



US 36 PUBLIC PRIVATE PARTNERSHIP



Frequently Asked Questions

WHAT IS A PUBLIC-PRIVATE PARTNERSHIP (P3)?

The Federal Highway Administration defines a Public-Private Partnership (P3) as a “contractual agreement formed between a public agency and a private sector entity that allow for greater private sector participation in the delivery and financing of transportation projects.”

WHY IS P3 VALUABLE FOR COLORADO?

P3s dramatically accelerate construction on projects that would take decades to build without private funding. Currently, federal and state fuel taxes are insufficient for the number of highway projects necessary to repair Colorado’s aging infrastructure and prepare for anticipated growth. A P3 is an innovative way to overcome this obstacle for the benefit of Colorado motorists.

In addition, the concessionaire assumes the majority of the risk of the project in terms of funding. The risk for the Colorado Department of Transportation (CDOT) and Colorado’s High Performance Transportation Enterprise (HPTE) is limited when it comes to paying back the loans needed to build projects of this magnitude. The concessionaire is required to use the toll revenues to fund the federal loans and maintenance costs of the corridor. If revenues exceed estimates, the concessionaire will share the excess revenues with the state.

WHY DOESN’T CDOT FUND THESE PROJECTS WITH TRADITIONAL FUNDING?

Enough traditional funding for Colorado’s needs isn’t available at this time. Currently, more than 80 percent of CDOT’s \$1.1 billion budget is dedicated to maintenance of the current system, allowing little else to improve congestion and mobility. Due to inflation and increases in fuel efficiency, as well as a federal budget that did not change in the last authorization, CDOT is unable to keep pace with the growing demands on the statewide transportation system. P3s are a strategy to leverage limited state resources with the private sector.

WHAT IS THE P3 ARRANGEMENT FOR US 36?

The concessionaire on the US 36 Express Lanes Project was chosen to expand the highway and operate and maintain it for 50 years, in exchange for the right to collect toll revenues from the project over the life of the concession agreement. Under terms of the agreement, Plenary (the concessionaire) also will retain tolls collected from the 7.7-mile express-toll operation on Interstate 25 between downtown Denver and the Pecos Street interchange on US 36. The I-25 High Occupancy Toll (HOT) facility opened in 2006 and generates about \$2.6 million in annual toll revenues.

WHAT IS THE CONCESSIONAIRE’S ROLE IN A P3?

The concessionaire will collect tolls from the HOV lane, maintain the toll and general purpose lanes – including pothole repairs, snow removal, striping, etc. – and pay back the federal loans with the tolling revenues.

WHO OWNS THE HIGHWAY IN A P3 AGREEMENT?

CDOT maintains ownership of all highways in a P3 agreement.

WHO ASSUMES THE RISK?

The concessionaire assumes most of the risk in a P3, including risks associated with the level of traffic in the express lanes and the sufficiency of toll revenues to support repayment of loans, as well as the long-term operation and maintenance of the highway.

WILL A P3 CONTRACT PRECLUDE FUTURE HIGHWAY IMPROVEMENTS OR PROJECTS?

No. CDOT is permitted under the contract to build future highway and transit projects.

HOW WILL THE MAINTENANCE OF THE HIGHWAY BE HANDLED?

All maintenance – pothole repairs, snow removal, signage, rehabilitation, striping, etc. – will be handled by the concessionaire. However, the concessionaire must adhere to strict standards set forth by HPTE. If the highway is not maintained to these specified performance measures, the concessionaire will incur financial penalties.

HOW WILL THE CONCESSIONAIRE BE HELD ACCOUNTABLE?

The HPTE and CDOT will oversee the concessionaire and ensure that they are adhering to all requirements in the contract through regular check-ins and audits of the processes and procedures. The concessionaire is required to pay HPTE a yearly fee to ensure funds are available for comprehensive oversight.

WHO CONTROLS THE TOLLING RATES?

The concessionaire proposes all tolls and penalty charges, up to a capped amount, but the HPTE's board of directors must approve them.

