

MEMORANDUM

DEPARTMENT OF TRANSPORTATION

4201 East Arkansas Avenue
Denver, Colorado 80222



TO: Colorado Transportation Commission

FROM: Mike Cheroutes, Director, High Performance Transportation Enterprise
Kathy Young, First Assistant Attorney General, Transportation Unit

SUBJECT: May Transportation Commission Meeting

DATE: May 16, 2013

Purpose

This memorandum summarizes the discussion planned for the regular May Transportation Commission meeting regarding the HPTE U.S. 36 Concession Project Intra-Agency Agreement (IAA) between HPTE and CDOT. Attached is the final draft of the IAA. The U.S. 36 Concession Agreement, which will be attached as Exhibit A to the IAA, will be sent to the Commissioners individually by counsel because it will not have been executed as of May 16, 2013 and contains proprietary and confidential information.

Action Requested

During the Commission meeting, staff will discuss the purpose and content of the IAA and ask that the Commission approve and direct CDOT Executive Director Hunt to sign on behalf of CDOT.

Background

In April 2013, HPTE selected Plenary Roads Denver as its preferred proposer for the design, construction, financing, operation and maintenance of the U.S. 36 Corridor and the I-25 Express Lanes. The attached IAA was negotiated during the concession request for proposal process with the three shortlisted US 36 concession teams. The purpose of the IAA is three-fold. First, it outlines and memorializes CDOT's direct obligations to budget and pay Plenary Roads Denver for snow and ice removal and routine maintenance of the U.S. 36 general purpose lanes. Second, it creates a backup loan obligation from CDOT to HPTE in the event that HPTE needs to borrow money from CDOT to pay for an HPTE Payment Obligation Event that is contained in the anticipated concession agreement between HPTE and Plenary Roads Denver. A sample loan agreement is attached to the IAA as Exhibit B. Last, through this IAA, CDOT will grant HPTE a non-exclusive license over, under, upon and in the U.S. 36 and I-25 site and managed lanes.

Resolution #TC-

Approving the Interagency Agreement between CDOT and HPTE for the U.S. 36 Concession Project.

Approved by the Transportation Commission on: _____

WHEREAS the Transportation Commission is responsible, pursuant to C.R.S. 43-1-106(8), for formulating the general policy of the Colorado Department of Transportation (CDOT); and

WHEREAS the Transportation Commission’s approval is required for CDOT intergovernmental agreements that may involve more than \$750,000; and

WHEREAS the Colorado High Performance Transportation Enterprise (HPTE), in partnership with CDOT, is in final negotiations with its preferred proposer, Plenary Roads Denver, for the design, construction, financing, operation and maintenance of the U.S. 36 Corridor between Denver and Boulder and the I-25 Express Lanes (collectively US 36 project); and

WHEREAS when constructed, the US 36 project will contain two general purpose lanes and one managed lane in each direction between Denver and Boulder; and

WHEREAS the Transportation Commission supports the US 36 project and recognizes the benefits of this project, which include, but are not limited to, encouraging carpooling and transit use, reducing vehicle emissions, reducing congestion, and improving the safety, capacity, and accessibility of the surface transportation system; and

WHEREAS in order to finalize the concession agreement between HPTE and Plenary Roads Denver, and reach financial close, an interagency agreement between CDOT and HPTE is necessary to accomplish three purposes. First, the agreement outlines and memorializes CDOT’s Executive Director’s obligation to make an annual budget request for funds to pay Plenary Roads Denver for snow and ice removal and routine maintenance of the U.S. 36 general purpose lanes. Second, the interagency agreement creates a backup loan process between CDOT and HPTE in the event that HPTE needs to borrow money from CDOT to pay for an HPTE Payment Obligation Event that is contained in the anticipated concession agreement between HPTE and Plenary Roads Denver. Third, through the interagency agreement, CDOT will grant HPTE a non-exclusive license over, under, upon and in the U.S. 36 and I-25 site and managed lanes.

NOW THEREFORE BE IT RESOLVED, the Transportation Commission hereby approves the Interagency Agreement between CDOT and HPTE for the U.S. 36 Concession Project and authorizes CDOT's Executive Director to sign the interagency agreement on behalf of CDOT.

