

APPENDIX 3: P3 Open Records and Amended Transparency Policy

COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE FIRST AMENDED TRANSPARENCY POLICY RELATING TO PUBLIC-PRIVATE PARTNERSHIPS

SECTION I. PURPOSE

The purpose of this Policy is to provide transparency and accountability for, and public participation in, any Public-Private Partnership or “P3” entered into by the High Performance Transportation Enterprise.

SECTION II. AUTHORITY

High Performance Transportation Enterprise, § 43-4-806(6), C.R.S.

SECTION III. APPLICABILITY

This Policy applies to any Surface Transportation Infrastructure Project that involves or is reasonably expected to involve a Public-Private Partnership.

SECTION IV. DEFINITIONS

“General Assembly” means the body created by art. V, § 1 of the Colorado Constitution.

“High Performance Transportation Enterprise” and “HPTE” mean the High Performance Transportation Enterprise created pursuant to § 43-4-806(2)(a)(I), C.R.S.

“HOV Lane” means a high-occupancy vehicle lane requiring a designated number of persons in a vehicle to receive free access and which is part of a Surface Transportation Infrastructure Project subject to a Public-Private Partnership.

“HPTE Board” means the High Performance Transportation Enterprise Board created pursuant to § 43-4-806(2)(a)(I), C.R.S.

“Public-Private Partnership” or “P3” means an agreement between the HPTE and one or more private entities by which the HPTE transfers responsibility to a private entity to design, build, finance, operate and maintain a Surface Transportation Infrastructure Project, or by which the HPTE transfers responsibility to a private entity to design, build, operate and maintain a Surface Transportation Infrastructure Project, in return (in either case) for the right to receive all or a portion of the User Fees generated by the Surface Transportation Infrastructure Project and/or other public monies. The use of the word “partnership” to describe such an arrangement does not confer on the relationship formed any of the attributes or incidents of a partnership under § 7-60-106, C.R.S. of the Colorado Revised Statutes or the common law. See § 43-1-1204(4), C.R.S.

“Surface Transportation Infrastructure Project” has the meaning set forth in § 43-4-803(23), C.R.S.

“Transportation Commission” means the Transportation Commission created pursuant to § 43-1-106, C.R.S.

“User Fee” has the meaning set forth in § 43-4-803(27), C.R.S.

SECTION V. POLICY

As a general statement of policy, the HPTE will continue to prioritize transparency and accountability in the development and implementation of Public-Private Partnerships for Surface Transportation Projects.

1. Town Hall Meetings. With the objective of providing a meaningful opportunity to the public to have input on a proposed Public-Private Partnership: the HPTE, in coordination with interested local governments, shall hold a minimum of three public town hall meetings on any Public-Private Partnership under consideration. The meetings shall:

(i) Provide the public and stakeholders with sufficient detail to understand the proposed Public-Private Partnership as then contemplated and the proposed long-term obligations of the financing arrangement;

(ii) At least one town hall meeting must be held during each of the following periods of the P3 procurement process:

- a. during Phase One (Visioning, including Project Identification and Screening);
- b. following Phase Two (Project Development), after completion of a Traffic and Revenue Study, prior to issuance of the Request for Qualifications;
- c. during Phase Three, Stage Two (Project Procurement), following selection of short-listed proposers, prior to issuance of a Request for Proposals

(iii) be held either at a physical location in proximity to the primary communities expected to be affected by the Public-Private Partnership and such other forum as the HPTE Board may deem appropriate to provide access to the public;

(iv) allow for comment, input, and questions from the public and responses from HPTE Board members and/or HPTE staff; and

(v) provide information regarding the transportation needs the Transportation Commission seeks to address by the proposed Public-Private Partnership, the perceived advantages and disadvantages of the proposed Public-Private Partnership, potential alternative funding options (including options that rely exclusively on public funding), and the essential terms being considered at any meeting required by Section 1(A)(i)(a) and at subsequent meetings when necessary to update the public on additional developments.

A. The HPTE shall consider the suggestions and ideas expressed by the public at the town hall meetings required by Section 1(A).

