submit a final Form 90 to the OE for approval.
- The OE, through signature of CDOT Form 90 will provide formal approval of the CMO. The OE should receive the CDOT Form 90 and all attachments before the contractor performs any of the work. If the work is emergency work that must begin with the written notice from the PE (i.e. via 105), the PE shall contact the FHWA Operations Engineer and their Area Engineer prior to beginning such work. The Form 90 can be submitted as a pdf for FHWA signature.
- The OE will sign the Form 90 and return the form 90 with the original signature to the CDOT Project Engineer within 5 business days of receipt.
- When time allows, the original form 90 shall be routed through CDOT and FHWA to

collect original signatures for final project documentation. Emails and signed pdf documents should be circulated with the original form 90 to hasten this process.

## 2.2. CONFLICT RESOLUTION PROCESS

If disagreements emerge which cannot be resolved among CO Division, HPTE and CDOT, the impasse shall be escalated as shown below. If other agencies are involved, personnel from equivalent organizational levels will be included in the conflict resolution process.

Table 1 -Conflict Resolution Process

CDOT	HPTE	FHWA	Time Line
Project Manager	Enterprise Specialist	Operations Engineer	Once agree to escalate will establish next meeting
Regional Transportation Director	Enterprise Specialist	Program Delivery Team Leader	Meeting date within 10 business days
Chief Engineer	HPTE Director	Assistant Division Administrator	Meeting date within 30 calendar days
Executive Director	HPTE Director	Division Administrator	Meeting date within 30 calendar days

When the parties at the lowest organizational level of the agencies have agreed to escalate, a meeting date will be established **within 10 business days**. At that time, the agencies from both levels will meet to discuss the issues and come up with a resolution. If an agreement cannot be reached, then the issue will be escalated to the next level and a meeting date established **within 30 calendar days**. At that time, the agencies from all three levels will meet to discuss the issues and come to a resolution. If an agreement cannot be reached, the issue will be escalated to the highest level and a meeting date established **within 30 calendar days**. At that time, all agencies will come to resolution.

Mediation and facilitation may be used at any level to help expedite resolution. Documentation of all disagreements and resolutions shall be furnished to all involved agencies and included in the project file.

## 2.3. OVERSIGHT AUTHORITY AND MISCELLANEOUS STIPULATIONS

### 2.3.1. FHWA oversight authority

FHWA retains authority for the following actions on the Project:

- RFP Approval
- Approval of Design Exceptions on US 36
- Contract Concurrence in Award
- Authorization of design and construction (obligation of Federal Aid Funds)
  - Contract Change Order Approval
  - Approval of Contract Claims Settlement
  - Final Inspection
  - Project Acceptance

Final Voucher

### 2.3.2. Approvals required from FHWA

The following actions require the approval of FHWA:

- Use of US 36 airspace for non-highway-related purposes only if purchased with FA and leased at below market value;
- Disposal of Right of Way – only if purchased with FA and disposed of below market value;
- Design exceptions affecting US 36 (13 controlling criteria, as Specified in the CDOT/FHWA Stewardship Agreement April 2013);
- Obligation of funds;
- Waivers to Buy America requirements (FHWA Washington Headquarters (HQ) approval required as noted in Mr. Horne’s July 3, 2003 memorandum);
- SEP-14/SEP-15 methods (FHWA HQ approval required for experimental contracting/project delivery methods);
- Civil Rights program approvals;
- Environmental approvals except those specifically delegated under the “Programmatic Agreement between HPTE and FHWA for the Review and Approval of Certain NEPA Categorically Excluded
- Transportation Projects, Hardship acquisition and protective buying;
- Modifications to project agreements;
- Final vouchers;
- Project Limit Extensions.

## **SECTION 3. HPTE & FHWA ROLES AND RESPONSIBILITIES BY FUNCTIONAL AREAS**

The following subsections of Section 3 describe the functional/program stewardship and oversight areas that are subject to this Project Stewardship Agreement.

HPTE is responsible for preparing project scoping and scheduling documents, environment and right-of-way clearance documents, local entity agreements, and overall management of the Project.

### **3.1. CONTRACT MANAGEMENT**

Throughout the terms of the Contract, the Concessionaire will be required to submit Contract Management related items detailing the management to the Project. These submittals include quality control strategies, scheduling, invoicing, public relations strategies etcetera. These submittals will be available to FHWA. FHWA will identify with which submittals they will be involved.

During the design/construction period of Phase II, CDOT personnel will be designated by HPTE as HPTE’s Representative to exercise the functions and powers of HPTE in relation to the project which are identified in the contract. CDOT personnel will co-locate with the design-builder in order to more efficiently provide oversight functions required in the contract. This oversight includes personnel who will oversee contract management issues.

Required Contract Management related submittals are detailed in Appendix A

### **3.2. DESIGN AND CONSTRUCTION**

#### **3.2.1. Design**

The HPTE Design Project Manager is responsible for assuring the design of the Project conforms to applicable Federal Standards, CDOT and HPTE Standards, and the contract documents. The Concessionaire will prepare for HPTE approval a Quality Management Plan (QMP) that describes quality control and quality assurance practices that will be implemented to insure successful Project design. HPTE will continually monitor the Concessionaire's compliance with the QMP.

Throughout the Design portion of the project, CDOT will monitor the design process. Task Forces will be established for various specialties including drainage, roadway, structures, traffic/ITS, utilities and environmental through which CDOT conduct "over the shoulder" reviews. The Concessionaire will also be required to hold Design Progress Review meetings (30%, 60%, 90% and 100% packages) with CDOT personnel to monitor design progress and to provide CDOT with an opportunity to comment on the plans and indicate areas where CDOT does not believe the plans comply with the contract documents. The Concessionaire is also required to submit 30% and Final Plans and Specifications prior to Release for Construction for CDOT acceptance.

In addition, CDOT personnel will review various submittals, plans and reports, throughout the design process which will require CDOT review, acceptances or approvals depending on the terms of the contract. These action will be responsibility of the CDOT Design Manager in cooperation with specialty staff.

CDOT will conduct periodic audits during the design process to ensure contract requirements are being complied with. The Concessionaire will be required to respond to the audits, and the issues raised during the audits must be resolved to CDOT's satisfaction.

Required Design related submittals and the associated required HPTE/CDOT action are shown in Appendix A.

### **3.2.2. Construction**

The CDOT Construction Project Manager is responsible for assuring the construction of the Project conforms to applicable Federal Standards, CDOT and HPTE Standards, and the contract documents. The Concessionaire will prepare for HPTE approval a Construction Quality Management Plan (QMP) that describes quality control and quality assurance practices that will be implemented to insure successful project construction.

The Concessionaire will be responsible for Quality Control and Quality Assurance throughout the construction period. The Concessionaire will be required to perform audits of the QA/QC program, and submit its findings to HPTE.

CDOT will responsible for owner verifications. CDOT's owner verification will use a sampling approach to assess the Concessionaire's compliance with the requirements of the Contract Documents. The results of HPTE verification reviews will be recorded by CDOT and will be documented within the Quality Management Oversight (QMO) Database, a secure web-based application. Any Non Conformance Noticess identified by CDOT require a response within the QMO database. CDOT's owner verification will include four areas;

- Design verification reviews: HPTE will perform design verification reviews on the products of design (drawings, specifications, and other design deliverables) on an ongoing basis during the Phase 2 Construction Work.
- Construction verification Inspections: HPTE will perform construction verification inspections on construction Activities
- Construction verification Testing: HPTE will perform sampling and testing of Materials to validate the Concessionaire Quality Assurance testing program

- Process Audits: HPTE will perform process audits on the implementation of all Concessionaire Work Activities, excluding design and construction. Such activities may include the requirements of the Contract Documents, such as public information, maintenance of traffic, environmental compliance, safety, project management processes, and meeting the requirements of the Approved QMP

To accomplish these verification reviews, CDOT personnel will be assigned full time to the US 36 project to monitor and report on construction quality and compliance with the contract documents.

If nonconforming work is identified by the owner verification reviews, the Concessionaire will be required to submit to CDOT a Nonconformance Report which must include;

- Identification of Nonconforming Work
- Evaluation of the Nonconforming Work
- Recommendation for "repair" or "use as is" dispositions
- Cause of Nonconforming Work
- Proposed corrective action to prevent recurrence
- Responsibility for accomplishing corrective action
- Schedule of Work with a date of remedy completion
- Signature lines for the Quality Manager and CDOT verifying that the Nonconforming Work has been completed in accordance with the approved disposition.

Per the contract documents, the Concessionaire may not perform the recommended remedy prior to Acceptance by CDOT for "repair" and "use as is" dispositions. The CDOT Project Construction Manager will be responsible for providing that acceptance.

Prior to Project Completion, CDOT will be responsible to conduct a "walk through" inspection of the work with the Concessionaire and other affected agencies, and will develop a "Punch List" of work that does not comply with the contract. The Concessionaire will then be required to develop a procedure by which it will resolve the issues identified in the Punch List and obtain CDOT acceptance that the issues have been resolved to CDOT's satisfaction.

FHWA will perform periodic construction inspections throughout the construction of the project, and CDOT, HPTE and FHWA will be responsible for Final Inspection and Acceptance of the project.

Throughout the Construction process, the Concessionaire will be required to submit various reports, plans and other information to CDOT for CDOT action, including Review, Acceptance or Approvals.

Required Construction related submittals and the associated required HPTE action are shown in Appendix A.

### **3.3. ENVIRONMENT**

The Environmental Program is based on law, regulation and policy guidance from CDOT, HPTE and FHWA.

The national commitment to the environment was formalized through the passage of the National Environmental Policy Act (NEPA) of 1969. NEPA establishes a national environmental policy and provides a framework for environmental planning and decision-making. NEPA directs FHWA and HPTE, when planning projects or issuing permits, to conduct environmental reviews to consider the potential impacts on the environment by their proposed actions.

On December 11 2009, FHWA signed the Record of Decision for the Environmental Impact Statement, and has subsequently approved reevaluations of the Environmental Impact Statement for both the US 36 Phase I and Phase II projects. If the Concessionaire proposes work that has not been approved as a part of the ROD and 2012 US 36 Phase 1 and Phase 2 NEPA Reevaluations, CDOT Reevaluation Form (#1399) must be submitted for Approval for changes to design, impacts, or mitigation. Approval of the NEPA re-evaluation or other NEPA process by FHWA is required before any action can be taken.

FHWA will continue to provide oversight of environmental responsibilities including possible reevaluations to the decision documents and implementation of mitigation plans in accordance with the Stewardship/Oversight Agreement, the FEIS, the Record of Decision, re-evaluations and provisions of the Design Build Contract. Project mitigation and commitments will be closely monitored by CDOT, HPTE and FHWA.

In order to properly plan for the day-to-day monitoring of environmental issues come up during construction, the concessionaire will be required to prepare an Environmental Compliance Work Plan specifically identifying all of the environmental compliance requirements for the Phase 2 Construction Work and the Concessionaire's approach for complying with those requirements that must be submitted to CDOT for acceptance. A full time CDOT Project Environmental Manager will be responsible for owner verifications to assure the contract requirements are being complied with.

This plan will delineate how environmental requirements in the contract documents will be complied with and identify that Environmental reviews involve an interdisciplinary and interagency process. FHWA, CDOT and HPTE will work cooperatively with other federal and state agencies during the environmental review process. This coordinated review process will include input from the public, as well as from other agencies, to guarantee that all environmental protections, as well as all other issues are addressed.

### **3.3.1. Method of Operation**

For the environmental function, FHWA maintains ultimate responsibility and approval authority for all activities requiring federal actions. Interagency coordination and stewardship are maintained through routine contacts in person, by telephone, by electronic mail, and in writing during the course of transacting normal business operations. On specific Project activities, stewardship and oversight coordination will occur between HPTE's US 36 Phase II Environmental Manager and FHWA's Operations Engineer.