Herman Stockinger, Secretary
Transportation Commission of Colorado

Date

**HPTE US36 CONCESSION PROJECT
INTRA-AGENCY AGREEMENT**

THIS AGREEMENT, made this _____ day of _____, 2013 by and between the STATE OF COLORADO for the use and benefit of THE COLORADO DEPARTMENT OF TRANSPORTATION, hereinafter referred to as “CDOT”, and the COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE, a government-owned business and a division of CDOT, hereinafter referred to as the “Enterprise or HPTE.”

FACTUAL RECITALS:

1. CDOT is an agency of the State of Colorado; and
2. The Transportation Commission of Colorado is the budgetary and policy making body for CDOT with all powers and duties granted by the General Assembly pursuant to C.R.S. 43-1-106; and
3. The Enterprise was authorized and created pursuant to C.R.S. 43-4-806(1) and (2); and
4. The Enterprise has entered into an agreement, dated _____, 2013 (“Concession Agreement”) with Plenary Roads Denver (“Concessionaire”) to: (1) finance, design and construct (and reconstruct where appropriate) the general purpose lanes and a new managed lane in each direction (“US36 Phase 2 Managed Lanes”) on U.S. 36 between 88th Street and Table Mesa Drive (“US 36 Phase 2 Corridor”), together with associated roadways, bridges, access ramps, pavement replacement, sound and retaining walls, bikeways, and ITS improvements; (2) design and construct a diverging diamond interchange at McCaslin Boulevard and US36 (“McCaslin Interchange”); (3) operate and maintain (a) the US36 Phase 2 Managed Lanes, (b) the CDOT/HPTE constructed managed lane in each direction (“US 36 Phase 1 Managed Lanes”) now being designed and constructed on that portion of US 36 from Pecos Boulevard to 88th Street (the “US 36 Phase 1 Corridor”), and (c) the existing I-25 Express Lanes (“I 25 Managed Lanes”) on that portion of I-25 from the 20th Street exit to Pecos Boulevard, to the extent and all as more specifically described in the Concession Agreement; and (4) permit the Concessionaire access to the lands owned by the State of Colorado to complete the work described in the preceding sections.
5. The work described above in Recital No. 4 is collectively referred to in this Agreement as the "Project" and all other defined terms used in this Agreement have the meanings provided in this Agreement or in the Concession Agreement; and
6. Under the terms of the Concession Agreement, the Concessionaire is also required to perform snow and ice removal services for the McCaslin Interchange, and snow and ice removal services and

routine maintenance services for the general purpose lanes in the US 36 Phase 1 Corridor and the US 36 Phase 2 Corridor (collectively the “US 36 Corridor”), for which the Concessionaire is to be compensated by the HPTE which will in turn be reimbursed for those expenses related to the general purpose lanes by CDOT; and

7. CDOT and HPTE have agreed to enter into this Agreement to provide certain additional assurances and agreements, as further described below; and

8. By a resolution passed on February 21, 2013, for the purposes of 42-4-1012(1)(a), C.R.S., the Transportation Commission designated the Managed Lanes as preferential lanes for vehicles that carry a number of persons to be specified in the agreement to be made between HPTE and the Concessionaire; and

9. This Agreement is executed under the authority of Sections 29-1-203, 43-1-110, and 43-4-806(4) C.R.S., as amended and no other filings, consents or approvals are required.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING FACTUAL RECITALS, IT IS HEREBY AGREED AS FOLLOWS:

I. CDOT GENERAL PURPOSE LANES PAYMENT OBLIGATIONS

A. CDOT agrees, subject to annual allocation by the Transportation Commission, to pay (i) for Snow and Ice Control Services for the General Purposes Lanes in the US 36 Corridor and (ii) for Routine Maintenance services for the General Purpose Lanes in the US 36 Corridor and (iii) for its obligations in relation to those Non-Separable Tasks that may occur from time to time, in each case in the amounts and at the times necessary for HPTE to meet its payment obligations in accordance with the Concession Agreement (“CDOT Service Funding Obligations”). Such payments will be made to HPTE for remittance in a timely manner to the Concessionaire or, at the direction of HPTE, such payments will be made directly to the Concessionaire in accordance with the Concession Agreement.

B. In order for CDOT to timely budget for the CDOT Service Funding Obligations, on or before September 15 of the immediately preceding fiscal year, the Enterprise shall determine, in consultation with Concessionaire, the amounts and schedule of CDOT Service Funding Obligations for any fiscal year and shall notify the Executive Director of CDOT (“Executive Director”) in writing of such requirements. Amounts sufficient to pay such CDOT Service Funding Obligations for the succeeding fiscal year shall be included by the Executive Director in the annual operation and maintenance budget request submitted to the Transportation Commission for an allocation of moneys in the state highway fund for such purpose.