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- B. Any town hall meetings pursuant to Section 1(A) shall be preceded by full and timely notice, including:
- (i) providing notice to each member of the General Assembly whose district includes any geographical area located within the expected boundaries of the proposed Surface Transportation Infrastructure Project;
 - (ii) providing notice to the governing body of each county and municipality whose geographical limits are located within the expected boundaries of the proposed Surface Transportation Infrastructure Project;
 - (iii) posting on the HPTE website, at least one (1) week in advance, the location, date, and time of any town hall meeting as well as other relevant information relating to the meeting that will assist the public in making meaningful public comment regarding the proposed Public-Private Partnership, including in the case of the meeting required by Section 1(A)(i)(c), posting on its website a copy of, or an internet link to, the final request for proposal for a Public-Private Partnership; and
 - (iv) providing informational releases to appropriate media sources.
- C. If at any point prior to the final town hall meeting the HPTE determines that the proposed Surface Transportation Infrastructure Project will not require a Public-Private Partnership, the HPTE is not required to hold any additional meetings pursuant to Section 1(A).
- D. Once the HPTE enters into a Public-Private Partnership, the HPTE shall post on its website, or provide on its website an internet link to, a summary of the essential terms of the agreement and when any such agreement becomes fully effective, the HPTE shall post on its website, or provide on its website an internet link to, the full agreement, subject to reasonable safeguards to protect information which would not be subject to compulsory disclosure under the Colorado Open Records Act.
- E. In order to evaluate the effectiveness of Public-Private Partnership education and outreach efforts, HPTE shall maintain records of public and stakeholder engagement activities, including all meeting dates, the names of meeting attendees, lists of those notified of meetings, copies of handouts or presentations, and follow up action items, consistent with public relations best practices and established Federal Highway Administration and CDOT practices for public engagement during environmental reviews.
- 1. Status of High-Occupancy Vehicle Lanes.** If a Surface Transportation Infrastructure Project subject to a Public-Private Partnership contains one or more HOV Lanes and the status of the HOV Lanes may be impacted by the terms of the Public-Private Partnership, the HPTE shall provide notice to the public of any such change or of any change in the qualifications required to access such a lane for free use as an HOV Lane by both posting on the HPTE website and with written notice to adjacent local governments, at least thirty (30) days in advance of the effective date of the change.
- 2. General Assembly.** In addition to the requirements set forth at § 43-4-806(10), C.R.S., upon request by any member of the General Assembly, the HPTE shall provide additional reports and/or presentations to the General Assembly regarding any Surface Transportation Infrastructure Project that involves or is reasonably expected to involve a Public-Private Partnership. Any such reports or presentations shall be in accordance with the Colorado Open Records Act and shall be prepared with reasonable safeguards in place protecting proprietary information and the negotiating process.

3. Multi-Modal Consideration.

- A. In coordination with the Transportation Commission, the HPTE shall consider opportunities, and to the extent reasonable under the circumstances, include multi-modal alternatives (including transit) when analyzing any proposed Surface Transportation Infrastructure Project that is expected to include any HOV Lanes, high-occupancy toll lanes or managed lanes. As part of this evaluation, the HPTE shall evaluate the suitability of managed lanes for express bus service or bus rapid transit service, and shall consider whether it is appropriate to use User Fee revenues to support the capital and operating costs of such service.
- B. If any excess User Fee revenues are shared with the HPTE pursuant to the terms of any Public-Private Partnership, the HPTE shall consider whether it is appropriate under the circumstances to recommend to the Transportation Commission to apply a portion of such shared revenues to support multi-modal transportation (including transit) in the corridor that contains the Surface Transportation Infrastructure Project subject to the Public-Private Partnership. In exercising this consideration, the HPTE shall consult with the officials of the local communities located in any such corridor.

SECTION VI. EFFECTIVE DATE

This Policy shall be effective as of August 19, 2015, shall replace and supersede the Transparency Policy Relating to Public-Private Partnerships approved by the HPTE Board on July 16, 2014, and shall remain in effect until amended or superseded by subsequent resolution of the HPTE Board.