Required Environmental related submittals are detailed in Appendix A

## **3.4. OPERATIONS & MAINTENANCE**

Per the terms of the Contract Documents, the Concessionaire will operate and maintain the following highways, which includes snow and ice removal:

- The entire US 36 corridor between I-25 and Table Mesa
- I-25 Express Lanes between downtown Denver and US 36

The operation and maintenance of the Managed Lanes and maintenance of the General Purpose Lanes as agreed by the Concession Agreement will be under the direction of the Concessionaire beginning at the Services commencement date and continuing during the Services Period provided in the Concession Agreement. The Concessionaire will be responsible for performing all activities necessary to satisfy the contract requirements with regards to the Managed Lanes and the General Purpose Lanes (including the BOS Corridors) as agreed in the Concession Agreement (the "Maintained Elements") in a manner that provides a safe and reliable



transportation system for improved mobility at current CDOT standards or better.

The longitudinal limits of the Concessionaire's maintenance responsibilities on the I-25 Managed Lanes will start at I-25 from approximately MP 211.8 northward to MP 217.8, a distance of 6 miles, and from the interchange of I-25 and US 36 westward along US 36 to MP 52.9, a distance of approximately 0.6 miles. The I-25 Managed Lanes also includes an interchange ramp at 70th Avenue and connections with two arterials into Downtown Denver at 19th Street and 20th Street via a reversible two lane direct connect fly over bridge.

The Concessionaire is to be responsible for Routine Maintenance and Life Cycle Maintenance of the pavement of I-25 wherever it rests on the sub-grade, and Routine Maintenance activities such as drain clearance, for structural components, but will not be responsible for Life Cycle Maintenance of the sub-grade itself, nor of any structures within it. HPTE, through CDOT, will be responsible for all such maintenance to the sub-grade and those structures apart from the Routine Maintenance which is the Concessionaire's responsibility.

The lateral limits will be all work in the I-25 Managed Lanes the full width of pavement on the barrier separated section; the entire sections of the Downtown Denver ingress/egress ramps from/to I-25 and the entire section of the 70th Avenue interchange ramps from/to I-25. The Type 7 barrier and attenuators that are adjacent to the I-25 General Purpose Lanes is not included in the Maintained Elements except as it relates to the I-25 Preventative Maintenance Program.

The I-25 Managed Lanes include the fifteen (15) I-25 Bridges. Of these 15 bridge structures, five carry only the I-25 Managed Lanes and the remainder carries both the I-25 Managed Lanes and the I-25 General Purpose Lanes.

The Concessionaire is to be responsible for both Routine Maintenance and Life Cycle Maintenance in relation to:

- The bridge decks (including the pavement resting on, or forming part of, the deck); and
- The expansion joints in the bridge decks;

The Concessionaire is not responsible for either Life Cycle Maintenance or Routine Maintenance of the bridge structures supporting the bridge decks. HPTE, through CDOT, will be responsible for those matters.

The HPTE Service Requirements will specify the required maintenance regime for the decks of the I-25 Bridges. The Concessionaire will be responsible for carrying out maintenance according to this specification on the whole of the bridge decks (including the part of those decks which carry General Purpose Lanes). For the I-25 Shared Bridge Decks such Life Cycle Maintenance activities will be treated as Non-Separable Tasks. The percentage of the cost of the Non-Separable Task borne by CDOT will vary according to the percentage of the structure which is attributable to the I-25 GP Lanes.

Throughout the 50 year term of these obligations, the Concessionaire will be required to report on various aspects of the Operations and Maintenance of the infrastructure for which it is responsible. HPTE will monitor the Concessionaires efforts to implement those reports, and perform Quality Control and Audits to assure the Contract Documents are being adhered to.

Required Operations & Maintenance submittals are detailed in Appendix A

### **3.5. ASSET MANAGEMENT**

Per the terms of the Contract Documents, the Concessionaire will hand back the Facilities to HPTE at the end of the 50 year term.

Prior to hand back, the Concessionaire will be required to detail the condition and of Facilities, and bring the facilities up to standards are required in the Contract documents. The Concessionaire will prepare a Handback Plan that contains the methodologies and activities to be undertaken or employed to meet the Handback Requirements and obtain Acceptance from HPTE. The Concessionaire must submit the Handback Plan, including a Residual Life Methodology plan, to HPTE for review and Acceptance.

The Concessionaire will perform an initial, an intermediate, and a final Residual Life Inspection that covers all Maintained Elements within the Managed Lanes as noted below. HPTE

The Concessionaire will be required to engage a suitably qualified independent expert to perform Residual Life Inspections and testing with appropriate coverage such that the results are representative of all the Maintained Elements. HPTE will be given the opportunity to participate in any of the inspections and/or tests and shall be given a minimum of thirty (30) Business Days' notice prior to the performance of any such tests.

Required Asset Management submittals are detailed in Appendix A

### **3.6. RIGHT-OF-WAY**

The acquisition of private property for public use is governed by a host of state and federal rules and regulations. The Right-of-Way (ROW) program has overall responsibility for the acquisition, management, and disposal of real property on Federal-aid projects. This responsibility includes assuring that acquisition and disposals are made in compliance with the legal requirements of the state and federal laws and regulations.

Prior to issuance of the RFP, CDOT acquired all right-of-way needed to construct the Project as defined in the contract documents. In the event that the Concessionaire requests additional ROW acquisition and CDOT Approves such request (Concessionaire Acquisitions), all Concessionaire Acquisitions, if needed, will be performed by the Concessionaire in compliance with the requirements of the contact documents. The Concessionaire shall be responsible for completion of all steps in the ROW acquisition process for Concessionaire Acquisitions, except for condemnations (if needed). The Colorado Attorney General's Office will file and prosecute all condemnations needed for Concessionaire Acquisitions the Concessionaire. The region CDOT Right-of-Way Manager will be responsible to assure that all Right-of-Way activities will be accomplished in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, the CDOT/FHWA Stewardship Agreement (April 20130) and the requirements of the Design-Build contract.

Required Right-of-Way related submittals are detailed in Appendix A

# US 36 Phase II Project Oversight Agreement

NH 0361-093

## US 36 MANAGED LANES-TOLL CONCESSION PROJECT

Denver, Colorado Metropolitan Area

Project Oversight Agreement

Submitted Pursuant to:

Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users

Section 1904(a)

By the

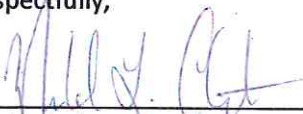
High Performance Transportation Enterprise


The High Performance Transportation Enterprise (HPTE) has developed this Project Oversight Agreement for Phase 2 of the US 36 Corridor improvements, in coordination with the Federal Highway Administration - Colorado Division (FHWA) and in accordance with USDOT Major Project requirements under SAFETEA-LU, Section 1904(a). This Agreement outlines the framework by which FHWA and HPTE will administer the Project to maintain the US 36 Corridor and the existing I-25 Express Lanes, to optimize operations, improve safety, and provide for national security while protecting and preserving environmental resources. This Agreement addresses a collaborative approach to administer the Project through various Stewardship and Oversight activities including the delegation of specific roles and responsibilities to HPTE.

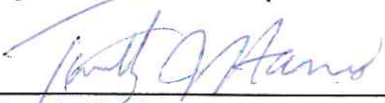
HPTE understands this Agreement is a living document and it is expected to evolve as the Project progresses through its various stages. Prior to the issuance of Notice to Proceed 1, it is the intent of HPTE to have the Agreement signed by the Director of HPTE.

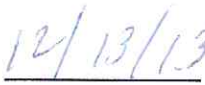
In accordance with the language of this Agreement, I have affixed my signature and request your concurrence in moving forward with Agreement implementation per your signature.

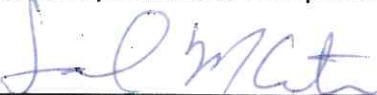
Respectfully,


  
\_\_\_\_\_  
Michael Cheroutes.  
Director  
High Performance Transportation Enterprise

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Timothy Harris  
Chief Engineer  
Colorado Department of Transportation

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
John M. Cater  
Colorado Division Administrator  
Federal Highway Administration

  
\_\_\_\_\_  
Date

## **APPENDIX A**

### **US 36 PHASE II SUBMITTAL TYPES**

## US 36 PHASE II SUBMITTAL TYPES

Not intended to be an exhaustive list. For specific timeframes and submittal requirements, please consult the contract documents

SUBMITTAL TYPE	SUBMITTAL	CONTRACT DOCUMENT REFERENCE	HPTE ACTION	TIMEFRAME TO RESPOND TO PLENARY ROADS DENVER (PRD) OR TIMEFRAME FOR PRD TO SUBMIT TO HPTE
Design	All fiber allocations, splicing diagrams, and network draings	Schedule 5 Section 19.1.3.1	Acceptance	Prior to incorporation into the Work
Construction	“VMS acceptance test procedure”	Schedule 5 Section 19.2.4	Acceptance	The Concessionaire shall notify CDOT ITS at least 14 Days prior to the test date.
Construction	“VTMS acceptance test procedure”	Schedule 5 Section 19.2.12	Acceptance	The Concessionaire shall notify CDOT ITS at least two weeks prior to the test date.
Design	A graphic of each structure to demonstrate structural consistency	Schedule 5 Section 15.2.3.8	Approval	As a part of the Preliminary Design Packages and/or the In-Process Design Packages as described in Section 15.
Operations & Maintenance	A maintenance plan for each box culvert structure type used	Schedule 5 Section 15.2.4.2	Acceptance	As a part of the Preliminary Design Packages and/or the In-Process Design Packages as described in Section 15.
Environmental	A scope of work for Remediation Work activities (Recognized Hazardous Materials)	Schedule 5 Section 5.4.1	Approval	Prior to commencing any Remediation Work activities
Right-of-Way	Acquisition of Concessionaire Acquisition UEs	Schedule 5 Section 8.2.2	Approval	Upon determination that additional ROW parcels or PE parcels (including Concessionaire acquisition UEs) are necessary or desirable for the Design
Construction	Additional Non-Destructive methods for testing drilled caissons	Schedule 5 Section 15.3	Acceptance	As required, for acceptance of construction of drilled caissons
Design	Aesthetic Treatment Plan	Schedule 5 Section 15.3	Acceptance	With preliminary and final design plans for related structural elements
Environmental	Air Pollutant Emission Notice (APEN)	Schedule 5 Section 5.1.2	Acceptance	Prior to construction
Design	All box culverts, new and reuse of existing, shall be load rated, documented	Schedule 5 Section 15.2.4.1	Acceptance	As a part of the Preliminary Design Packages and/or the In-Process Design Packages as described in Section 15.
Design	All permanent lighting plans at intersections and local streets owned and maintained by local entities	Schedule 5 Section 14.3	Review	Prior to issuance of Released for Construction Documents
Design	All permanent lighting plans at intersections and local streets owned and maintained by local entities -60% and 100% Design Progress Review Meetings	Schedule 5 Section 14.3	Review	Prior to submittal of Released for Construction Documents for Review
Design	All rehabilitated and widened structures shall be load rated and documented and submitted to HPTE	Schedule 5 Section 15.2.3.6	Acceptance	As a part of the Preliminary Design Packages and/or the In-Process Design Packages as described in Section 15.
Construction	Alternative subgrade treatment	Schedule 5 Section 11.1.2.1.1	Approval	Prior to incorporation into the Work
Operations & Maintenance	Annual Review Report	Schedule 6 Section 1.11	Review	Annually
Construction	As-built CAD documentation	Schedule 5 Section 19.4	Acceptance	Prior to Phase 2 Work Completion
Construction	As-Built data (in InRoads TMOSS survey format) and field notes	Schedule 5 Section 9.3.3	Review	Upon completion of the surveys
Construction	As-Built Documents	Schedule 5 Section 3.6.2	Acceptance	With final construction, close out of Phase 2 Construction Work.

