

Resolution – HPTE #296

Approving a Purchase Order between the High Performance Transportation Enterprise and mobilitynext

WHEREAS, C.R.S. Sections 43-4-806, *et seq.*, created the High Performance Transportation Enterprise (“HPTE”) as a government-owned business within the Colorado Department of Transportation (“CDOT”); and

WHEREAS, the business purpose of HPTE is to pursue public private partnerships and other innovative and efficient means of completing surface transportation infrastructure projects; and

WHEREAS, HPTE is authorized, pursuant to C.R.S. Section 43-4-806(6)(g) to enter into contracts or agreements with any private entity to facilitate a public-private partnership; and

WHEREAS, HPTE is also empowered, pursuant to C.R.S. Section 43-4-806(6)(h) to make and enter into all other contracts and agreements that are necessary or incidental to the exercise of its powers and performance of its duties; and

WHEREAS, mobilitynext is a first-of-its-kind, membership-based collaboration for public and private entities to partner, train, and execute scalable and deployable projects related to smart transportation; and

WHEREAS, HPTE seeks membership in mobilitynext’s services to provide insights into transportation challenges and receive input and opportunity from mobilitynext’s private entity partners in order to accelerate actionable innovation related to smart transportation; and

WHEREAS, HPTE and mobilitynext recognize the potential synergies between the parties, and desire to further collaborate to advance and promote their respective missions; and

WHEREAS, HPTE and mobilitynext have agreed to a Purchase Order that outlines and defines the roles and responsibilities of each party.

NOW THEREFORE BE IT RESOLVED, the HPTE Board of Directors hereby approves the Purchase Order in substantially the form presented, with such changes thereto as may be approved by the HPTE Director and the office of the Colorado Attorney General, provided that such changes shall not substantially and materially alter the terms and conditions of the agreement as presented to the HPTE Board of Directors, nor otherwise be inconsistent with this Resolution.

Signed as of June 19, 2019

Simon Logan
Secretary, HPTE Board of Directors



MEMORANDUM

TO: HIGH PERFORMANCE TRANSPORTATION ENTERPRISE BOARD
FROM: NICHOLAS FARBER, ACTING DIRECTOR, HPTE
ANDREW GOMEZ, ASSISTANT ATTORNEY GENERAL
DATE: JUNE 19, 2019
SUBJECT: mobilitynext PURCHASE ORDER

Purpose

A request for approval of the draft Purchase Order ("PO") for membership into mobilitynext. This memorandum provides a summary of the key provisions of the PO.

Requested Action

Staff requests that the HPTE Board authorize execution of the PO for mobilitynext membership.

Background

At HPTE's November 2018 meeting, Jim Doyle from mobilitynext presented to the Board, highlighting the high-level goals, partners, and overall structure of mobilitynext. Now, the parties are ready to move forward formalizing their commitment. Upon execution of the PO, the non-binding September 28, 2018 MOU with mobilitynext will be superseded.

Overview of mobilitynext Membership

mobilitynext is a membership-based research and development hub for public and private entities to collaborate and engage in each other's subject-matter expertise, with the goal of executing deployable projects related to smart technology. Eventually, mobilitynext will be located at Peña Station Next; until then, mobilitynext will provide an interim facility.

1) *Cost*

Annual membership is \$100,000 dollars, payable quarterly in \$25,000 installments. This membership fee can be refunded if certain conditions are not met (see section 3, *Termination*).

2) *Term*

HPTE's membership begins on or about July 29, 2019 (the "Effective Date").

3) *Termination*

HPTE can request that its membership fee be refunded if two conditions are met: (1) if, after fifteen (15) days of the Effective Date, no more than three public agencies - excluding HPTE - have joined mobilitynext; and (2) if, after six (6) months of the Effective Date, no more than three (3) private entity partners have joined mobilitynext.

4) *Access to HPTE*

In addition to the membership fee, HPTE will also use its best efforts to make its senior-most executive staff available for quarterly meetings, and may wish to sit on mobilitynext's governance board.

Recommendation

Staff recommends approval of the terms of the mobilitynext PO in substantially the same form attached, and staff will move forward to finalizing the agreement.

Attachment

Draft PO

SCOPE OF WORK

mobilitynext is a first-of-its-kind, membership-based, statewide, applied research “do-lab” for public and private entities to collaborate, train and execute scalable and deployable projects related to smart transportation.

HPTE seeks membership in mobilitynext’s services to provide insights into transportation challenges and to receive input and opportunity for real-world testing and demonstrations by mobilitynext’s private entity partners in order to accelerate actionable innovation.