C. Moneys allocated by the Transportation Commission for the payment of CDOT Service Funding

Obligations shall be transferred timely to the appropriate subaccount in the Enterprise's special revenue fund, established pursuant to Section 43-4-806(3)(a), C.R.S., and shall be used by the Enterprise to satisfy the CDOT Service Funding Obligations, as they become due.

II. CDOT BACKUP LOAN OBLIGATIONS

A. The Concession Agreement, attached hereto as Exhibit A, contains obligations of HPTE to pay the Concessionaire various amounts and sums upon the occurrence (and following the occurrence of) certain events and in respect of several other matters, as more fully described therein (the "HPTE Payment Obligations").

B. The Transportation Commission has reviewed the Concession Agreement and is aware of the HPTE Payment Obligation Events. On or before September 15 of the immediately preceding fiscal year, the Enterprise shall estimate whether and in what maximum amount it may be necessary for the Enterprise to request that CDOT provide financial support to fulfill an HPTE Payment Obligation Event in any fiscal year, it being understood that any such financial support shall be in the form of a loan from CDOT to the Enterprise ("CDOT Backup Loan" or simply "Loan"). The Enterprise shall notify the Executive Director in writing as to the estimated maximum amount, if any, that is expected to be payable in the succeeding fiscal year, and such maximum amount ("CDOT Backup Loan Set Aside") shall be included in the budget request to the Transportation Commission for an allocation of moneys in the state highway fund for such purpose.

C. The Enterprise may also, at any time during any fiscal year, notify the Executive Director in writing that the Enterprise desires that CDOT make Loans for projected HPTE Payment Obligation Events in an amount that exceeds any CDOT Backup Loan Set Aside that the Transportation Commission has previously allocated for such fiscal year. In such event, the Executive Director shall submit a supplemental budget request to the Transportation Commission at its next regularly scheduled meeting for an allocation or supplemental allocation of moneys in the state highway fund for the purpose of making Loans to the Enterprise in such fiscal year in an amount equal to the amount set forth in the notice delivered by the Enterprise to the Executive Director pursuant to Section II.B.

D. Moneys allocated by the Transportation Commission to make Loans shall be transferred to the Enterprise's separate account established for the Project in the Enterprise's operating fund, pursuant to 43-4-806(4), C.R.S., and shall be used by the Enterprise to satisfy the HPTE Payment Obligation Events, as they become due.

E. Notwithstanding any other provision hereof: (a) CDOT and HPTE agree and acknowledge that

the Transportation Commission has no obligation to allocate funds to make Loans in any fiscal year and the decision whether or not to allocate funds, and the amount, if any, of funds allocated, to make Loans in any fiscal year shall be made annually at the sole and absolute discretion of the Transportation Commission; (b) prior to allocating any funds to make Loans in any fiscal year, CDOT shall determine that such authority exists in the law and that a sufficient unencumbered balance remains available in Fund 400 for Loans in an amount equal to the amount of funds so allocated; and (c) once an allocation by the Transportation Commission has been made, Loans shall be made up to the amounts requested by the Enterprise as set forth above.

F. All Loans shall be authorized by and subject to a separate Transportation Commission Resolution and shall be evidenced by separate Loan agreements in substantially the form attached hereto as Exhibit B (“Loan Agreement”), with terms consistent with the terms contained herein. In particular, having regard to the intent of the parties that the Loans shall be repaid from the revenues generated by the Project after the Concession Agreement has terminated (unless HPTE should have funds from any source to enable it to prepay the Loans in accordance with terms permitting such prepayment) CDOT shall determine a reasonable repayment schedule for each Loan after consultation with HPTE, provided that no repayment of any interest or principal on any Loan shall fall due before the later of (a) the date when Services Period ends and (b) the date on which HPTE has fully paid all amounts under or in connection with the Concession Agreement which arise out of HPTE Payment Obligation Events.

III. CDOT PERFORMANCE OBLIGATIONS

CDOT and the Transportation Commission have reviewed the Concession Agreement and are aware that the Enterprise has undertaken certain obligations thereunder to cause or ensure that CDOT (a) will perform certain acts, take certain action, and provide certain services and (b) will refrain from performing certain other acts (“CDOT Performance Obligations”). CDOT enters into this Agreement in consideration of the benefits it is receiving including, but not limited to, the reconstruction of the General Purpose lanes of the US 36 Phase 2 Corridor and other transportation improvements, and hereby agrees to take any and all action, and to refrain from taking any action (as the case may be) necessary to satisfy the CDOT Performance Obligations in the manner and as otherwise required by the Concession Agreement.

