

**Resolution – HPTE #238**

**Approving an Amended Memorandum of Understanding with the Federal Highway Administration and Colorado Department of Transportation for the I-70 Eastbound Peak Period Shoulder Lane (Mountain Express Lane) Project**

**WHEREAS**, the General Assembly created the Colorado High Performance Transportation Enterprise (“HPTE”), pursuant to Section 43-4-806, C.R.S., as a government-owned business within the Colorado Department of Transportation (“CDOT”) to pursue innovative means of more efficiently financing important surface transportation projects that will improve the safety, capacity, and accessibility of the surface transportation system; and

**WHEREAS**, HPTE, in partnership with CDOT, completed and is operating the I-70 Mountain Express Lane Project, formerly known as the I-70 Peak Period Shoulder Lane Project (the “Project”) over a 13 mile segment of eastbound I-70 through the I-70 Mountain Corridor; and

**WHEREAS**, HPTE previously entered into a Memorandum of Understanding (“MOU”) with the Federal Highway Administration (“FHWA”) and the Colorado Department of Transportation (“CDOT”), which set forth certain conditions of the design variance required for the Project, including, *inter alia*, restrictions on the hours of operation of the Project; and

**WHEREAS**, the parties desire to make certain modifications to the MOU (the “Amended MOU”), including a requirement to conduct of an annual multidisciplinary review of the Project that includes a safety analysis and focuses on signing, striping and operations during both peak and non-peak operations; and

**WHEREAS**, the Amended MOU further provides for increased hours of annual operation and certain other operational flexibilities to better manage incidents on the I-70 Mountain Corridor; and

**WHEREAS**, HPTE previously executed an agreement (the “Loan Agreement”) with Banc of America Preferred Funding Corporation (the “Bank”) for loan financing to support the construction of the Project, which Loan Agreement requires the consent of the Bank to any amendment to the MOU; and

**WHEREAS**, the Board of Directors (the “Board”) previously approved Resolution #208 approving an earlier version of an amended MOU that was not ultimately executed, and which is intended to be superseded and replaced by the Amended MOU executed pursuant to this Resolution.

**NOW THEREFORE BE IT RESOLVED**, the Board of Directors hereby approves the Amended MOU in the form presented and authorizes the HPTE Director, subject to receipt of the required consent of the Bank, to execute the Amended MOU, with such

revisions or modifications, not inconsistent with this Resolution, as the HPTE Director may determine to be necessary or appropriate.

Signed as of August 16, 2017

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Kari V. Grant  
Secretary, HPTE Board

**AMENDED  
MEMORANDUM OF UNDERSTANDING (MOU)  
By and between the  
FEDERAL HIGHWAY ADMINISTRATION,  
UNITED STATES DEPARTMENT OF TRANSPORTATION (Division)  
AND  
COLORADO DEPARTMENT OF TRANSPORTATION (CDOT)  
AND  
COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE (HPTE)**

WHEREAS, CDOT has constructed the *I-70 Eastbound Peak Period Shoulder Lane Project* (hereinafter referred to as the “Project”); and

WHEREAS, the Division, CDOT and HPTE previously entered into an MOU for the Project, which contemplated changes as a second step to allow for added operation flexibility following the commencement of operations; and

WHEREAS, this Amended MOU is intended to supersede and replace the original MOU dated April 22, 2014; and

WHEREAS, CDOT and HPTE desire to continue tolling during periods of high traffic volumes on the eastbound inside shoulder from MP 230 to MP 241 (hereinafter referred to as the “Toll Facility”); and

WHEREAS, the Division, CDOT and HPTE recognize the seasonality of the traffic demand experienced by the Toll Facility and therefore agree that for purposes of data collection, operational assessments, performance measures and reviews, the Toll Facility reporting period shall be the twelve month operating year from November 1<sup>st</sup> to October 31<sup>st</sup>, inclusive; and

WHEREAS, the following are conditions of the design variance required for the Project:

- a. CDOT and HPTE agree to collect sufficient Toll Facility data and adjacent GP Lanes data to provide a complete view of the total corridor performance.
- b. The following data on the Toll Facility and adjacent GP Lanes are to be collected during each operating year to assemble the following performance measures that are based upon the Project’s Concept of Operations. The Project’s Concept of Operations, recommended performance measures are as follows:
  1. Interstate 70 Travel Time Reliability;
  2. Interstate 70 Traffic Volume and Traffic Type;
  3. Interstate 70 Safety and Crash Data, during operational and non-operational periods including the location of the incident;
    - a. Included as a performance measure will be an evaluation of incidents that occur in the Toll Facility when the Toll Facility is in the closed state; and
  4. Incident clearance times (as measured from the time of dispatch of Courtesy Patrol to when all emergency responders have left the scene).

