

Resolution – HPTE #281

Approving an Amended Memorandum of Understanding with the Federal Highway Administration, the Colorado Department of Transportation and the High Performance Transportation Enterprise for the I-70 Eastbound and Westbound 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, is operating a portion of 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, with the westbound portion to begin construction in 2019; and

WHEREAS, HPTE previously entered into that Memorandum of Understanding (“MOU”) for the Project with the Federal Highway Administration (“FHWA”) and CDOT on April 22, 2014, which set forth certain conditions of the design variance required for the Project, and subsequently entered into Amended MOU on September 22, 2017 that allowed for added operation flexibility following the commencement of operations; and

WHEREAS, the parties desire to make certain modifications to the MOU (the “Amended MOU”), intending to supersede and replace the MOU dated September 22, 2017; and

WHEREAS, specifically, the parties desire to memorialize operational flexibilities to better manage incidents on the I-70 Mountain Corridor that include both eastbound and westbound directions; 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 HPTE Board of Directors (the “Board”) previously approved Resolution #208 and Resolution #238, respectively, which authorized execution of those certain MOUs, and which are intended to be superseded and replaced by this Amended MOU executed pursuant to this Resolution.

NOW THEREFORE BE IT RESOLVED, the HPTE Board 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 November 14, 2018

Simon Logan
Secretary, HPTE Board

**AMENDMED AND RESTATED
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 both the *I-70 Eastbound and Westbound Peak Period Shoulder Lane Projects* (hereinafter referred to as the “Project”); and

WHEREAS, the Division, CDOT and HPTE previously entered into an MOU for the Project on April 22, 2014, and subsequently entered into Amended MOU on September 22, 2017 that allowed for added operation flexibility following the commencement of operations; and

WHEREAS, this Second Amended MOU is intended to supersede and replace the MOU dated September 22, 2017; 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 and on the westbound inside shoulder from MP 242 to 230.5 (hereinafter collectively 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 1st to October 31st, 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
 - b. Evaluation of signing and striping related to safety and operations of the facility.
 - c. Outreach to emergency responders for feedback on the safety and operations of the facility.
 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. 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. CDOT will maintain the striping to ensure the striping remains of high quality for the facility.
- d. 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 in the eastbound direction, and Fridays, Saturdays, and Sundays in the westbound direction 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 6:00am 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 in the eastbound direction
 - 7. The Toll Facility shall not operate on more than 125 days of operation (including holidays), or operate in excess of 965 hours per year in the westbound direction.
 - 8. 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.
 - 9. Any proposed changes to the operating limitations of the Toll Facility or to this agreement will be in accordance with the 2011 I-70 Mountain Corridor Record of Decision.

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 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: _____, DATE: _____
Michael P. Lewis, Executive Director

COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE

BY: _____, DATE: _____
David I. Spector, Director

**FEDERAL HIGHWAY ADMINISTRATION
COLORADO DIVISION**

BY: _____, DATE: _____
John M. Cater, Division Administrator



Date: November 14, 2018

To: High Performance Transportation Enterprise Board / Colorado Transportation Commission

From: Nicholas Farber, HPTE Head of Innovative Project Delivery; Neil Ogden, P.E., Region 1, West Program, Resident Engineer

Subject: Second Amendment to Memorandum of Understanding Between HPTE, CDOT, and FHWA regarding westbound PPSL project

Purpose

The purpose of this memo is to describe the Third Amendment to the Memorandum of Understanding (MOU) between the Colorado Department of Transportation (CDOT), the High-Performance Transportation Enterprise (HPTE), and the Federal Highway Administration (FHWA) regarding the addition to the westbound Peak Period Shoulder Lane (PPSL) Project.

Action

The HPTE Board and Transportation Commission are asked to adopt a resolution that supports the staff recommendation to approve the third amendment to the eastbound PPSL MOU to add the westbound PPSL project.

Background

The westbound PPSL project adds an approximate 12-mile tolled PPSL on WB I-70 between the Veterans Memorial Tunnels (just west of MP 243) and the US 40/I-70 interchange (MP 232). The general purpose lanes and shoulder of westbound I-70 are resurfaced and widened in select locations on the existing alignment to accommodate an Express Lane on the shoulder during peak travel periods. The Express Lane begins approximately 500 feet east of the Veterans Memorial Tunnels portal and continues past the US40/I-70 Interchange. The project maximizes the use of the existing alignment and infrastructure to minimize any new impacts within the study area. The 11-foot shoulder Express Lane is open for use only during peak periods, and otherwise serves as the shoulder of the interstate. Overhead signs will show the Express Lane status and toll rates will be located throughout the corridor and at the entrance point.

Overview of MOU

CDOT, HPTE, FHWA originally entered into a MOU for the eastbound PPSL project on April 22, 2014 that sets forth the reporting requirements CDOT and HPTE are to provide to FHWA, and specifies the number of hours and days the shoulder lane could be open for in a year's time. It was amended again in September of 2017 to allow the eastbound Express Lane to be open for additional hours and days per year. This second amendment adds the westbound PPSL project to the MOU, adds additional reporting requirements (evaluation of striping, and seeking feedback on safety and operations from law enforcement), and specifies how many hours and days the westbound Express Lane can operate for (125 days, or not in excess of 965 hours).

Options / Decision Matrix

1. **Staff Recommendation:** Approve the Third Amendment to the MOU between CDOT, HPTE and FHWA.
2. Review but do not approve the IAA. Provide instructions on changes or revisions.

Attachment

Third Amendment to Memorandum of Understanding between FHWA, CDOT, and HPTE.