HPTE and mobilitynext agree to the following services and terms of membership:

- **Public Agency Launch Date.** The services and terms of membership set forth in this Scope of Work will begin on the date mobilitynext launches its public agency membership program (“Effective Date”), which will occur on or about July 29, 2019.
- **Term.** The term of this Scope of Work (“Term”) will begin on the Effective Date and will not expire until eighteen (18) months from the Effective Date, unless earlier terminated in accordance with the terms of this Scope of Work or the terms and conditions of the Purchase Order.
- **Membership Fee.** Beginning on the Effective Date, HPTE will pay mobilitynext a membership fee of One Hundred Thousand Dollars (\$100,000), payable in four quarterly installments of Twenty-Five Thousand Dollars (\$25,000) by the end of the first week of each quarter (“Membership Fee”). All financial obligations of HPTE under this Scope of Work are subject to annual budgeting and appropriation by HPTE’s governing body, in its sole discretion.
- **Termination for Lack of Sufficient Public Agency Participation.** In the event that fewer than three (3) separate and additional public agency partners, not including HPTE, agree to membership in mobilitynext before or within fifteen (15) days of the Effective Date, then HPTE, in its sole discretion, may terminate this Scope of Work upon fifteen (15) days’ written notice of termination and shall not have any obligation to pay any amount of the Membership Fee and shall be refunded in full any amount of the Membership Fee already paid.
- **Termination for Lack of Sufficient Private Entity Participation.** It is anticipated that private entity membership in mobilitynext will begin on or about six (6) months after the Effective Date, or on or about another date to be determined by mobilitynext’s governance board (“Private Entity Launch Date”). In the event that fewer than three (3) private entity partners agree to membership in mobilitynext as of the Private Entity Launch Date, then HPTE may terminate this Scope of Work upon fifteen (15) days’ written notice of termination. mobilitynext will then return to HPTE the pro rata amount of the Membership Fee paid by HPTE for the remainder of the quarter, as calculated from the date of termination to the end of the quarter in question.
- **MOU.** The September 28, 2018 non-binding Memorandum of Understanding is superseded by this Scope of Work in its entirety as of the Effective Date.
- **Pillars.** mobilitynext shall establish pillars around particular areas, such as aviation and mass transit, to allow for focused innovation. HPTE may participate in any and all pillar activity during the term of its membership.
- **Pillar Chair.** HPTE will use its best efforts to make senior-level staff available to chair a Pillar when asked by mobilitynext. Pillar chairs will be expected to dedicate, on average, three hours per week

to facilitate decision making, provide direction, and encourage collaboration. Pillar chairs will be supported by mobilitynext staff to assist in task execution.

- **mobilitynext Board and Committees.** If it so chooses, HPTE may make its most senior executive available to sit on mobilitynext's governance board. In addition, HPTE will use its best efforts to staff other mobilitynext committees to support mobilitynext's operations and to provide direction.
- **Programs.** mobilitynext will structure, staff, and facilitate programs across pillars to facilitate multi-modal innovation. HPTE may participate in any and all programs during the Term of this Scope of Work.
- **Private Entity Partner Access.** mobilitynext shall use its best efforts to provide HPTE with introduction and access to any and all of mobilitynext's private entity partners. As part of such best efforts, mobilitynext shall hold events on a quarterly basis for HPTE and mobilitynext's private entity partners.
- **HPTE Leadership Access.** HPTE will use its best efforts to make its most senior executive available for mobilitynext's executive-level only quarterly events with mobilitynext's private entity partners. If the senior-most executive is unavailable, HPTE will use its best efforts to make its next most senior executive available for such quarterly events, which will be no longer than two hours each and which may be broken into parts to better facilitate conversation among HPTE and the private entity partners in attendance.
- **Co-Location; mobilitynext Facility.** mobilitynext intends to be located at Peña Station Next, a transit-oriented development site in Denver. Once constructed, the mobilitynext facility will be available to HPTE for co-location of HPTE's employees and contractors with other mobilitynext partners. Prior to the construction of that new facility, mobilitynext will use an interim facility that will enable all the services above.
- **Network Participation.** Subject to its federal, state, and contractual restrictions and obligations, HPTE will make its physical infrastructure available to mobilitynext's private entity partners for testing, trials, development, and deployment of advanced technologies that may benefit HPTE. HPTE may establish the terms and conditions upon which its physical infrastructure will be made available, with due regard and without limitation to, safety and security restrictions, operational needs, regulatory requirements, and procurement procedures.
- **Procurement.** HPTE and mobilitynext shall abide by all relevant procurement standards and guidelines, including any and all policies regarding organizational conflicts of interest. mobilitynext acknowledges that HPTE's procurement requirements shall govern HPTE's approach to collaboration with mobilitynext's private entity partners, as well as a private entity partner's ability to bid on potential public projects.
- **Organizational Conflict of Interest.** In accordance with procurement best practices, mobilitynext acknowledges that participation by a private entity partner in developing a scope of work for HPTE or another public agency for a potential public project would create an organizational conflict of interest that would preclude the private entity partner from competing for the work that the private entity partner had helped to delineate. As such, mobilitynext shall use its best efforts to ensure that its private entity partners are not engaged in the practice of developing any scopes of work with HPTE or another public agency for potential public projects.
- **Insurance.** mobilitynext shall maintain general liability and other insurance as reasonably necessary to cover its obligations under this Scope of Work and the Purchase Order.

- **Notices.** All communication, notices, and correspondence shall be addressed to the individuals identified below. Either HPTE or mobilitynext may, from time to time, designate in writing new or substitute representatives.
 - If to mobilitynext:
 - Attn: Jim Doyle
8100 E. Union Ave., #1111
Denver, CO. 80237
 - If to HPTE:
 - Attn: Director, HPTE
Colorado Department of Transportation
2829 W. Howard Place, 5th Floor
Denver, CO 80204