



## MEMORANDUM

TO: HIGH PERFORMANCE TRANSPORTATION ENTERPRISE BOARD  
FROM: NICHOLAS FARBER, DIRECTOR, HPTE  
ANDREW GOMEZ, ASSISTANT ATTORNEY GENERAL  
DATE: JANUARY 20, 2021  
SUBJECT: FIRST AMENDMENT TO I-25 NORTH (120TH TO NORTHWEST PARKWAY/E-470) LOAN AGREEMENT

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### Purpose

The purpose of this memorandum is to summarize the First Amendment to the I-25 North (120<sup>th</sup> to Northwest Parkway/E-70) 'Segment 3' Loan Agreement, which removes any mention of the margin rate factor.

### Background

In February 2016, HPTE entered into a Loan Agreement with Bank of America, N.A. for \$23,630,000.00, of which the proceeds were used to fund a portion of the cost for the I-25 North Segment 3 Project. The Segment 3 Project is currently in operation and HPTE continues to meet its obligations under the existing Loan Agreement.

However, when the Tax Cuts and Jobs Act passed in 2017, the margin rate factor that is used to calculate interest on the loan was changed due to the reduction in the marginal corporate tax rate. As a result, Bank of America has asked HPTE to remove any mention of the margin rate factor and to amend certain portions related to the accounting of the loan.

The deletions from the Loan Amendment are as follows:

"Margin Rate Amount" means, for each day during an Interest Period that both the Note is outstanding and the Margin Rate Factor is greater than 1.0, an amount equal to the product of (x) the difference between (a) the MRF Amount for such day and (b) the amount of tax-exempt interest that accrued on the Note for such day and (y) 1.54. It being understood that the Margin Rate Amount does not constitute interest which is excluded from gross income for purposes of federal income taxation.

"Margin Rate Factor" means the greater of (i) 1.0 and (ii) the product of (A) one minus the Maximum Federal Corporate Tax Rate multiplied by (B) 1.53846. The effective date of any change in the Margin Rate Factor shall be the effective date of the decrease or increase (as applicable) in the Maximum Federal Corporate Tax Rate resulting in such change.

"MRF Amount" means, for each day the product of (i) the amount of tax-exempt interest that accrued on the Note for such day multiplied by (ii) the Margin Rate Factor.

### Decision Matrix

1. **Staff Recommendation:** Approve the Loan Agreement Amendment. HPTE will execute the Amendment and continue to operate and maintain the Segment 3 corridor.
2. Do not approve the Loan Agreement Amendment. Reject the Amendment, explaining that Staff should work to revise certain provisions in the agreement. Staff will return in February with a revised amendment for approval.

### Attachment:

Attachment A: Resolution #342

Attachment B: First Amendment to the Segment 3 Loan Agreement