## US 36 PHASE II SUBMITTAL TYPES

Not intended to be an exhaustive list. For specific timeframes and submittal requirements, please consult the contract documents

SUBMITTAL TYPE	SUBMITTAL	CONTRACT DOCUMENT REFERENCE	HPTE ACTION	TIMEFRAME TO RESPOND TO PLENARY ROADS DENVER (PRD) OR TIMEFRAME FOR PRD TO SUBMIT TO HPTE
Construction	As-Built Documents	Schedule 5 Section 15.3	Acceptance	With final construction, close out of Phase 2 Construction Work.
Construction	As-Built plans	Schedule 5 Section 7.6.2	Acceptance	As soon as practicable, but not later than 90 Days after execution of a CRAL
Construction	As-Built Schedule	Schedule 5 Section 2.1.3.2.7	Acceptance	Before the release of final Retainage
Design	Bridge Deck Condition Report	Schedule 5 Section 15.3	Acceptance	As specified for the Existing Bridge Repairs \ Rehabilitation in Section 15
Design	Bridge Load Rating	Schedule 5 Section 15.3	Acceptance	With Final Plans and Specifications Package for new and rehabilitated existing structures.
Design	Bridge Removal Plan to HPTE	Schedule 5 Section 15.2.3.6	Acceptance	As a part of the Preliminary Design Packages and/or the In-Process Design Packages as described in Section 15.
Construction	CDOT device data sheets	Schedule 5 Section 19.4	Acceptance	4 weeks prior to device integration
Environmental	Certificate of Compliance for Imported Topsoil	Schedule 5 Section 17.3	Acceptance	Prior to hauling topsoil to the Site
Environmental	Certification of Erosion Control Supervisor requirements	Schedule 5 Section 12.1.2.1.5	None	At NTP1
Design	Change to existing drainage patterns	Schedule 5 Section 12	Approval	Prior to construction
Design	Class III, major overhead signs, and Managed Lane regulatory and guide signs plan	Schedule 5 Section 14.3	Approval	Prior to issuance of Released for Construction Documents
Design	Class III, major overhead signs, and Managed Lane regulatory and guide signs plan – 30%, 60% and 100% Design Progress	Schedule 5 Section 14.3	Review	Prior to issuance of Released for Construction Documents
Design	CLOMR	Schedule 5 Section 12.5.3	Acceptance	Prior to issuance of Release for Construction Documents for each Segment
Construction	COC/CTR log	Schedule 5 Section 3.3.2	Acceptance	Prior to Phase 2 Work Completion
Operations & Maintenance	Communications and Marketing Plan	Concession Agreement Section 22.4	Acceptance	(i) At least forty (40) Business Days prior to the projected Commencement Date in relation to the I-25 Managed Lanes and the I-25 Shared Bridge Decks; (ii) At least sixty (60) Business Days prior to the projected Phase 1 Services Commencement Date in relation to the Phase 1 Managed Lanes and the Phase 1 GP Lanes; (iii) At least ninety (90) Business Days prior to the projected Full Services Commencement Date in relation to the Managed Lanes and the US 36 General Purpose Lanes as an integrated system; and (iv) No less than annually or, if the Concessionaire wishes to change any matter within any plan, more frequently, but no more frequently than once every three (3) months.
Right-of-Way	Complete parcel acquisition file	Schedule 5 Section 8.2.3	Approval	No later than 2 Working Days following tender to the landowner
Contract Management	Concessionaire public information staff contact information	Schedule 5 Section 4.9	Acceptance	Prior to NTP1

## US 36 PHASE II SUBMITTAL TYPES

Not intended to be an exhaustive list. For specific timeframes and submittal requirements, please consult the contract documents

SUBMITTAL TYPE	SUBMITTAL	CONTRACT DOCUMENT REFERENCE	HPTE ACTION	TIMEFRAME TO RESPOND TO PLENARY ROADS DENVER (PRD) OR TIMEFRAME FOR PRD TO SUBMIT TO HPTE
Design	Concessionaire to obtain geotechnical samples	Schedule 5 Section 15.2.2.3	None	Concessionaire may obtain 90 Days from NTP1
Design	Condemnation Memorandum and Check List Form	Schedule 5 Section 8.2.3	Approval	If the Concessionaire cannot reach an agreement with a landowner for the acquisition of the Concessionaire Acquisitions
Construction	Construction Activity information	Schedule 5 Section 4.6.1	Review	Pursuant to schedule in Section 4.6.1
Construction	Construction notification	Schedule 5 Section 4.5.2	None	20 Days prior to NTP2
Construction	Construction of Relocation Acceptance Letter (CRAL)	Schedule 5 Section 7.1.1	Acceptance	After Utility relocation
Contract Management	Current Initial Schedule	Schedule 5 Section 2.1.3.2.3	Acceptance	Concurrent with Monthly Progress Report
Design	Custom-designed monotube sign structure and foundation plans	Schedule 5 Section 14.3	Approval	Prior to issuance of Released for Construction Documents
Design	Custom-designed monotube sign structure and foundation plans -60% and 100% Design Progress Review Meetings	Schedule 5 Section 14.3	Review	Prior to submittal of Released for Construction Documents for Approval
Contract Management	Description of actual construction Activities conducted during the previous Week	Schedule 5 Section 3.3.4	Review	Weekly
Design	Design exceptions - Structures	Schedule 5 Section 15.3	Approval	As part of the ATC Process, and prior to issuance of applicable Release for Construction Documents
Design	Design exceptions- Roadway	Schedule 5 Section 13.4	Approval	As part of the ATC and Proposal process, and prior to issuance of applicable Release for Construction Documents
Design	Design of Pavement Structures	Schedule 5 Section 10.1	Approval	At the Pre-paving Conference.
Construction	Design of Relocation Acceptance Letter (DRAL)	Schedule 5 Section 7.1.1	Acceptance	Prior to commencement of any Utility Work
Design	Design of wildlife crossings	Schedule 5 Section 5.3.2	Acceptance	Prior to construction
Design	Design progress review meeting minutes	Schedule 5 Section 3.3.1	Acceptance	5 Working Days after meeting
Design	Detailed bridge deck condition report	Schedule 5 Section 15.2.3.6	Acceptance	As a part of the Preliminary Design Packages and/or the In-Process Design Packages as described in Section 15.
Construction	Detailed Documentation of Rehabilitation Quantities	Schedule 5 Section 15.2.3.6	Acceptance	During rehabilitation of existing deck, if warranted as specified for the Existing Bridge Repairs \ Rehabilitation in Section 15
Design	Detailed documentation of the rehabilitation quantities	Schedule 5 Section 15.2.3.6	Acceptance	As a part of the Preliminary Design Packages and/or the In-Process Design Packages as described in Section 15.
Construction	Detour pavement design	Schedule 5 Section 10.2.1	Acceptance	At the Pre-paving Conference and at least 14 Days prior to the use of any Detour Pavement on the Project
Contract Management	Ditch agreement in writing on methods and procedures covering all Work on the Ditch's property.	Schedule 5 Section 6.2.5	Review	Ditch prior to beginning any construction on or adjacent to the Ditch ROW

## US 36 PHASE II SUBMITTAL TYPES

Not intended to be an exhaustive list. For specific timeframes and submittal requirements, please consult the contract documents

SUBMITTAL TYPE	SUBMITTAL	CONTRACT DOCUMENT REFERENCE	HPTE ACTION	TIMEFRAME TO RESOND TO PLENARY ROADS DENVER (PRD) OR TIMEFRAME FOR PRD TO SUBMIT TO HPTE
Construction	Documentation for the preservation or remonumentation of any survey monument	Schedule 5 Section 9.4	Acceptance	Submit with As-Built Documents
Contract Management	Documents for design verification reviews	Schedule 5 Section 3.5	Acceptance	Minimum of 5 Days in advance of review meeting
Construction	Each draft Utility Work Order to HPTE for HPTE's review and approval.	Schedule 5 Section 7.3.3	Approval	Prior to commencement of any Utility Work
Contract Management	Emergency Information Dissemination – Telephone Tree	Schedule 5 Section 4.4.1	Acceptance	At NTP1.
Environmental	Environmental Compliance Work Plan	Schedule 5 Section 5.0	Acceptance	Within 60 Days after NTP1.
Operations & Maintenance	Establish and prepare plans identifying the Auditable Sections	Schedule 6 Section 2.3.6	Review	No later than thirty (30) days prior to commencement of initial inspections. Initial inspections shall take place by the Services Commencement Date.
Construction	Existing subgrade allowed to remain in place	Schedule 5 Section 11.1.2.3	Approval	Prior to incorporation into the Work
Contract Management	FASTER Reporting	Schedule 5 Section 2.1.3.2.5	Review	Concurrent with each Monthly Progress Report submittal
Design	Final design plans for grading and drainage. HPTE will determine the impact and the scope of paleontological construction monitoring that will be required.	Schedule 5 Section 5.1.4	Review	21 days prior to Released for Construction The Concessionaire shall provide 5 Working Days advance notice to HPTE prior to conducting work that may require monitoring.
Design	Final Drainage Report	Schedule 5 Section 12.4.1.1	Approval	Prior to Acceptance of Phase 2 Construction Work
Design	Final Plans and Specifications Package	Schedule 5 Section 15.3	Acceptance	As a part of the Preliminary Design Packages and/or the In-Process Design Packages as described in Section 15.
Contract Management	Final Public Information Plan	Schedule 5 Section 4.9	Approval	Prior to NTP2
Asset Management	Final Residual Life Inspection ("Final Inspection") Report	Concession Agreement Section 48.6	Review	Within thirty (30) Business Days following performance of the Final Inspection
Design	Final Water Quality Report	Schedule 5 Section 12.4.4	Approval	Prior to Acceptance of Phase 2 Construction Work
Design	Foundation design reports	Schedule 5 Section 15.2.2.4	Acceptance	As a part of the Preliminary Design Packages and/or the In-Process Design Packages as described in Section 15.
Design	Full-Size Mockups of surface treatments showing texture, color and quality	Schedule 5 Section 15.3	Acceptance	As a part of the Preliminary Design Packages and/or the In-Process Design Packages as described in Section 15.
Environmental	Functional assessment of all wetlands to be impacted by the Phase 2 Construction Work.	Schedule 5 Section 5.2.3	Review	Prior to wetland impact



## US 36 PHASE II SUBMITTAL TYPES

Not intended to be an exhaustive list. For specific timeframes and submittal requirements, please consult the contract documents