IV. HPTE LICENSE

CDOT agrees and acknowledges that for the Concessionaire to complete its obligations under the

Concession Agreement, the Concessionaire will require a formal right of access for appropriate use to the relevant land owned by the State of Colorado. CDOT is receiving significant value (consideration) from the agreement between HPTE and the Concessionaire, inasmuch as it will receive the benefit of the reconstruction of the US 36 general purpose lanes. Accordingly, it is in CDOT's interest that CDOT should provide, and CDOT hereby Provides, to the HPTE, for the Contract Period a non-exclusive license over, under, upon and in the Site and the Managed Lanes (as those terms are defined in the Concession Agreement). The period for which this license is provided for the different parts of the Site and the Managed Lanes shall be for the same duration as the period of the license provided by HPTE for those parts of the Site and the Managed Lanes under the Concession Agreement. CDOT acknowledges and agrees that HPTE may sublicense the license provided in this Article IV to the Concessionaire (with the right for the Concessionaire to give sub-sublicenses), and to any other party as may be permitted by and in accordance with the Concession Agreement.

Subject to the terms of the Concession Agreement, CDOT reserves the right of use, occupancy and ownership over, under, upon and in the lands described in the preceding paragraph.

CDOT agrees that it shall not transfer or purport to assign, convey, transfer, dispose of, alienate or create any Encumbrance in, or purport to transfer or dispose of, alienate or create any Encumbrance in the land comprising the Site or the Managed Lanes while the Concessionaire is permitted to use the same under the terms of the Concession Agreement. Further, CDOT agrees to defend its title or real property interest to the Site and the Managed Lanes, subject to rights held by third parties as disclosed in the Disclosed Data and Permitted Encumbrances, as well as the license provided to HPTE under this Agreement against any person claiming any interest adverse to CDOT apart from the owners of rights held by third parties as disclosed in the Disclosed Data and Permitted Encumbrances in relation to those rights and Permitted Encumbrances only.

V. DEFAULTS, TERMINATION AND REMEDIES

A. If the Enterprise fails to repay any Loan in accordance with the applicable Loan Agreement and upon notice to the Enterprise and failure by the Enterprise to cure within thirty (30) days thereof, CDOT may, at its option: (a) terminate its commitment to make future Loans hereunder; (b) declare the entire principal amount of all Loans then outstanding immediately due and payable; (c) take any other appropriate legal action.

B. Notwithstanding the exercise of any of the remedies above, the Enterprise shall not be relieved of liability to CDOT for any damages sustained by CDOT by virtue of any breach of this Agreement by the Enterprise.

VI. GENERAL PROVISIONS

A. This Agreement is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Agreement on the effective date of such change as if fully set forth herein. Except as specifically provided otherwise herein, no modification of this Agreement shall be effective unless agreed to in writing by both parties in an amendment to this Agreement that is properly executed and approved in accordance with applicable law.

B. The terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.

C. Except as herein otherwise provided, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

D. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by the Concessionaire or any other or third person on such Agreement.

E. The Enterprise shall maintain all books, documents, papers, accounting records and other evidence pertaining to project or any cost incurred for the term of the Concession Agreement, and if requested by CDOT, make such materials available to CDOT for three years after the termination of the Concession Agreement.

F. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions for the parties, of the Colorado Governmental Immunity Act, Section 24-10-101 et seq. C.R.S. or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq. as applicable, as now or hereafter amended.

G. At all times during the performance of this Agreement, the Enterprise shall strictly adhere to all applicable federal and state laws, rules, and regulations that have been or may hereafter be established,

including, but not limited to state and federal laws respecting discrimination and unfair employment practices.

H. The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision of this Agreement, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Agreement to the extent that the Agreement is capable of execution.

