

**Resolution – HPTE #208**

**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 to the MOU now desire to enter into an Amended MOU to provide for increased hours of annual operation, and to provide 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 which consent will be provided by the Bank prior to execution of the Amended MOU by the HPTE Director.

**NOW THEREFORE BE IT RESOLVED**, the Board hereby approves the Amended MOU in the form presented and authorizes the HPTE Director 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 September 21, 2016

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

- a. CDOT and HPTE agree to collect the following data on the Toll Facility during each state fiscal year, and if needed, conduct a reassessment of the functionality of the Toll Facility or components of the Toll Facility. Based on the Project’s Concept of Operations, recommended performance measures include:
  1. Interstate 70 Travel Time Reliability;
  2. Interstate 70 Traffic Volume and Traffic Type;
  3. Interstate 70 Safety and Crash Data; and
  4. Incident clearance times (as measured from the time of dispatch of Courtesy Patrol to when all emergency responders have left the scene).

One certification submitted by either CDOT or HPTE to the Division, within two months of the end of the state fiscal year, 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.

- b. 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.

- c. 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, 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 will not be charged for use of the Toll Facility during emergency closures. 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: \_\_\_\_\_,                      DATE: \_\_\_\_\_  
Shailen P. Bhatt, 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