SUBMITTAL TYPE	SUBMITTAL	CONTRACT DOCUMENT REFERENCE	HPTE ACTION	TIMEFRAME TO RESPOND TO PLENARY ROADS DENVER (PRD) OR TIMEFRAME FOR PRD TO SUBMIT TO HPTE
Design	Geotechnical investigations reports	Schedule 5 Section 10.1.1	Acceptance	Within 30 Working Days following completion of the field work, and with or prior to design submittals which utilize information and recommendations from the subsurface investigation
Design	Groundwater elevations at all EDB locations	Schedule 5 Section 12.2.4.7	Review	Prior to NTP2
Asset Management	Handback Plan, including a Residual Life Methodology plan	Concession Agreement Section 48.2	Acceptance	No later than the first day of the fifth full calendar year before the Expiration Date
Environmental	Health and Safety Plan (HASP)	Section 5.4.2	Approval	Within 21 Days prior to NTP2
Construction	HMA Mix Designs	Schedule 5 Section 10.2.1	Approval	At the Pre-paving Conference and at least 14 Days prior to the use of any HMA pavement on the Project
Construction	HPTE review and Approval of any MOT variance requests	Schedule 5 Section 16.1.1.7	Approval	A minimum of 14 Days prior to implementation
Environmental	Identification of Sub-Contractor(s) to perform Remediation Work	Schedule 5 Section 5.6	Review	Prior to Sub-Contractor(s) commencing Remediation Work
Environmental	Identify and mark (with environmental fencing or flagging) all wetlands and waters of the U.S. that have the potential to be impacted by the Phase 2 Construction Work.	Schedule 5 Section 5.2.3	Review	Prior to wetland impact
Construction	Imported topsoil	Schedule 5 Section 17.3	Acceptance	Prior to incorporation into the Work
Construction	Incident Management Plan (IMP)	Schedule 5 Section 16.1.1.4	Acceptance	30 Days prior to NTP2
Operations & Maintenance	Incident Response Plan ("IRP")	Schedule 6 Section 1.7.4	Acceptance	Submit with Maintenance Management Plan (MMP)
Contract Management	Initial Schedule specifying WBS Activities and proposed Work segments	Schedule 5 Section 2.1.1	Acceptance	Within 20 Days after NTP1
Design	In-Process Design Package	Schedule 5 Section 15.3	Review	Provided for information at 90% design.
Environmental	Integrated Noxious Weed Management Plan	Schedule 5 Section 17.4	Acceptance	Within 60 Days after NTP1
Construction	Integration and testing plan	Schedule 5 Section 19.4	Approval	4 weeks prior to testing and integration
Design	Interim Segment Drainage Reports	Schedule 5 Section 12.5.3	Acceptance	Prior to Over the Shoulder Reviews, 100% Reviews, and Release for Construction Documents for each segment
Design	Interim Segment Water Quality Report	Schedule 5 Section 12.5.3	Acceptance	Prior to Over the Shoulder Reviews, 100% Reviews, and Release for Construction Documents for each segment
Asset Management	Intermediate Residual Life Inspection ("Intermediate Inspection") Report	Concession Agreement Section 48.5	Review	Within thirty (30) Business Days following performance of the Intermediate Inspection

## US 36 PHASE II SUBMITTAL TYPES

Not intended to be an exhaustive list. For specific timeframes and submittal requirements, please consult the contract documents

SUBMITTAL TYPE	SUBMITTAL	CONTRACT DOCUMENT REFERENCE	HPTE ACTION	TIMEFRAME TO RESOND TO PLENARY ROADS DENVER (PRD) OR TIMEFRAME FOR PRD TO SUBMIT TO HPTE
Contract Management	Invoice showing: (a) If HPTE accepted the Concessionaire's GP Routine Maintenance Fee for the GP Routine Maintenance Services prior to the Contract Date, the GP Routine Maintenance Fee for that month (b) The GP Snow and Ice Control Services Fee and a breakdown of any applicable reductions in accordance with Schedule 25; and (c) The cost incurred during the month in relation to Routine Maintenance activities on the I-25 Shared Bridge Decks, and the Non-Separable Percentages of those amounts; (d) The amount due by way of reimbursement of the cost of courtesy patrols pursuant to Section 4.4.1.1 of Schedule 6; and (e) The total which is due.	Concession Agreement Section 30.2	Approval	Within ten (10) Business Days of the end of each relevant month
Design	ITS - Supporting reports and design calculations	Schedule 5 Section 19.4	Acceptance	Concurrent with design plan submittals
Design	ITS and ETC plan sheets and details	Schedule 5 Section 19.4	Acceptance	Prior to Release for Construction
Construction	ITS device and material project sheets	Schedule 5 Section 19.1	Approval	Prior to installation
Construction	ITS equipment manuals and associated documentation	Schedule 5 Section 19.4	Acceptance	Prior to Phase 2 Work Completion
Design	ITS infrastructure product sheets	Schedule 5 Section 19.4	Approval	Prior to ordering and installation
Construction	Landscape Plan	Schedule 5 Section 17.3	Acceptance	At least 30 Days prior to disturbance of existing vegetation
Construction	Lane restrictions	Schedule 5 Section 16.2.5.1	Acceptance	By Thursday 10:30 a.m. of the week in advance of the work (for work Sunday through Saturday), unless required by construction emergencies or other reasonably unforeseen events.
Design	Lane use control signs for RTD Buses that clearly indicate the shoulder lane is for RTD Buses Only in conjunction with a variable lane use control signal	Schedule 5 Section 14.1.1.1	Approval	Prior to issuance of Released for Construction Documents

## US 36 PHASE II SUBMITTAL TYPES

Not intended to be an exhaustive list. For specific timeframes and submittal requirements, please consult the contract documents

SUBMITTAL TYPE	SUBMITTAL	CONTRACT DOCUMENT REFERENCE	HPTE ACTION	TIMEFRAME TO RESPOND TO PLENARY ROADS DENVER (PRD) OR TIMEFRAME FOR PRD TO SUBMIT TO HPTE
Design	Lighting and electrical design calculations Acceptance Prior to issuance of the Released for Construction Documents	Schedule 5 Section 14.3	Acceptance	Prior to issuance of Released for Construction Documents
Design	Lighting and electrical design calculations -100% Design Progress Review Meeting	Schedule 5 Section 14.3	Review	Prior to submittal of Released for Construction Documents
Design	Lighting calculations showing the design meets the performance criteria for roadway or Bikeway design, voltage-drop calculations for each circuit.	Schedule 5 Section 14.1.4.1	Acceptance	Prior to issuance of Released for Construction Documents
Design	Lighting designs and plans	Schedule 5 Section 14.1.4.1	Acceptance	Prior to issuance of Released for Construction Documents
Design	LOMR	Schedule 5 Section 12.5.3	Acceptance	After project is constructed (will need design services after construction)
Construction	Maintenance Condition Survey	Schedule 5 Section 18.1.2	Acceptance	Every six months, Concurrent with the Maintenance Level of Service Plan update
Construction	Maintenance Level of Service Plan	Schedule 5 Section 18.1.2	Acceptance	At least 15 Days prior to NTP2, then update every 6 months.
Operations & Maintenance	Maintenance Management Plan	Concession Agreement Section 22.4	Acceptance	(i) At least forty (40) Business Days prior to the projected Commencement Date in relation to the I-25 Managed Lanes and the I-25 Shared Bridge Decks; (ii) At least sixty (60) Business Days prior to the projected Phase 1 Services Commencement Date in relation to the Phase 1 Managed Lanes and the Phase 1 GP Lanes; (iii) At least ninety (90) Business Days prior to the projected Full Services Commencement Date in relation to the Managed Lanes and the US 36 General Purpose Lanes as an integrated system; and (iv) No less than annually or, if the Concessionaire wishes to change any matter within any plan, more frequently, but no more frequently than once every three (3) months.
Operations & Maintenance	Maintenance Management Plan (MMP)	Schedule 6 Section 1.7.1	Acceptance	In accordance with Section 22.4 of the Concession Agreement
Design	Maintenance plan for each bridge type and box culvert structure type used	Schedule 5 Section 15.2.3	Approval	As a part of the Preliminary Design Packages and/or the In-Process Design Packages as described in Section 15.
Design	Maintenance plan for each bridge type used	Schedule 5 Section 15.2.3.5	Acceptance	As a part of the Preliminary Design Packages and/or the In-Process Design Packages as described in Section 15.
Contract Management	Master distribution list of contacts to be used for general public information, publications, and informational flyers/newsletters	Schedule 5 Section 4.6.3	Review	Prior to NTP2
Environmental	Materials Management Plan (MMP)	Schedule 5 Section 5.4	Approval	Within 21 Days prior to NTP2

## US 36 PHASE II SUBMITTAL TYPES

Not intended to be an exhaustive list. For specific timeframes and submittal requirements, please consult the contract documents

SUBMITTAL TYPE	SUBMITTAL	CONTRACT DOCUMENT REFERENCE	HPTE ACTION	TIMEFRAME TO RESPOND TO PLENARY ROADS DENVER (PRD) OR TIMEFRAME FOR PRD TO SUBMIT TO HPTE
Contract Management	Materials Testing and Inspection Plan	Schedule 5 Section 3.3.3	Acceptance	Submit with QMP within 60 Days following NTP1
Design	Median butterfly sign structure and foundation plans	Schedule 5 Section 14.3	Approval	Prior to issuance of Released for Construction Documents
Design	Median butterfly sign structure and foundation plans -60% and 100% Design Progress Review Meetings	Schedule 5 Section 14.3	Review	Prior to issuance of Released for Construction Documents
Contract Management	Meeting minutes	Schedule 5 Section 7.4.2.3	Acceptance	Not later than 7 Days after each meeting date
Construction	Method of Handling Traffic (MHT)	Schedule 5 Section 16.2.5.1	Acceptance	At least 2 Days prior to implementation of the MHT requiring a lane closure, before any travel lanes or shoulders are closed
Design	Methods and procedures for repairs to existing structures	Schedule 5 Section 15.2.3.6	Acceptance	As a part of the Preliminary Design Packages and/or the In-Process Design Packages as described in Section 15.
Environmental	Migratory bird nest survey	Schedule 5 Section 5.6	Review	Prior to impacting existing structures that may contain active bird nests
Environmental	Monitoring program that tracks project effects to listed species, including project effects, level of incidental take, exceedance of incidental take allowed in the PBO, and effectiveness of avoidance/minimization measures and conservation actions.	Schedule 5 Section 5.3.5	Review	During construction
Operations & Maintenance	Monthly incident reports	Schedule 6 Section 1.8.2	Review	Monthly. For incidents involving deaths, the Concessionaire shall submit the incident report to HPTE within 24 hours of the Incident.
Construction	Monthly Maintenance Progress Reports	Schedule 5 Section 18.1.2	Review	Shall be submitted to HPTE each month with the Monthly Progress Report as required in Schedule 5, Section 2, (Project Management).
Construction	Monthly Progress Report	Monthly Progress Report Section 2.1.2.	Review	Monthly
Construction	Monthly Progress Report format	Schedule 5 Section 1.3.1	Acceptance	Within 10 Working Days after NTP1
Construction	Monthly Progress Schedule	Schedule 5 Section 2.1.3.2.5	Acceptance	Concurrent with Monthly Progress Report
Construction	MOT variance request	Schedule 5 Section 16.4	Approval	At least 14 Days prior to implementation of the TCP
Design	Network diagrams	Schedule 5 Section 19.4	Acceptance	Concurrent with design plan submittals
Environmental	Noise analyses, final geometry, and architectural details of noise barriers	Schedule 5 Section 5.1.2.1	Acceptance	21 Days prior to issuance of Release for Construction Documents
Environmental	Noise control plan	Schedule 5 Section 5.1.2.2	Acceptance	As part of the Release for Construction Documents
Construction	Nonconformance Report	Schedule 5 Section 3.4	Acceptance	In accordance with the Approved QMP procedures
Contract Management	Notification to all the Ditch representatives of the status of the project and upcoming coordination planned	Schedule 5 Section 6.2.2	None	Within 5 Days after NTP1

## US 36 PHASE II SUBMITTAL TYPES

Not intended to be an exhaustive list. For specific timeframes and submittal requirements, please consult the contract documents