I. The signatories aver that to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described herein.

J. This Agreement shall be effective as of the date of the Contract Date.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

STATE OF COLORADO
JOHN HICKENLOOPER, Governor

COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE

By _____
DONALD HUNT
Executive Director
DEPARTMENT OF TRANSPORTATION

By _____
MICHAEL CHEROUTES
HPTE Director

APPROVED:
JOHN SUTHERS
Attorney General

By _____
First Assistant Attorney General

EXHIBIT A
CONCESSION AGREEMENT
[TO BE ADDED]

EXHIBIT B
CDOT- HPTE SEPARATE LOAN AGREEMENT

THIS LOAN AGREEMENT, made this ___ day of _____, 20___ by and between the State of Colorado for the use and benefit of THE COLORADO DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the “Lender”, and the COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE, hereinafter referred to as the “Borrower”, entered into pursuant to the Master Intra-Agency Agreement dated as of _____, 2013 between Lender and Borrower (the “Master Loan Agreement”).

FACTUAL RECITALS:

1. The Colorado Department of Transportation, the Lender, is an agency of the State of Colorado;
2. The Colorado High Performance Transportation Enterprise, the Borrower, was authorized and created pursuant to C.R.S. 43-4-806(1) and (2) as a government-owned business, a TABOR-exempt enterprise and a division of CDOT charged with aggressively pursuing innovative means of financing surface transportation projects;
3. The Transportation Commission of Colorado is the budgetary and policy-making body of the Lender and may, pursuant to C.R.S. 43-4-806(4), authorize the transfer of money from the state highway fund to the Borrower to defray expenses of the Borrower and, notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, such a transfer by the Lender to the Borrower shall constitute a loan and shall not be considered a grant for purposes of section 20(2)(d) of article X of the state constitution;
4. The Borrower entered into an agreement dated _____, 2013 (“Concession Agreement”) with Plenary Roads Denver (“Concessionaire”) to: (1) finance, design and construct (and reconstruct where appropriate) the general purpose lanes and a new managed lane in each direction (“US36 Phase 2 Managed Lanes”) on U.S. 36 between 88th Street and Table Mesa Drive (“US 36 Phase 2 Corridor”), together with associated roadways, bridges, access ramps, pavement replacement , sound and retaining walls, bikeways, and ITS improvements; (2) design and construct a diverging diamond interchange at McCaslin Boulevard and US36 (“McCaslin Interchange”); (3) operate and maintain (a) the US36 Phase 2 Managed Lanes, (b) the CDOT/HPTE constructed managed lane in each direction (“US 36 Phase 1 Managed Lanes”) now being designed and constructed on that portion of US 36 from Pecos Boulevard to

88th Street (the “US 36 Phase 1 Corridor”), and (c) the existing I-25 Express Lanes (“I 25 Managed Lanes”) on that portion of I-25 from the 20th Street exit to Pecos Boulevard, to the extent and all as more specifically described in the Concession Agreement; and (4) permit the Concessionaire access to the lands owned by the State of Colorado to complete the work described in the preceding sections.

5. The Concession Agreement contains obligations to HPTE to pay the Concessionaire various amounts and sums upon the occurrence (and following the occurrence of) certain events and in respect of several other matters (“Borrower Payment Obligation Events”).

6. The Borrower has requested a loan from the Lender in the amount of \$[Requested Amount] for Borrower Payment Obligation Events because [description of why Payment Obligation Event arose].

7. The Transportation Commission has approved this loan request and authorized the Lender to make a loan to the Borrower in the amount of \$[Principal Amount];

8. Authority exists in the law and a sufficient unencumbered balance thereof remains available in Fund 400 to lend to the Borrower;

9. By Resolution # TC-____, on _____, 2013, the Transportation Commission approved the HPTE-CDOT Intra-Agency agreement approved by the Transportation Commission and the HPTE Board of Directors (“HPTE-CDOT Agreement”); and

10. This Agreement is executed under the authority of Section 43-4-806(4), as amended, and by resolution of the HPTE Board.

NOW, THEREFORE, IT IS HEREBY AGREED THAT:

ARTICLE I

LOAN AND CLOSING

Section 1.01. Loan and Promissory Note. Pursuant to the terms of the HPTE-CDOT Agreement and this Agreement, the Lender hereby agrees to loan \$[Principal Amount] (the “principal amount of the Loan”) to the Borrower and the Borrower agrees to pay the Lender the principal amount of the Loan plus interest on the terms described herein (collectively, the “Loan”). The Borrower’s obligation to pay the Lender the principal of and interest on the Loan is evidenced by a promissory note (the “Note”) in the form attached as Attachment 1.

Section 1.02. Closing. The Lender shall deliver the principal amount of the Loan to the Borrower, by means of a transfer immediately available funds into the HPTE Operating Fund on a date mutually agreed to by the Borrower and the Lender (such date is referred to as the “Closing Date”).

