



Date: January 20, 2021

To: High-Performance Transportation Enterprise Board / Colorado Transportation Commission

From: Piper Darlington, HPTE Special Projects Manager; Andrew Gomez, HPTE General Counsel

Subject: Mountain Express Lane Intra-Agency Agreement

Purpose

The purpose of this memorandum is to summarize the draft Intra-Agency Agreement (“IAA”) among CDOT and HPTE for the I-70 Mountain Express Lanes (“MEXL”) Project.

Action

Staff is seeking HPTE Board approval of resolution #345 authorizing the execution of the eastbound and westbound I-70 MEXL Project IAA.

General Background on CDOT-HPTE Project Intra-Agency Agreements

IAAs between CDOT and HPTE document the substantive terms of how CDOT and HPTE work together and allocate rights and responsibilities on shared projects. State law and best practices require an IAA for each project. IAAs can include provisions re: administrative payment procedures, commercial loan terms (if any), process for requesting a back-up TC loan (if any), terms governing shared operations as well as allocation of operations and maintenance costs.

History of the I-70 Mountain Express Lanes

In December 2014, HPTE borrowed \$25 million from Banc of America to help complete the I-70 MEXL Eastbound Project. In order to assist HPTE in securing more favorable loan terms needed for the project, CDOT entered into the Eastbound MEXL IAA in order to provide credit support to HPTE. As is the case on each of its projects, HPTE and CDOT entered into that IAA following a similar format and containing certain substantive provisions, including the backup loan structure. More recently, in October 2019, HPTE and CDOT entered into the Westbound MEXL IAA to account for pre-completion tolling operations. Now, with westbound MEXL nearing completion and eastbound in operation, HPTE and CDOT desire to consolidate both westbound and eastbound into one IAA and to account for HPTE’s refinance effort of the Banc of America debt. Upon execution of this IAA, the 2014 eastbound IAA and the 2019 westbound IAA will be terminated.

The 75-page loan agreement is between HPTE and Wells Fargo Municipal Capital Strategies and is included as Exhibit B to the IAA.



Key Provisions of the IAA

Below is a summary of several key areas that are important for the HPTE Board to take into consideration while reviewing the attached IAA (Attachment A) and resolution (Attachment B). The IAA and resolution:

- (1) Incorporate an allocation of financial responsibility related to Operations & Maintenance (O&M).
 - a. Sets forth that HPTE is responsible for operating and maintaining the constructed Express Lanes and CDOT maintains O&M responsibility for the general purpose lanes. Notably, this is the first IAA that changes the model for how O&M payments are calculated and processed. Previously, CDOT invoiced HPTE for all O&M based on a calculated share of Express Lane vehicles versus general lane vehicles. After proving cumbersome for both HPTE and CDOT staff, the Parties have decided that CDOT will provide HPTE a Scope of Work outlining the services to be rendered for the upcoming year. HPTE will then pay CDOT to conduct the services annually. The arrangement is similar to HPTE's Fee for Service agreement that it enters into annually with CDOT, but in the reverse.
- (2) Recognizes that future Transportation Commissions will not be bound by budgetary and policy decisions made by the current TC.
 - a. Stipulates that the current TC cannot allocate and transfer future state highway funds for a loan to HPTE.
 - b. Sets forth that any decision as to whether or not to allocate and transfer such funds to HPTE shall be made by the TC in the year in which the HPTE request occurs.

Stipulates that in the event the TC elects to make a loan to HPTE in order to satisfy any of the O&M obligations under the IAA, CDOT may not use Federal-aid highway funds to satisfy any expenses related to the operations and maintenance of either Express Lane project.

Options / Decision Matrix

1. **Staff Recommendation:** Approve the IAA. CDOT and HPTE will execute the IAA, and tolling will commence in Fall 2020 for the Westbound Mountain Express Lane.
2. Do not approve the IAA. Reject the IAA, explaining that Staff should work to revise certain provisions in the agreement. Staff will return in February with a revised IAA for approval.

Attachment

Appendix A - Resolution #345

Appendix B - I-70 Mountain Express Lane Project Intra-Agency Agreement