SUBMITTAL TYPE	SUBMITTAL	CONTRACT DOCUMENT REFERENCE	HPTE ACTION	TIMEFRAME TO RESPOND TO PLENARY ROADS DENVER (PRD) OR TIMEFRAME FOR PRD TO SUBMIT TO HPTE
Contract Management	Office Facilities and Options	Schedule 5 Section 2.2	Approval	Not later than 60 Days after the NTP1 effective date
Design	One General Project Foundation Report for all sign structures	Schedule 5 Section 15.2.6.1.1	Acceptance	As a part of the Preliminary Design Packages and/or the In-Process Design Packages as described in Section 15.
Environmental	Open Space - Public safety and security plans	Schedule 5 Section 5.1.5	Review	For work that will occur on the open space lands
Operations & Maintenance	Operations Management Plan	Schedule 6 Section 1.7.2	Acceptance	(i) At least forty (40) Business Days prior to the projected Commencement Date in relation to the I-25 Managed Lanes and the I-25 Shared Bridge Decks; (ii) At least sixty (60) Business Days prior to the projected Phase 1 Services Commencement Date in relation to the Phase 1 Managed Lanes and the Phase 1 GP Lanes; (iii) At least ninety (90) Business Days prior to the projected Full Services Commencement Date in relation to the Managed Lanes and the US 36 General Purpose Lanes as an integrated system; and (iv) No less than annually or, if the Concessionaire wishes to change any matter within any plan, more frequently, but no more frequently than once every three (3) months.
Contract Management	Original Initial Schedule	Schedule 5 Section 2.1.3.2.2	Approval	Not later than 15 Days prior to issuance of NTP2
Contract Management	Other Meeting Minutes (defined in QMP)	Schedule 5 Section 3.3.1	Acceptance	4 Working Days after meeting
Environmental	Paleontological Mitigation	Section 5.1.4	Review	The Concessionaire shall provide 5 Working Days advance notice to HPTE prior to conducting work that may require monitoring
Design	Pavement Design Report	Schedule 5 Section 10.2.1	Approval	Submitted with Preliminary Design Packages
Construction	PCCP jointing plan	Schedule 5 Section 10.2.2.2	Approval	At the Pre-paving Conference and at least 14 Days prior to the use of any PCCP on the Project
Construction	PDA Testing Criteria including number, type, layout and location Acceptance Submitted as part of the Preliminary Design Package and/or In-Process Design Packages	Schedule 5 Section 15.3	Acceptance	As a part of the Preliminary Design Packages and/or the In-Process Design Packages as described in Section 15.
Right-of-Way	Permission to enter property forms	Schedule 5 Section 8.2.3	Acceptance	Prior to entering any property outside the ROW for surveying, nonintrusive environmental investigation, and appraisal purposes.
Design	Pipe material selection	Schedule 5 Section 12.3.1	Acceptance	As part of the Drainage Reports
Environmental	Plan of action that outlines the impacts expected and how the Concessionaire shall comply with BTPD policies.	Schedule 5 Section 5.3.1	Approval	Prior to conducting any Activities that could potentially impact BTPD.
Design	Plans for all Class III, major overhead signs, and Managed Lane regulatory and guide signs	Schedule 5 Section 14.1.1.1	Approval	Prior to issuance of Released for Construction Documents

## US 36 PHASE II SUBMITTAL TYPES

Not intended to be an exhaustive list. For specific timeframes and submittal requirements, please consult the contract documents

SUBMITTAL TYPE	SUBMITTAL	CONTRACT DOCUMENT REFERENCE	HPTE ACTION	TIMEFRAME TO RESPOND TO PLENARY ROADS DENVER (PRD) OR TIMEFRAME FOR PRD TO SUBMIT TO HPTE
Contract Management	Pre-construction photographs	Schedule 5 Section 2.1.5.1	Acceptance	Immediately after NTP1; shall be completed prior to NTP2.
Design	Preliminary (30% level) plan sets	Schedule 5 Section 3.3.1	Acceptance	As defined in Contract Schedules
Design	Preliminary design plans for ultimate improvements	Schedule 5 Section 13.4	Acceptance	With preliminary and final design plans for related initial build elements
Contract Management	Preliminary Initial Schedule & WBS structure	Schedule 5 Section 2.1.3.4.2	Acceptance	Prior to NTP1
Environmental	Project database that tracks the level of impacts, number of individuals of a species taken, number of individual orchids impacted, and acres of habitat lost	Schedule 5 Section 5.3.5	Review	During construction
Contract Management	Project Directory	Schedule 5 Section 2.2.3	None	Prior to issuance of NTP2
Contract Management	Project Safety Management Plan (PSMP)	Schedule 5 Section 2.3.1	Acceptance	Prior to receiving NTP2
Contract Management	Project vision information	Schedule 5 Section 4.1	Approval	Prior to release to public
Design	Proposed foundation type for wall type	Schedule 5 Section 15.3	Approval	Prior to proceeding with the initial design and Release for Construction Documents
Contract Management	Proposed list of Maintenance of Traffic Task Force task force members	Schedule 5 Section 16.1.1.1	Acceptance	Within 30 Days after NTP1.
Design	Proposed location of wall and wall type	Schedule 5 Section 15.3	Approval	Prior to proceeding with the initial design and Release for Construction Documents
Design	Proposed Locations of Access Holes	Schedule 5 Section 15.2.3.3	Approval	As a part of the Preliminary Design Packages and/or the In-Process Design Packages as described in Section 15.
Design	Proposed methods of accommodating settlement and differential settlement for wall structures used	Schedule 5 Section 15.3	Approval	Submitted as part of the Preliminary Design Package and/or In-Process Design Packages
Design	Proposed MSE block wall locations for Approval by HPTE.	Schedule 5 Section 15.2.5.4.2	Approval	As a part of the Preliminary Design Packages and/or the In-Process Design Packages as described in Section 15.
Design	Proposed non-historic bridge and retaining wall types	Schedule 5 Section 15.2.3.2	Approval	As a part of the Preliminary Design Packages and/or the In-Process Design Packages as described in Section 15.
Design	Proposed structure aesthetics, including all visible surfaces	Schedule 5 Section 15.2.5.5	Acceptance	As a part of the Preliminary Design Packages and/or the In-Process Design Packages as described in Section 15.
Contract Management	Public Information Plan	Schedule 5 Section 4.1.	Approval	Prior to NTP2
Construction	Punch List and Punch List log	Schedule 5 Section 3.4.2	Acceptance	Upon completion
Construction	Quality Assurance test data and approved test results	Schedule 5 Section 3.3.4	Acceptance	Within 24 hours following the inspection or test

## US 36 PHASE II SUBMITTAL TYPES

Not intended to be an exhaustive list. For specific timeframes and submittal requirements, please consult the contract documents

SUBMITTAL TYPE	SUBMITTAL	CONTRACT DOCUMENT REFERENCE	HPTE ACTION	TIMEFRAME TO RESPOND TO PLENARY ROADS DENVER (PRD) OR TIMEFRAME FOR PRD TO SUBMIT TO HPTE
Contract Management	Quality Management Plan (QMP)	Schedule 5 Section 3.6.1	Approval	Within 60 Days following NTP1 and prior to issuance of NTP2
Contract Management	Quality Manager Certification	Schedule 5 Section 2.1.2.3	Review	With Monthly Progress Report
Contract Management	Quarterly revised Public Information Plan	Schedule 5 Section 4.1.2	Approval	Within 10 Working Days following each Public Information Plan review meeting
Environmental	Recognized Hazardous Materials (RHM) reports	Schedule 5 Section 5.4.1	Review	Monthly during Construction
Contract Management	Recovery Schedule	Schedule 5 Section 2.1.3.4.5	Approval	According to Section 2.1.3.4.5
Environmental	Reevaluation for changes to design, impacts, or mitigation that were not approved as a part of the ROD and 2012 US 36 Phase 1 and Phase 2 NEPA Reevaluations.	Schedule 5 Section 5.1.5	Approval	Reevaluation must occur before the proposed change from the ROD can be performed. The Federal Highway Administration (FHWA) must concur with any NEPA reevaluation.
Construction	Released for Construction and Revisions to Released for Construction	Schedule 5 Section 15.3	Acceptance	As a part of the Preliminary Design Packages and/or the In-Process Design Packages as described in Section 15.
Construction	Requests to HPTE CTMC and Local Agencies for modifications to traffic signals, timing, and VMS messages	Schedule 5 Section 16.4	Review	Days prior to the requested date for modifications
Asset Management	Residual Life Initial Inspection ("Initial Inspection") Report	Concession Agreement Section 48.4	Review	Within thirty (30) days following performance of the Initial Inspection
Operations & Maintenance	Results from initial inspection of the I-25 Managed Lanes and I-25 Bridges	Schedule 6 Section 2.3.4	Review	At least 60 days prior to the anticipated Commencement Date
Operations & Maintenance	Review of Annual Services	Schedule 6 Section 1.11.1	Review	Annually
Contract Management	Revised Initial Schedule	Schedule 5 Section 2.1.3.2.4	Approval	Upon HPTE's or Concessionaire's request
Contract Management	Revised Project Information Plan	Schedule 5 Section 4.1.2	Approval	Within 10 Working Days after the review meeting date
Right-of-Way	Revised ROW monumentation sheet	Schedule 5 Section 9.3.4	Acceptance	Prior to Phase 2 Work Completion Submit with As-Built Documents
Construction	Revisions to Release for Construction Documents	Schedule 5 Section 3.6.2	Acceptance	As defined in Contract Schedules
Construction	Routine requests for use of the CTMC VMS boards	Schedule 5 Section 16.1.1.3	Review	By 10:30 a.m. on Thursday of the week prior to when the VMS boards will be needed (Monday through Sunday of the following week)

## US 36 PHASE II SUBMITTAL TYPES

Not intended to be an exhaustive list. For specific timeframes and submittal requirements, please consult the contract documents

SUBMITTAL TYPE	SUBMITTAL	CONTRACT DOCUMENT REFERENCE	HPTE ACTION	TIMEFRAME TO RESPOND TO PLENARY ROADS DENVER (PRD) OR TIMEFRAME FOR PRD TO SUBMIT TO HPTE
Operations & Maintenance	Safety Plan	Concession Agreement Section 22.4	Acceptance	(i) At least forty (40) Business Days prior to the projected Commencement Date in relation to the I-25 Managed Lanes and the I-25 Shared Bridge Decks; (ii) At least sixty (60) Business Days prior to the projected Phase 1 Services Commencement Date in relation to the Phase 1 Managed Lanes and the Phase 1 GP Lanes; (iii) At least ninety (90) Business Days prior to the projected Full Services Commencement Date in relation to the Managed Lanes and the US 36 General Purpose Lanes as an integrated system; and (iv) No less than annually or, if the Concessionaire wishes to change any matter within any plan, more frequently, but no more frequently than once every three (3) months.
Design	Sampling schedule for pipe selection for HPTE review	Schedule 5 Section 12.3.1	Review	Prior to NTP2.
Design	Sign layouts for all special signs of any size	Schedule 5 Section 14.3	Approval	Prior to issuance of Released for Construction Documents
Design	Sign layouts for all special signs of any size – 60% and 100% Design Progress Review Meetings	Schedule 5 Section 14.3	Review	Prior to issuance of Released for Construction Documents
Construction	SMA Mix Design	Schedule 5 Section 10.2.1	Approval	At the Pre-paving Conference and at least 14 Days prior to the use of any SMA pavement on the Project
Construction	Soil Survey along with any proposed mitigation measures	Schedule 5 Section 11.1.2.1.1	Approval	Before any pavement and pavement-related work commences
Environmental	Spill Prevention Control and Countermeasures (SPCC) Plan	Schedule 5 Section 5.4	Approval	Within 21 Days prior to NTP2
Construction	Splicing details	Schedule 5 Section 19.4	Acceptance	4 weeks prior to splicing
Design	Stormwater Management Plan(s) and SWMP Site Map	Schedule 5 Section 12.1.2.1.1	Acceptance	Prior to Release for Construction
Design	Structural concept report	Schedule 5 Section 15.2.7.1	Acceptance	Prior to proceeding with the initial design and Release for Construction Documents
Design	Structural Design for each VMS Structure	Schedule 5 Section 15.2.6	Approval	As a part of the Preliminary Design Packages and/or the In-Process Design Packages as described in Section 15.
Design	Structure Concept Report & Plans	Schedule 5 Section 15.3	Acceptance	Prior to proceeding with the initial design and Release for Construction Documents.
Contract Management	Summary of Activity-specific Material quantities (MTIP)	Schedule 5 Section 3.3.3	Approval	Submit with QMP within 60 Days following NTP1
Contract Management	Task force meeting minutes	Schedule 5 Section 3.3.1	Acceptance	Four Working Days after meeting
Contract Management	Telephone Hotline and Email Account	Schedule 5 Section 4.6.4	None	Prior to NTP2
Construction	Testing results	Schedule 5 Section 19.4	Acceptance	Following test period of each component