ARTICLE II
LOAN OBLIGATIONS

Section 2.01. Principal and Interest Payments. The Borrower shall pay to the Lender the principal amount of the Loan plus accrued interest in accordance with Section 2.07 or the Borrower may make prepayments in accordance with Section 2.05 hereof (a “Prepayment Date”).

Section 2.02. Lender Invoice and Reports. The Lender shall forward an invoice, that includes the amount of principal and interest that shall be due, to the Borrower at least thirty days before the next scheduled payment is due.

Section 2.03. Interest. Interest shall accrue on the principal amount of the Loan from the Closing Date through the day preceding the Maturity Date or Prepayment Date at the Interest Rate (defined below), computed on the basis of a 360-day year of twelve 30-day months.

Section 2.04. Interest Rate. “Interest Rate” means the rate of interest established and adopted by resolution by the Colorado Transportation Commission pursuant to 2 CCR 605-1, Rule V (2).

Section 2.05. Optional Prepayment. The Borrower, at its option, may prepay the Loan in whole by paying the Lender the outstanding principal amount or a portion of the Loan, plus accrued interest to the Prepayment Date as selected by the Borrower.

Section 2.06. Resource Pledge for Repayment. The Borrower’s obligation to pay the principal and interest on the Loan and any other amounts payable by the Borrower hereunder (the “Loan Obligations”) are extraordinary limited obligations of the Borrower payable with the [Repayment Source(s)] (Repayment Source(s)).

Section 2.07. Repayment Schedule. The Borrower shall make equal installments of \$[Payment Amount] to the Lender each [Payment Period] beginning [First Payment Due Date], and each [Payment Period] thereafter for [Number of Payments] consecutive [Payment Periods], provided that no payment shall fall due until a date (the “Concession Agreement Obligation End Date”) which is the later of the last day of the Services Period (as defined in the Concession Agreement) and the date that the Borrower has discharged or performed all of its payment obligations to the Concessionaire under the Concession Agreement. If any payment under this Loan Agreement would have fallen due prior to the Concession Agreement Obligation End Date it shall continue to accrue interest, and will become due 14 days after the Concession Agreement Obligation End Date.

Section 2.08. Remittance. All loan payments shall be made payable to the Colorado Department of Transportation, and sent to the Lender’s accounting branch at 4201 East Arkansas Avenue, Rm. 212, Denver, CO 80222, or to such other place or person as may be designated by the Lender in writing.

ARTICLE III
DEFAULT AND TERMINATION

Section 3.01. Event of Default. Borrow default (“Event of Default”) is governed by Section IV of the Master Loan Agreement.

Section 3.02. Remedies. Lender’s remedies against a Borrower Event of Default are governed by Section IV of the Master Loan Agreement.

Section 3.03. Remedies Neither Exclusive Nor Waved. No remedy under Section 3.02 hereof is intended to be exclusive, and each such remedy shall be cumulative and in addition to the other remedies. No delay or failure to exercise any remedy shall be construed to be a waiver of an Event of Default.

Section 3.04. Waivers. The Lender may waive any Event of Default and its consequences. No waiver of any Event of Default shall extend to or affect any subsequent or any other then existing Event of Default.

ARTICLE IV
TERMINATION

Section 4.01. Subject to the terms of the Master Loan Agreement, this Agreement may be terminated as follows:

(a) Termination for Cause. If, through any cause, the Borrower shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if the Borrower shall violate any of the covenants, agreements, or stipulations of this Agreement, the Lender shall thereupon have the right to terminate this Agreement for cause by giving written notice to the Borrower of its intent to terminate and at least thirty (30) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, the Borrower shall return any funds that have been disbursed to the Borrower as part of the Loan and any accrued interest thereon within 45 days of the date of termination. Notwithstanding above, the Borrower shall not be relieved of liability to the Lender for any damages sustained by the Lender by virtue of any breach of this Agreement by the Borrower.