The information provided by the performance measures shall be assembled into a report that provides an assessment of the operating year’s performance with recommendations as needed for the upcoming operating year. If needed, as a part of the operating year

assessment, CDOT or HPTE will conduct a review of the functionality of the Toll Facility or components of the Toll Facility. The accuracy and findings of the report shall be certified by CDOT and HPTE and submitted to the Division, within two months of the end of the operating year. One certified report shall be sufficient to satisfy the requirements of this paragraph so long as both parties are bound by such certification. If requested, CDOT and HPTE agree to provide Clear Creek County (CCC) results of the Project's ongoing assessment as a part of CDOT/CCC Quarterly Coordination Meetings.

- c. In addition to paragraph b. above, CDOT will conduct an annual multidisciplinary review of the Toll Facility that includes a safety analysis and focuses on signing, striping, and operations during both the peak and non-peak operations. The results of the review shall be shared with FHWA.
- d. CDOT will maintain the striping to ensure the striping remains of high quality for the facility
- e. CDOT and the HPTE agree to reassess the Toll Facility in the year 2020 in conjunction with the I-70 Programmatic Environmental Impact Statement (PEIS) Record of Decision (ROD) reassessment.

At that time, the full range of improvements evaluated at Tier 1 may be reconsidered. In addition, the I-70 Collaborative Effort stakeholder committee (including the lead agencies) may reconsider the full range of improvements evaluated in the Final PEIS, or pursue a new process because the context in which this Tier 1 decision was made is so changed that none of the alternatives evaluated in the Final PEIS meets future transportation needs. Global, regional, and local trends such as peak oil, climate change, technological advances, and changing demographics could affect these future transportation needs.

The reassessments can proceed in parallel with Tier 2 NEPA processes for individual projects. Preparation of a reassessment does not require ongoing Tier 2 NEPA processes to be halted, nor does it preclude the initiation or conclusion of other Tier 2 NEPA processes.

- f. CDOT and HPTE agree to limit the use of the Toll Facility according to the following operational limitations:
  - 1. The Toll Facility operations shall be limited to peak periods of congestion, which based on modeling and historic data, are projected to be on Saturdays and Sundays from December through March, and July through September.
  - 2. The Toll Facility shall operate during holiday associated traffic and planned special events throughout the year, both which are anticipated to generate a large, concentrated number of return trips from the I-70 Mountain Corridor to the Denver Metropolitan Area.
  - 3. In order to balance the semi-predictable nature of the I-70 Mountain Corridor traffic peaks with the uncertainties that come from adverse weather and tight geometry, HPTE and the CDOT Transportation Management Center (CTMC) operations center will have the flexibility to determine when congestion levels have risen to a level that warrants opening the Toll Facility. It is anticipated that the Toll Facility will normally be operated between the hours of 9:00am and 8:00pm.
  - 4. When necessary, the Toll Facility shall be allowed to operate during emergency closures of the general purpose lanes. A toll may not be charged for use of the Toll Facility during emergency closures. If a toll is not charged, these hours of

emergency use will not be counted when calculating whether the Toll Facility's annual operational limits set forth in Paragraph 6 below apply.

5. The Toll Facility operations are weather dependent.
6. The Toll Facility shall not operate on more than 100 days per year (including holidays), or operate in excess of 1,168 hours per year.
7. The Toll Facility shall cease operation by the year 2035 unless modified by a different project, which may or may not be a part of the Corridor's long term solution.

The CDOT and the HPTE agree that if the above operational limitations are not met, the Division has the right to revoke the design variances allowed for the Project from MP 230 to MP 241 and require all Federal funds be repaid in full. If the above mentioned limitations are not met, the Division has the right to require CDOT to restore the cross section and right side break down shoulder to a pre-Project condition.

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

**COLORADO DEPARTMENT OF TRANSPORTATION**

BY: \_\_\_\_\_,  
Shailen P. Bhatt, Executive Director

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

**COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE**

BY: \_\_\_\_\_,  
David I. Spector, Director

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

**FEDERAL HIGHWAY ADMINISTRATION  
COLORADO DIVISION**

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

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