## US 36 PHASE II SUBMITTAL TYPES

Not intended to be an exhaustive list. For specific timeframes and submittal requirements, please consult the contract documents

SUBMITTAL TYPE	SUBMITTAL	CONTRACT DOCUMENT REFERENCE	HPTE ACTION	TIMEFRAME TO RESPOND TO PLENARY ROADS DENVER (PRD) OR TIMEFRAME FOR PRD TO SUBMIT TO HPTE
Contract Management	The Adjusted Proposal Financial Model	Concession Agreement Section 2.4	Review	Prior to the proposed date of Financial Close
Design	The Concessionaire shall verify and confirm the accuracy of all survey and mapping information provided to the Concessionaire, regardless of the source of the information. The Concessionaire shall document all forms of data verification. Any Discrepancies in control point information	Schedule 5 Section 9.1.3	None	Provided that information is reported to HPTE within 60 Days after NTP1 will be resurveyed or corrected by HPTE at no cost to the Concessionaire.
Contract Management	The format and detail level required for submittal of the Monthly Progress Report	Schedule 5 Section 2.1.2.3	Established by HPTE, in	Within 10 Working Days after NTP1
Design	The load ratings of three existing structures along the Phase 2 Construction Work limits that are not modified by this Phase 2 Construction Work shall be documented	Schedule 5 Section 15.2.3.9	Acceptance	As a part of the Preliminary Design Packages and/or the In-Process Design Packages as described in Section 15.
Construction	Traffic Control Plans	Schedule 5 Section 16.2.1	Acceptance	At least 14 Days prior to implementation of the TCP
Design	Traffic Management Plan (TMP)	Schedule 5 Section 16.1.1.2	Acceptance	At least 30 Days prior to NTP2
Operations & Maintenance	Transition Management Plan	Schedule 6 Section 22.4	Acceptance	(i) At least forty (40) Business Days prior to the projected Commencement Date in relation to the I-25 Managed Lanes and the I-25 Shared Bridge Decks; (ii) At least sixty (60) Business Days prior to the projected Phase 1 Services Commencement Date in relation to the Phase 1 Managed Lanes and the Phase 1 GP Lanes; (iii) At least ninety (90) Business Days prior to the projected Full Services Commencement Date in relation to the Managed Lanes and the US 36 General Purpose Lanes as an integrated system; and (iv) No less than annually or, if the Concessionaire wishes to change any matter within any plan, more frequently, but no more frequently than once every three (3) months.
Operations & Maintenance	Transition Plan -operations and maintenance activities on the I-25 Managed Lanes, the Phase 1 Corridor and Phase 2 Corridor	Schedule 6 Section 1.7.5	Acceptance	At least 30 days prior to the I-25 Managed Lanes Services Commencement. At least 30 days prior to the Services Commencement Date for the Phase 1 Corridor and at least 30 days prior to the Final Services Commencement Date. Updates to the Transition Plan shall be submitted for Acceptance to HPTE.
Design	Travel Demand Management Program (TDM)	Schedule 5 Section 16.1.1.5	Acceptance	Within 30 Days after NTP2.

## US 36 PHASE II SUBMITTAL TYPES

Not intended to be an exhaustive list. For specific timeframes and submittal requirements, please consult the contract documents

SUBMITTAL TYPE	SUBMITTAL	CONTRACT DOCUMENT REFERENCE	HPTE ACTION	TIMEFRAME TO RESPOND TO PLENARY ROADS DENVER (PRD) OR TIMEFRAME FOR PRD TO SUBMIT TO HPTE
Environmental	Updated Environmental Compliance Work Plan	Schedule 5 Section 5.0	Acceptance	Monthly during Construction Annually during the post-construction phase
Construction	Use of broken concrete or broken asphalt or asphalt millings	Schedule 5 Section 11.1.2.3	Approval	Prior to incorporation into the Work
Construction	Utility No-Conflict Closeout	Schedule 5 Section 7.1.1	Acceptance	Prior to commencement of any Utility Work
Design	Utility placement on bridge structures	Schedule 5 Section 15.2.3.4.13	Approval	As a part of the Preliminary Design Packages and/or the In-Process Design Packages as described in Section 15.
Contract Management	Utility Tracking Report	Schedule 5 Section 7.3.2	Review	Monthly or at HPTE's request
Construction	Utility Work Orders	Schedule 5 Section 7.3.3	Provide comments or Approval	Within 14 Days after delivery of the draft Utility Work Order by the Concessionaire to HPTE, prior to commencement of any Utility Work
Contract Management	Visual inspection of all the existing corridor structures to remain	Schedule 5 Section 15.2.3.6	None	During the first 120 Days of the Contract (NTP1)
Contract Management	Weekly look ahead of specific scheduled construction Activities	Schedule 5 Section 3.3.4	Review	Weekly
Contract Management	Work Breakdown Structure	Schedule 5 Section 2.1.1	Acceptance	Along with Preliminary Initial Schedule
Construction	Written notice of failure of Utility Owner to cooperate or timely perform	Schedule 5 Section 7.5	Acceptance	Immediately after discovery
Construction	Written notice of Utility Owner not meeting Work Order time frame	Schedule 5 Section 7.4.4.2	Acceptance	Immediately after discovery
Construction	Written notice of Utility Permit violation	Schedule 5 Section 7.4.4.2	Acceptance	Immediately after discovery
Construction	Written notices to Utility Owners	Schedule 5 Section 7.1.1	Acceptance	Prior to commencement of any Utility Work
Right-of-Way	Written request to purchase the Additional TEs	Schedule 5 Section 8.2.1	Approval	After the Concessionaire determines that TEs are needed for the Work

**APPENDIX B**

**CDOT-HPTE INTRA-AGENCY AGREEMENTS**

**HPTE US36 CONCESSION PROJECT  
INTRA-AGENCY AGREEMENT**

THIS AGREEMENT, made this 27<sup>th</sup> day of June, 2013 by and between the STATE OF COLORADO for the use and benefit of THE COLORADO DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "CDOT", and the COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE, a government-owned business and a division of CDOT, hereinafter referred to as the "Enterprise or HPTE."

***FACTUAL RECITALS:***

1. CDOT is an agency of the State of Colorado; and
2. The Transportation Commission of Colorado is the budgetary and policy making body for CDOT with all powers and duties granted by the General Assembly pursuant to C.R.S. 43-1-106; and
3. The Enterprise was authorized and created pursuant to C.R.S. 43-4-806(1) and (2); and
4. The Enterprise has entered into an agreement, dated June 27, 2013 ("Concession Agreement") with Plenary Roads Denver ("Concessionaire") to: (1) finance, design and construct (and reconstruct where appropriate) the general purpose lanes and a new managed lane in each direction ("US36 Phase 2 Managed Lanes") on U.S. 36 between 88<sup>th</sup> Street and Table Mesa Drive ("US 36 Phase 2 Corridor"), together with associated roadways, bridges, access ramps, pavement replacement, sound and retaining walls, bikeways, and ITS improvements; (2) design and construct a diverging diamond interchange at McCaslin Boulevard and US36 ("McCaslin Interchange"); (3) operate and maintain (a) the US36 Phase 2 Managed Lanes, (b) the CDOT/HPTE constructed managed lane in each direction ("US 36 Phase 1 Managed Lanes") now being designed and constructed on that portion of US 36 from Pecos Boulevard to 88<sup>th</sup> Street (the "US 36 Phase 1 Corridor"), and (c) the existing I-25 Express Lanes ("I 25 Managed Lanes") on that portion of I-25 from the 20<sup>th</sup> Street exit to Pecos Boulevard, to the extent and all as more specifically described in the Concession Agreement; and (4) permit the Concessionaire access to the lands owned by the State of Colorado to complete the work described in the preceding sections.
5. The work described above in Recital No. 4 is collectively referred to in this Agreement as the "Project" and all other defined terms used in this Agreement have the meanings provided in this Agreement or in the Concession Agreement; and
6. Under the terms of the Concession Agreement, the Concessionaire is also required to perform snow and ice removal services for the McCaslin Interchange, and snow and ice removal services and

routine maintenance services for the general purpose lanes in the US 36 Phase 1 Corridor and the US 36 Phase 2 Corridor (collectively the "US 36 Corridor"), for which the Concessionaire is to be compensated by the HPTE which will in turn be reimbursed for those expenses related to the general purpose lanes by CDOT; and

7. CDOT and HPTE have agreed to enter into this Agreement to provide certain additional assurances and agreements, as further described below; and

8. By a resolution passed on February 21, 2013, for the purposes of 42-4-1012(1)(a), C.R.S., the Transportation Commission designated the Managed Lanes as preferential lanes for vehicles that carry a number of persons to be specified in the agreement to be made between HPTE and the Concessionaire; and

9. This Agreement is executed under the authority of Sections 29-1-203, 43-1-110, and 43-4-806(4) C.R.S., as amended and no other filings, consents or approvals are required.

**NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING FACTUAL RECITALS, IT IS HEREBY AGREED AS FOLLOWS:**

**I. CDOT GENERAL PURPOSE LANES PAYMENT OBLIGATIONS**

A. CDOT agrees, subject to annual allocation by the Transportation Commission, to pay (i) for Snow and Ice Control Services for the General Purposes Lanes in the US 36 Corridor and (ii) for Routine Maintenance services for the General Purpose Lanes in the US 36 Corridor and (iii) for its obligations in relation to those Non-Separable Tasks that may occur from time to time, in each case in the amounts and at the times necessary for HPTE to meet its payment obligations in accordance with the Concession Agreement ("CDOT Service Funding Obligations"). Such payments will be made to HPTE for remittance in a timely manner to the Concessionaire or, at the direction of HPTE, such payments will be made directly to the Concessionaire in accordance with the Concession Agreement.

B. In order for CDOT to timely budget for the CDOT Service Funding Obligations, on or before September 15 of the immediately preceding fiscal year, the Enterprise shall determine, in consultation with Concessionaire, the amounts and schedule of CDOT Service Funding Obligations for any fiscal year and shall notify the Executive Director of CDOT ("Executive Director") in writing of such requirements. Amounts sufficient to pay such CDOT Service Funding Obligations for the succeeding fiscal year shall be included by the Executive Director in the annual operation and maintenance budget request submitted to the Transportation Commission for an allocation of moneys in the state highway fund for such purpose.

C. Moneys allocated by the Transportation Commission for the payment of CDOT Service Funding

Obligations shall be transferred timely to the appropriate subaccount in the Enterprise's special revenue fund, established pursuant to Section 43-4-806(3)(a), C.R.S., and shall be used by the Enterprise to satisfy the CDOT Service Funding Obligations, as they become due.

## **II. CDOT BACKUP LOAN OBLIGATIONS**

A. The Concession Agreement, attached hereto as Exhibit A, contains obligations of HPTE to pay the Concessionaire various amounts and sums upon the occurrence (and following the occurrence of) certain events and in respect of several other matters, as more fully described therein (the "HPTE Payment Obligations").

B. The Transportation Commission has reviewed the Concession Agreement and is aware of the HPTE Payment Obligation Events. On or before September 15 of the immediately preceding fiscal year, the Enterprise shall estimate whether and in what maximum amount it may be necessary for the Enterprise to request that CDOT provide financial support to fulfill an HPTE Payment Obligation Event in any fiscal year, it being understood that any such financial support shall be in the form of a loan from CDOT to the Enterprise ("CDOT Backup Loan" or simply "Loan"). The Enterprise shall notify the Executive Director in writing as to the estimated maximum amount, if any, that is expected to be payable in the succeeding fiscal year, and such maximum amount ("CDOT Backup Loan Set Aside") shall be included in the budget request to the Transportation Commission for an allocation of moneys in the state highway fund for such purpose.