(b) Termination Due to Loss of Funding. The parties hereto expressly recognize that the Loan is made to the Borrower with State funds which are available to the Lender for the purposes of making a loan for the purposes described herein, and therefore, the Borrower expressly understands and agrees that all its rights, demands and claims to a loan arising under this Agreement are contingent upon availability of such funds to the Lender. In the event that such funds or any part thereof are not available to the Lender, the Lender may immediately terminate or amend this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

APPROVED:
JOHN W. SUTHERS
Attorney General

STATE OF COLORADO
JOHN HICKENLOOPER, Governor

By: _____
Assistant Attorney General

By: _____
Executive Director
DEPARTMENT OF TRANSPORTATION

ATTEST: (SEAL)

COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE

By: _____

By: _____

Federal Employer Identification Number:
[FEIN]

ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS24-30-202 requires that the State Controller approve all agreements. This Agreement is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until this Agreement is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

DAVID J. MC DERMOTT, CPA
State Controller

By: _____
LILIYA GERSHMAN
Department Controller

Date: _____

Attachment 1
NOTE

\$ _____

For VALUE RECEIVED, THE COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE _____ (the "Maker") subject to and in accordance with a Loan Agreement dated the [] day of [] [20__] promises to pay to Colorado Department of Transportation (the "Holder") the principal sum of \$ _____ with interest from date at the rate of _____% per annum on the balance from time to time remaining unpaid. The said principal and interest shall be payable in lawful money of the United States of America at 4201 East Arkansas Avenue, Rm. 212, Denver, CO 80222 or at such place as may hereafter be designated by written notice from the Holder to the Maker hereof, on the date and in the manner following:

The Maker shall make equal installments of \$ _____ to the Lender each _____ beginning _____, and each _____ thereafter for _____ consecutive _____ [*or replace by reference to the agreed repayment schedule*].

By: _____

Attest: _____

DATE: May 8, 2013
TO: Transportation Commissioners, Executive Director, Senior Management Team, Branch Managers, and Office Directors
FROM: Kurtis Morrison, Office of Policy & Government Relations
RE: 2013 Regular Session of the General Assembly: Summary Report

Summary

On May 8, 2013, the General Assembly will adjourn on the 120th day of the legislative session, as required by the state constitution. Throughout the session, 710 bills and resolutions were introduced. Of this amount, CDOT monitored 96 measures impacting the department and transportation public policy. Of all bills and resolutions monitored by CDOT, approximately 70 bills have been signed into law or postponed indefinitely. The remaining bills are (at the time of this printing) either still under consideration or awaiting the Governor's approval. This memorandum summarizes the CDOT legislative agenda bills approved during the 2013 session, and provides a summary table of the most notable transportation measures considered by the legislature.

CDOT Legislative Agenda Bills

This year, CDOT submitted two bills to the General Assembly and partnered with another department to develop a third agenda bill. The following subsections discuss each measure.

House Bill 13-1083 (Motorcycle Operator Safety Training Program). House Bill 13-1083 codifies new improvements to the CDOT Motorcycle Operator Safety Training (MOST) program, recommended in a performance audit by the State Auditor and developed through a CDOT stakeholder outreach effort. Specifically, the bill:

- establishes a statutory prohibition on the use of MOST reimbursements by vendors for capital business expenses (i.e. motorcycles, helmets, books, etc.);¹
- creates a statutory advisory committee to recommend program improvements;²
- requires CDOT to report annually on the MOST program to the General Assembly House Transportation and Energy Committee, Senate Transportation Committee, and Legislative Audit Committee;³ and
- creates an affirmative repeal of the project in 2017, which requires the General Assembly to reevaluate CDOT's progress in improving the program over the next several years and determine whether the MOST program should be continued.⁴

The bill was **signed into law by the Governor.**

¹ COLO. REV. STAT. § 43-5-504(2).

² COLO. REV. STAT. § 43-5-505.

³ COLO. REV. STAT. § 43-5-506.

⁴ COLO. REV. STAT. § 43-5-507.

House Bill 13-1132 (Highway Vehicle Weight Limits). Federal law dictates weight limits for vehicles traveling on federal-aid highways. All states, including Colorado, establish weight limits in state law that mirror the federal statutes. Any state weight laws that conflict with federal weight laws place CDOT at risk of losing federal transportation dollars. Last summer, CDOT determined that Colorado's vehicle weight law was inconsistent with federal weight laws. The specific federal law at issue requires that the gross weight limit of a vehicle be determined by a federal formula accounting for number of axles and length, not to exceed 80,000 pounds. Whereas, Colorado weight limit laws requires that the gross weight limit of a single vehicle be limited to no more than 36,000 pounds for a single vehicle of two axles, or no more than 54,000 for a single vehicle with three or more axles. House Bill 13-1132 reconciled this inconsistency by striking the 36,000 and 54,000 weight limits for two axle and three or more axle vehicles, leaving the federal formula limit and 80,000 pound cap in place.⁵ The bill was **signed into law by the Governor.**