WHAT HAPPENS IF THE CONCESSIONAIRE DISSOLVES WITHIN THE 50 YEARS?

If the concessionaire dissolves before the end of the 50-year contract, CDOT will resume all maintenance and operations of the highway and tolled lanes. The contract includes CDOT and HPTE remedies in this event and in many other events of default by the concessionaire. Remedies include the right to take back the highway and managed lanes under very favorable terms.

WHAT HAPPENS IF TOLL REVENUES EXCEED PROJECTIONS?

The state will share in those proceeds.

WHAT HAPPENS IF TOLL REVENUES ARE BELOW PROJECTIONS?

Even if the concessionaire encounters lower-than-anticipated toll revenues, it still will have the responsibility of operating and maintaining the managed lanes, reconstructing them when they need it, and paying off loans on the project.

WHO'S BEING TOLLED?

Only the motorists who choose to travel in the HOV lane with fewer than the required number of people in a single vehicle will be tolled. The HOV requirement will begin with HOV2+ but will increase to HOV3+ in 2017, unless the managed lanes become congested earlier. Two general purpose lanes will always remain free to motorists.

WHAT DO THE TOLLS PAY FOR?

The tolls will be used by the concessionaire to operate and maintain the managed lanes, reconstruct them when necessary, and repay its debt and equity contribution—exceeding \$170 million—to the project. Excess toll revenues will be shared with HPTE and applied to the corridor in consultation with the local governments.

WILL CDOT EMPLOYEES LOSE THEIR JOBS WITH THE P3 AGREEMENT?

No state employee will lose their job because of the new P3 arrangement. CDOT crews will be deployed to other critical areas to provide maintenance and operations to the travelling public. Over time, CDOT might also adjust staffing levels based on retirements and attrition.

HOW WAS THE P3 CONCESSIONAIRE CHOSEN FOR US 36?

A two-phase competitive bid process was used for selecting the concessionaire. The first phase was based on the qualifications of all interested teams. The initial list was shortlisted to three teams who had the best qualifications for this project. The second phase included evaluation to select the proposal with the best value and financing for the corridor. Local governments were consulted throughout the process, and HPTE reported the concessionaire search to the legislature.



FINAL CONTRACT SUMMARY



The contract with Plenary Roads Denver is designed to protect the public interest by maintaining public ownership of the roads while specifying service standards under which the concessionaire will operate and maintain the system. Any tolling decisions are the final decision of the HPTE Board and the contract permits CDOT or any other transportation agency to make future improvements to the roads or transportation system in the area.

Other key terms of the contract include:

- Plenary will design, construct, and finance its portion of the US 36 corridor improvements
- The state retains ownership of the highway and Plenary is granted a non-exclusive license (not ownership) for 50 years to access and use the highway and its structures for the purpose of carrying out the operations
- Plenary will operate, maintain and rehabilitate the whole US 36 corridor, including the express tolled lanes as well as the general purpose lanes
- Plenary will operate, maintain and rehabilitate the I-25 express tolled lanes
- Plenary will receive payment from the state for fulfilling its maintenance obligations on the general purpose lanes
- If Plenary fails to meet the specified performance standards, they can incur financial penalties. Examples include:
 - Penalties when Plenary has failed to meet the operations and maintenance standards such as snow plowing
 - Travel time delays to transit
- Plenary will assume certain risks, such as construction schedule and budget and is responsible to ensure the asset meets acceptable conditions such as highway surfaces and bridge quality
- The state will monitor compliance against the contract requirements
- The state can make further improvements to the highway at its own option and cost
- The state will share in revenues generated by the US 36 project after minimum rate-of-return targets are met
- Plenary must return to the state a highway in first-class condition at the end of the concession agreement

The US 36 concession agreement could be a model for other major highway ventures in Colorado, including expansion and improvement projects being considered for C-470; I-25 north of the Denver metro area; and Interstate 70 in both the mountain corridor and central Denver.