C. The Enterprise may also, at any time during any fiscal year, notify the Executive Director in writing that the Enterprise desires that CDOT make Loans for projected HPTE Payment Obligation Events in an amount that exceeds any CDOT Backup Loan Set Aside that the Transportation Commission has previously allocated for such fiscal year. In such event, the Executive Director shall submit a supplemental budget request to the Transportation Commission at its next regularly scheduled meeting for an allocation or supplemental allocation of moneys in the state highway fund for the purpose of making Loans to the Enterprise in such fiscal year in an amount equal to the amount set forth in the notice delivered by the Enterprise to the Executive Director pursuant to Section II.B.

D. Moneys allocated by the Transportation Commission to make Loans shall be transferred to the Enterprise's separate account established for the Project in the Enterprise's operating fund, pursuant to 43-4-806(4), C.R.S., and shall be used by the Enterprise to satisfy the HPTE Payment Obligation Events, as they become due.

E. Notwithstanding any other provision hereof: (a) CDOT and HPTE agree and acknowledge that

the Transportation Commission has no obligation to allocate funds to make Loans in any fiscal year and the decision whether or not to allocate funds, and the amount, if any, of funds allocated, to make Loans in any fiscal year shall be made annually at the sole and absolute discretion of the Transportation Commission; (b) prior to allocating any funds to make Loans in any fiscal year, CDOT shall determine that such authority exists in the law and that a sufficient unencumbered balance remains available in Fund 400 for Loans in an amount equal to the amount of funds so allocated; and (c) once an allocation by the Transportation Commission has been made, Loans shall be made up to the amounts requested by the Enterprise as set forth above.

F. All Loans shall be authorized by and subject to a separate Transportation Commission Resolution and shall be evidenced by separate Loan agreements in substantially the form attached hereto as Exhibit B ("Loan Agreement"), with terms consistent with the terms contained herein. In particular, having regard to the intent of the parties that the Loans shall be repaid from the revenues generated by the Project after the Concession Agreement has terminated (unless HPTE should have funds from any source to enable it to prepay the Loans in accordance with terms permitting such prepayment) CDOT shall determine a reasonable repayment schedule for each Loan after consultation with HPTE, provided that no repayment of any interest or principal on any Loan shall fall due before the later of (a) the date when Services Period ends and (b) the date on which HPTE has fully paid all amounts under or in connection with the Concession Agreement which arise out of HPTE Payment Obligation Events.

### **III. CDOT PERFORMANCE OBLIGATIONS**

CDOT and the Transportation Commission have reviewed the Concession Agreement and are aware that the Enterprise has undertaken certain obligations thereunder to cause or ensure that CDOT (a) will perform certain acts, take certain action, and provide certain services and (b) will refrain from performing certain other acts ("CDOT Performance Obligations"). CDOT enters into this Agreement in consideration of the benefits it is receiving including, but not limited to, the reconstruction of the General Purpose lanes of the US 36 Phase 2 Corridor and other transportation improvements, and hereby agrees to take any and all action, and to refrain from taking any action (as the case may be) necessary to satisfy the CDOT Performance Obligations in the manner and as otherwise required by the Concession Agreement.

### **IV. HPTE LICENSE**

CDOT agrees and acknowledges that for the Concessionaire to complete its obligations under the

Concession Agreement, the Concessionaire will require a formal right of access for appropriate use to the relevant land owned by the State of Colorado. CDOT is receiving significant value (consideration) from the agreement between HPTE and the Concessionaire, inasmuch as it will receive the benefit of the reconstruction of the US 36 general purpose lanes. Accordingly, it is in CDOT's interest that CDOT should provide, and CDOT hereby Provides, to the HPTE, for the Contract Period a non-exclusive license over, under, upon and in the Site and the Managed Lanes (as those terms are defined in the Concession Agreement). The period for which this license is provided for the different parts of the Site and the Managed Lanes shall be for the same duration as the period of the license provided by HPTE for those parts of the Site and the Managed Lanes under the Concession Agreement. CDOT acknowledges and agrees that HPTE may sublicense the license provided in this Article IV to the Concessionaire (with the right for the Concessionaire to give sub-sublicenses), and to any other party as may be permitted by and in accordance with the Concession Agreement.

Subject to the terms of the Concession Agreement, CDOT reserves the right of use, occupancy and ownership over, under, upon and in the lands described in the preceding paragraph.

CDOT agrees that it shall not transfer or purport to assign, convey, transfer, dispose of, alienate or create any Encumbrance in, or purport to transfer or dispose of, alienate or create any Encumbrance in the land comprising the Site or the Managed Lanes while the Concessionaire is permitted to use the same under the terms of the Concession Agreement. Further, CDOT agrees to defend its title or real property interest to the Site and the Managed Lanes, subject to rights held by third parties as disclosed in the Disclosed Data and Permitted Encumbrances, as well as the license provided to HPTE under this Agreement against any person claiming any interest adverse to CDOT apart from the owners of rights held by third parties as disclosed in the Disclosed Data and Permitted Encumbrances in relation to those rights and Permitted Encumbrances only.

## **V. DEFAULTS, TERMINATION AND REMEDIES**

A. If the Enterprise fails to repay any Loan in accordance with the applicable Loan Agreement and upon notice to the Enterprise and failure by the Enterprise to cure within thirty (30) days thereof, CDOT may, at its option: (a) terminate its commitment to make future Loans hereunder; (b) declare the entire principal amount of all Loans then outstanding immediately due and payable; (c) take any other appropriate legal action.



B. Notwithstanding the exercise of any of the remedies above, the Enterprise shall not be relieved of liability to CDOT for any damages sustained by CDOT by virtue of any breach of this Agreement by the Enterprise.

## **VI. GENERAL PROVISIONS**

A. This Agreement is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Agreement on the effective date of such change as if fully set forth herein. Except as specifically provided otherwise herein, no modification of this Agreement shall be effective unless agreed to in writing by both parties in an amendment to this Agreement that is properly executed and approved in accordance with applicable law.

B. The terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.

C. Except as herein otherwise provided, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

D. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by the Concessionaire or any other or third person on such Agreement.

E. The Enterprise shall maintain all books, documents, papers, accounting records and other evidence pertaining to project or any cost incurred for the term of the Concession Agreement, and if requested by CDOT, make such materials available to CDOT for three years after the termination of the Concession Agreement.

F. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions for the parties, of the Colorado Governmental Immunity Act, Section 24-10-101 et seq. C.R.S. or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq. as applicable, as now or hereafter amended.

G. At all times during the performance of this Agreement, the Enterprise shall strictly adhere to all applicable federal and state laws, rules, and regulations that have been or may hereafter be established,

including, but not limited to state and federal laws respecting discrimination and unfair employment practices.

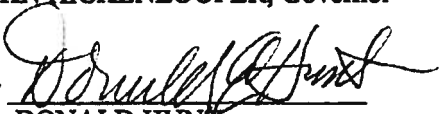
H. The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision of this Agreement, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Agreement to the extent that the Agreement is capable of execution.

I. The signatories aver that to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described herein.


J. This Agreement shall be effective as of the date of the Contract Date.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

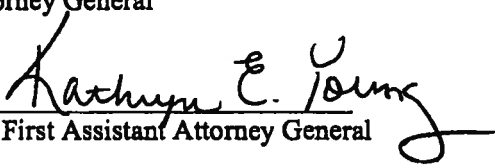
STATE OF COLORADO  
JOHN HICKENLOOPER, Governor

By   
DONALD HUNT  
Executive Director  
DEPARTMENT OF TRANSPORTATION

COLORADO HIGH PERFORMANCE  
TRANSPORTATION ENTERPRISE

By   
MICHAEL CHEROUTES  
HPTE Director

APPROVED:  
JOHN SUTHERS  
Attorney General

By   
First Assistant Attorney General

**EXHIBIT A**

**CONCESSION AGREEMENT**

Concession Agreement attached in full to original, but omitted from this copy to reduce volume of copy documentation

**EXHIBIT B**  
**CDOT- HPTE SEPARATE LOAN AGREEMENT**

THIS LOAN AGREEMENT, made this \_\_ day of \_\_\_\_\_, 20\_\_ by and between the State of Colorado for the use and benefit of THE COLORADO DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the “Lender”, and the COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE, hereinafter referred to as the “Borrower”, entered into pursuant to the Master Intra-Agency Agreement dated as of \_\_\_\_\_, 2013 between Lender and Borrower (the “Master Loan Agreement”).

***FACTUAL RECITALS:***

1. The Colorado Department of Transportation, the Lender, is an agency of the State of Colorado;
2. The Colorado High Performance Transportation Enterprise, the Borrower, was authorized and created pursuant to C.R.S. 43-4-806(1) and (2) 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;
3. The Transportation Commission of Colorado is the budgetary and policy-making body of the Lender and may, pursuant to C.R.S. 43-4-806(4), authorize the transfer of money from the state highway fund to the Borrower to defray expenses of the Borrower and, notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, such a transfer by the Lender to the Borrower shall constitute a loan and shall not be considered a grant for purposes of section 20(2)(d) of article X of the state constitution;
4. The Borrower entered into an agreement dated \_\_\_\_\_, 2013 (“Concession Agreement”) with Plenary Roads Denver (“Concessionaire”) to: (1) finance, design and construct (and reconstruct where appropriate) the general purpose lanes and a new managed lane in each direction (“US36 Phase 2 Managed Lanes”) on U.S. 36 between 88<sup>th</sup> Street and Table Mesa Drive ( “US 36 Phase 2 Corridor”), together with associated roadways, bridges, access ramps, pavement replacement , sound and retaining walls, bikeways, and ITS improvements; (2) design and construct a diverging diamond interchange at McCaslin Boulevard and US36 (“McCaslin Interchange”); (3) operate and maintain (a) the US36 Phase 2 Managed Lanes, (b) the CDOT/HPTE constructed managed lane in each direction (“US 36 Phase 1 Managed Lanes”) now being designed and constructed on that portion of US 36 from Pecos Boulevard to

88<sup>th</sup> Street (the “US 36 Phase 1 Corridor”), and (c) the existing I-25 Express Lanes (“I 25 Managed Lanes”) on that portion of I-25 from the 20<sup>th</sup> Street exit to Pecos Boulevard, to the extent and all as more specifically described in the Concession Agreement; and (4) permit the Concessionaire access to the lands owned by the State of Colorado to complete the work described in the preceding sections.

5. The Concession Agreement contains obligations to HPTE to pay the Concessionaire various amounts and sums upon the occurrence (and following the occurrence of) certain events and in respect of several other matters (“Borrower Payment Obligation Events”).

6. The Borrower has requested a loan from the Lender in the amount of \$[Requested Amount] for Borrower Payment Obligation Events because [description of why Payment Obligation Event arose].

7. The Transportation Commission has approved this loan request and authorized the Lender to make a loan to the Borrower in the amount of \$[Principal Amount];

8. Authority exists in the law and a sufficient unencumbered balance thereof remains available in Fund 400 to lend to the Borrower;

9. By Resolution # TC-\_\_\_\_, on \_\_\_\_\_, 2013, the Transportation Commission approved the HPTE-CDOT Intra-Agency agreement approved by the Transportation Commission and the HPTE Board of Directors (“HPTE-CDOT Agreement”); and

10. This Agreement is executed under the authority of Section 43-4-806(4), as amended, and by resolution of the HPTE Board.

**NOW, THEREFORE, IT IS HEREBY AGREED THAT:**

## **ARTICLE I LOAN AND CLOSING**

**Section 1.01. Loan and Promissory Note.** Pursuant to the terms of the HPTE-CDOT Agreement and this Agreement, the Lender hereby agrees to loan \$[Principal Amount] (the “principal amount of the Loan”) to the Borrower and the Borrower agrees to pay the Lender the principal amount of the Loan plus interest on the terms described herein (collectively, the “Loan”). The Borrower’s obligation to pay the Lender the principal of and interest on the Loan is evidenced by a promissory note (the “Note”) in the form attached as Attachment 1.