House Bill 13-1252 (Petroleum Cleanup and Redevelopment Fund). House Bill 13-1252 is a dual department bill crafted by the private sector, the Department of Labor and Employment (DLE), and CDOT. The bill creates a new cash fund to collect penalties from petroleum storage tank violations.⁶ Specific to CDOT, the bill provides for a one time transfer of \$5 million from the new fund to the State Highway Fund. The bill language specifies that the \$5 million may only be used for construction of the Eisenhower-Johnson Memorial Tunnels fire suppression system. The transfer is set to take place on July 1, 2013, or once enough revenue is collected to complete the transfer.⁷ The bill was **sent to the Governor for his signature.**

Table 1 summarizes all CDOT supported and opposed bills, as well as other key legislation related to CDOT and/or transportation public policy. At the conclusion of the session, the Office of Policy & Government Relations will provide a detailed final report on all bills signed into law. If you have any questions regarding this memorandum or legislation, please contact Kurt Morrison at (303) 757-9703 or kurtis.morrison@dot.state.co.us.

⁵ COLO. REV. STAT. § 42-4-508.

⁶ COLO. REV. STAT. § 8-20.5-103(9)(a).

⁷ COLO. REV. STAT. § 8-20.5-103(9)(c).

**Table 1.
Key Legislation Impacting CDOT
2013 Regular Session**

Bill Number	Short Title	Final Legislative Action	CDOT Position/ Action
Supported Bills			
HB 13-1057	Retain Avalanche Information Center in DNR	Signed Into Law	Supported
HB 13-1083*	Motorcycle Operator Safety Training Program	Signed Into Law	Supported/Amended
HB 13-1110	Special Fuel Tax & Electric Vehicle Fee	Sent to the Governor	Supported/Amended
HB 13-1132*	Highway Vehicle Weight Limits	Signed Into Law	Supported
HB 13-1252*	Petroleum Storage Tank Redevelopment Fund	Sent to the Governor	Supported
HB 13-1325	Inferences for Marijuana and Driving Offenses	Sent to the Governor	Supported
SB 13-027	RTD Mass Transit Station Parking Facilities	Signed Into Law	Supported
Opposed Bills			
SB 13-035	Prohibit Red Light Camera Vehicle Identification	Postponed Indefinitely	Opposed
SB 13-068	Modify Late Vehicle Registration Fee	Postponed Indefinitely	Opposed
SB 13-128	Firefighter Motor Vehicle License Plate Fees	Postponed Indefinitely	Opposed
SB 13-203	Limit Use of Govt. Land for Auto. Service Stations	Postponed Indefinitely	Opposed
Key Neutral/Amended Bills			
HB 13-1030	Transportation Commission Members	Postponed Indefinitely	Neutral**
HB 13-1116	Allocation of Sales & Use Tax Revenues to HUTF	Postponed Indefinitely	Neutral
HB 13-1161	Daily Vehicle Rental Fee Exemption	Postponed Indefinitely	Neutral
HB 13-1214	Felony for Repeat DUI Offenders	Postponed Indefinitely	Neutral
HB 13-1240	Penalties for Persistent Drunk Drivers	Sent to the Governor	Neutral
HB 13-1292	Keep Jobs in Colorado Act	Sent to the Governor	Neutral/Amended**
HB 13-1299	Changes to the SMART Government Act of 2010	***	Neutral
SB 13-016	Self-driving Motor Vehicle Guidance	Postponed Indefinitely	Neutral
SB 13-021	Pipeline Rights-of-Way	Postponed Indefinitely	Neutral**
SB 13-048	Authorize Local Government Use of HUTF for Transit	Signed Into Law	Neutral**
SB 13-049	Roundabout Turn & Lane Change Signal	Postponed Indefinitely	Neutral**
SB 13-054	Underage Person Alcoh. Consumption Parent Consent	Postponed Indefinitely	Neutral
SB 13-123	Collateral Consequences	Sent to the Governor	Neutral/Amended
SB 13-158	Sunset Cost-benefit Analysis of State Rules	Sent to the Governor	Neutral/Amended
SB 13-251	Driver's License & Identification Documentation	Sent to the Governor	Neutral/Amended

*CDOT legislative agenda bill.

**Testimony or concerns expressed in committee.

***Bill is still under consideration at the time of printing.