**Section 1.02. Closing.** The Lender shall deliver the principal amount of the Loan to the Borrower, by means of a transfer immediately available funds into the HPTE Operating Fund on a date mutually agreed to by the Borrower and the Lender (such date is referred to as the “Closing Date”).

**ARTICLE II**  
**LOAN OBLIGATIONS**

**Section 2.01. Principal and Interest Payments.** The Borrower shall pay to the Lender the principal amount of the Loan plus accrued interest in accordance with Section 2.07 or the Borrower may make prepayments in accordance with Section 2.05 hereof (a "Prepayment Date").

**Section 2.02. Lender Invoice and Reports.** The Lender shall forward an invoice, that includes the amount of principal and interest that shall be due, to the Borrower at least thirty days before the next scheduled payment is due.

**Section 2.03. Interest.** Interest shall accrue on the principal amount of the Loan from the Closing Date through the day preceding the Maturity Date or Prepayment Date at the Interest Rate (defined below), computed on the basis of a 360-day year of twelve 30-day months.

**Section 2.04. Interest Rate.** "Interest Rate" means the rate of interest established and adopted by resolution by the Colorado Transportation Commission pursuant to 2 CCR 605-1, Rule V (2).

**Section 2.05. Optional Prepayment.** The Borrower, at its option, may prepay the Loan in whole by paying the Lender the outstanding principal amount or a portion of the Loan, plus accrued interest to the Prepayment Date as selected by the Borrower.

**Section 2.06. Resource Pledge for Repayment.** The Borrower's obligation to pay the principal and interest on the Loan and any other amounts payable by the Borrower hereunder (the "Loan Obligations") are extraordinary limited obligations of the Borrower payable with the [Repayment Source(s)] (Repayment Source(s)).

**Section 2.07. Repayment Schedule.** The Borrower shall make equal installments of \$[Payment Amount] to the Lender each [Payment Period] beginning [First Payment Due Date], and each [Payment Period] thereafter for [Number of Payments] consecutive [Payment Periods], provided that no payment shall fall due until a date (the "Concession Agreement Obligation End Date") which is the later of the last day of the Services Period (as defined in the Concession Agreement) and the date that the Borrower has discharged or performed all of its payment obligations to the Concessionaire under the Concession Agreement. If any payment under this Loan Agreement would have fallen due prior to the Concession Agreement Obligation End Date it shall continue to accrue interest, and will become due 14 days after the Concession Agreement Obligation End Date.

**Section 2.08. Remittance.** All loan payments shall be made payable to the Colorado Department of Transportation, and sent to the Lender's accounting branch at 4201 East Arkansas Avenue, Rm. 212, Denver, CO 80222, or to such other place or person as may be designated by the Lender in writing.

**ARTICLE III**  
**DEFAULT AND TERMINATION**

**Section 3.01. Event of Default.** Borrow default ("Event of Default") is governed by Section IV of the Master Loan Agreement.

**Section 3.02. Remedies.** Lender's remedies against a Borrower Event of Default are governed by Section IV of the Master Loan Agreement.

**Section 3.03. Remedies Neither Exclusive Nor Waved.** No remedy under Section 3.02 hereof is intended to be exclusive, and each such remedy shall be cumulative and in addition to the other remedies. No delay or failure to exercise any remedy shall be construed to be a waiver of an Event of Default.

**Section 3.04. Waivers.** The Lender may waive any Event of Default and its consequences. No waiver of any Event of Default shall extend to or affect any subsequent or any other then existing Event of Default.

**ARTICLE IV**  
**TERMINATION**

**Section 4.01.** Subject to the terms of the Master Loan Agreement, this Agreement may be terminated as follows:

(a) Termination for Cause. If, through any cause, the Borrower shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if the Borrower shall violate any of the covenants, agreements, or stipulations of this Agreement, the Lender shall thereupon have the right to terminate this Agreement for cause by giving written notice to the Borrower of its intent to terminate and at least thirty (30) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, the Borrower shall return any funds that have been disbursed to the Borrower as part of the Loan and any accrued interest thereon within 45 days of the date of termination. Notwithstanding above, the Borrower shall not be relieved of liability to the Lender for any damages sustained by the Lender by virtue of any breach of this Agreement by the Borrower.

(b) Termination Due to Loss of Funding. The parties hereto expressly recognize that the Loan is made to the Borrower with State funds which are available to the Lender for the purposes of making a loan for the purposes described herein, and therefore, the Borrower expressly understands and agrees that all its rights, demands and claims to a loan arising under this Agreement are contingent upon availability of such funds to the Lender. In the event that such funds or any part thereof are not available to the Lender, the Lender may immediately terminate or amend this Agreement.



**[Signature page to follow]**

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

APPROVED:  
JOHN W. SUTHERS  
Attorney General

STATE OF COLORADO  
JOHN HICKENLOOPER, Governor

By: \_\_\_\_\_  
Assistant Attorney General

By: \_\_\_\_\_  
Executive Director  
DEPARTMENT OF TRANSPORTATION

ATTEST: (SEAL)

COLORADO HIGH PERFORMANCE  
TRANSPORTATION ENTERPRISE

By: \_\_\_\_\_

By: \_\_\_\_\_

Federal Employer Identification Number:  
[FEIN]

**ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER**

CRS24-30-202 requires that the State Controller approve all agreements. This Agreement is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until this Agreement is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

DAVID J. MC DERMOTT, CPA  
State Controller

By: \_\_\_\_\_  
LILIYA GERSHMAN  
Department Controller

Date: \_\_\_\_\_

**Attachment 1**

**NOTE**

\$ \_\_\_\_\_

\_\_\_\_\_

For VALUE RECEIVED, THE COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE \_\_\_\_\_ (the "Maker") subject to and in accordance with a Loan Agreement dated the [ ] day of [ ] [20\_\_] promises to pay to Colorado Department of Transportation (the "Holder") the principal sum of \$ \_\_\_\_\_ with interest from date at the rate of \_\_\_\_\_% per annum on the balance from time to time remaining unpaid. The said principal and interest shall be payable in lawful money of the United States of America at 4201 East Arkansas Avenue, Rm. 212, Denver, CO 80222 or at such place as may hereafter be designated by written notice from the Holder to the Maker hereof, on the date and in the manner following:

The Maker shall make equal installments of \$ \_\_\_\_\_ to the Lender each \_\_\_\_\_ beginning \_\_\_\_\_, and each \_\_\_\_\_ thereafter for \_\_\_\_\_ consecutive \_\_\_\_\_ [*or replace by reference to the agreed repayment schedule*].

By: \_\_\_\_\_

Attest: \_\_\_\_\_

**FIRST AMENDMENT TO  
HPTE US36 CONCESSION PROJECT  
INTRA-AGENCY AGREEMENT**

THIS FIRST AMENDMENT (“Amendment”) is made this 17<sup>th</sup> day of October, 2013 by and between the STATE OF COLORADO for the use and benefit of THE COLORADO DEPARTMENT OF TRANSPORTATION, hereinafter referred to as “CDOT”, and the COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE, a government-owned business and a division of CDOT, hereinafter referred to as the “Enterprise” or “HPTE.”

***FACTUAL RECITALS***

A. CDOT and HPTE entered into that certain HPTE US36 Concession Project Intra-Agency Agreement dated June 27, 2013 (“Original Agreement”), pursuant to which CDOT agreed (among other things) to perform the CDOT Service Funding Obligations, provide for a CDOT Backup Loan to HPTE, and fulfill the CDOT Performance Obligations, all relating to the Concession Agreement and the US 36 Project. All capitalized terms used in this Amendment but not otherwise defined in this Amendment shall have the meaning for such terms as set forth in the Original Agreement.

B. Pursuant to the Concession Agreement, HPTE is required to make certain payments (“Required Payments”) to the Concessionaire. HPTE intends to fund a portion of the Required Payments with monies (“Local Contributions”) to be received by CDOT for goods or services provided pursuant to the following intergovernmental agreements (collectively, the “Intergovernmental Agreements”):

- US 36 Concession Project Intergovernmental Agreement dated June 13, 2013, between HPTE, CDOT, and the Regional Transportation District (RTD contributing funds in return for construction of bus rapid transit lane);
- Contract dated June 11, 2013, between CDOT and the City of Louisville (Louisville contributing funds in return for construction of box culvert under US 36);
- Contract dated March 1, 2013, between CDOT and the City of Louisville (Louisville contributing funds in return for construction of diamond interchange at US 36 and McCaslin Blvd);
- Intergovernmental Agreement dated March 4, 2013, between CDOT and the Town of Superior (Superior contributing funds in return for construction of diamond interchange at US 36 and McCaslin Blvd);
- Intergovernmental Agreement dated June 14, 2013, between CDOT and the Town of Superior (Superior contributing funds for construction of pedestrian/bike underpass); and
- Contract dated April 24, 2013, between CDOT and Boulder County (Boulder County contributing funds for construction of bike path).

C. HPTE intends to also fund a portion of the Required Payments with federal highway funds (STP Metro and CMAQ) allocated for the US 36 Concession Project by the Denver Regional Council of Governments (“Federal Funds”).

D. CDOT and HPTE wish to amend the Original Agreement to provide for the obligation of CDOT to make available to HPTE the Local Contributions and the Federal Funds, subject to the terms and conditions set forth below.

E. CDOT entered into the Original Agreement and enters into this Amendment in consideration of the benefits it is receiving including, but not limited to, the reconstruction of the General Purpose lanes of the US 36 Phase 2 Corridor and other transportation improvements.

F. This Amendment is executed under the authority of Section 29-1-203, C.R.S., as amended.

**NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING FACTUAL RECITALS, IT IS HEREBY AGREED AS FOLLOWS:**

1. Local Contributions. At present, CDOT will receive Local Contributions in an amount totaling approximately \$30 million (such amount may increase or decrease pursuant to the Intergovernmental Agreements). CDOT agrees to make available to HPTE the sums owed to CDOT under the Intergovernmental Agreements in the amounts and at the times when such funds are made to CDOT.. It is understood that the Local Contributions are not Grants as defined in Section 24-77-102, C.R.S. but are rather being made in exchange for the goods or services, such as constructed bus rapid transit lanes, bike paths, and a diamond interchange, delivered by HPTE as part of the US 36 Project.

2. Federal Funds. CDOT further agrees to make available to HPTE the Federal Funds in the total amount of \$15,000,000.00 at such times and in such a manner so as to allow HPTE to timely fulfill HPTE's payment obligations under the Concession Agreement and any amendment thereto. CDOT's consideration for entering into this Amendment is the benefits it is receiving including, but not limited to, the reconstruction of the General Purpose lanes of the US 36 Phase 2 Corridor and other transportation improvements. Therefore, HPTE's use of the Federal Funds is not a Grant as defined in Section 24-77-102, C.R.S., but instead is a fee for goods and services. It is further understood that the Federal Funds are not Grants as defined in Section 24-77-102, C.R.S. but are rather federal funds excepted from the definition of Grants.

3. General Provisions. With the exception of those terms and conditions specifically modified and amended herein, the Original Contract shall remain in full force and effect in accordance with all of its terms and provisions. In the event of any conflict between the terms and provisions of the Original Agreement and the term and provisions of this Amendment, the terms and provisions of this Amendment shall supersede and control. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, and all of such counterparts shall constitute one agreement.

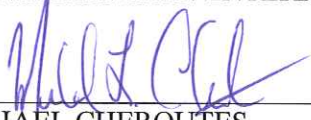
*[Signature page follows]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

STATE OF COLORADO  
JOHN HICKENLOOPER, Governor

By \_\_\_\_\_  
DONALD HUNT  
Executive Director  
DEPARTMENT OF TRANSPORTATION

COLORADO HIGH PERFORMANCE  
TRANSPORTATION ENTERPRISE

By  \_\_\_\_\_  
MICHAEL CHEROUTES  
HPTE Director

APPROVED:  
JOHN SUTHERS  
Attorney General

By \_\_\_\_\_  
First Assistant Attorney General