STATE OF COLORADO

DEPARTMENT OF TRANSPORTATION
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February 28, 2014

The Honorable KC Becker
The Honorable Mike Foote
The Honorable Dickey Lee Hullinghorst
The Honorable Tracy Kraft-Tharp
The Honorable Dominic Moreno
The Honorable Cherilyn Peniston
The Honorable Diane Primavera
The Honorable Joseph Salazar
The Honorable Jonathan Singer
House of Representatives
Colorado General Assembly
200 East Colfax Ave.
Denver, CO 80203

The Honorable Morgan Carroll
The Honorable Rollie Heath
The Honorable Matt Jones
The Honorable Lois Tochtrop
The Honorable Jessie Ulibarri
State Senate
Colorado General Assembly
200 East Colfax Ave.
Denver, CO 80203

RE: U.S. 36 Phase 2 Concessionaire Agreement

Dear Senators and Representatives:

As requested on your behalf by Representative KC Becker, this letters responds to your questions pertaining to the U.S. 36 concessionaire agreement between the High Performance Transportation Enterprise (HPTE) and Plenary Roads Denver (PRD).

Can CDOT/HPTE provide the Base Case Financial Model? Can CDOT/HPTE provide any financial modeling? The model you describe is a program in which contract performance may be measured and tracked. The financial model is the contractor's model and contains proprietary information which may place the contractor at a competitive disadvantage in future competitions for work here in Colorado and within the United States if publicly released, and therefore may be considered confidential. The model belongs to the concessionaire but CDOT/HPTE can access it at any time to oversee and verify results. The model is placed in escrow at financial close to ensure that it is not altered but will not become publically available.

If the General Assembly and public cannot see the Base Case Financial Model, can CDOT/HPTE state what elected officials have seen it and other variations on the financial modeling? Did the HPTE Board or Transportation Commission see it? The contractor's financial model was the basis for PRD's proposal which was determined to provide the best value to the state through a competitive procurement process. During the evaluation process the model was reviewed by the financial subcommittee of the evaluation team. The committee was comprised of the CDOT chief financial officer (CFO), State Controller, and Regional Transportation District (RTD) CFO. The HPTE's financial advisor for the transaction, KPMG, thoroughly reviewed the model and made a detailed presentation of its findings and analysis to the financial evaluation subcommittee. There were also extensive briefings for the Executive Oversight Committee (which included DRCOG and RTD senior management), the HPTE Board, and the Transportation Commission prior to award.

Was it possible to do this project through traditional financing like government bonds? Was that modeled, and if so, when would have the bonds be paid off (range of dates, given different interest rates is fine)? The HPTE Board considered the use of traditional financing secured by revenues from the project in making its decision to pursue the project as a concession. The bonding analysis was revisited several times during the process using a variety of interest rates and assumptions. Traditional municipal bonds have a 30 year repayment period and federal TIFIA financing typically has a repayment period of 35 years from completion of construction, which is roughly equivalent to a 40 year financing time frame. Financing Phase II of the U.S. 36 project was more problematic than financing for Phase I as it does not generate revenue at a rate similar to either the I-25 HOT lanes and RTD could not make available as much funding as in Phase I. Given the objective of moving ahead with Phase II immediately to honor the RTD commitment and to complete the corridor improvements in a single process, a financing gap existed and the private equity and subordinated debt provided by the concessionaire filled that gap. A 50 year concession period was needed to provide a repayment profile for the subordinated debt and the equity. Absent this approach it is difficult to state exactly when HPTE could have moved forward with Phase II as its advancement would have required either significant additional funds from either CDOT or another partner, or demonstration over time that the toll revenues Phase I generated were materially higher than predicted in the traffic and revenue study. CDOT/HPTE's report on the relative value to the state of the two approaches (P3 v. traditional government bonds) was attached to the year's HPTE legislative report.

Under the Base Case Financial Models with PRD, when is PRD's equity paid off? When equity and return on equity are paid is entirely a function of how well the managed lanes perform. Under the Base Case, it is unlikely that debt (and interest) and equity (and expected return on equity) can be paid sooner than the last 10 years of the concession term. In any event, if the project performs better than expected due to higher revenue or lower costs, the state will share in the revenue benefits earlier and in greater amounts. Furthermore, technically equity is never "paid off". Rather, equity is an investment of ownership. In the base case, PRD will ultimately make on its equity approximately 13.5 percent.

What is the range of tolls that PRD can charge and how is the toll amount determined? The toll is capped by the contract at $13.91 (indexed) for a full trip between Denver and Boulder Initially the tolls will be fixed by time of day and will range from $0.60 to $4.45 per trip during peak times (meaning that rates will be cheaper when traffic is lighter). The HPTE Board must approve any request by the contractor to change the toll amount – PRD is not permitted to set tolls unless the state approves the rate. Tolls rates for trips using the I-25 portion of the project at peak periods cannot be less than the RTD Express or Regional fares.

HPTE approves proposed toll increases submitted by PRD. Will these meetings be noticed and open to the public, with an opportunity for public comment? Yes. All HPTE Board meetings are publicly noticed at the HPTE Board website and are open to the public, as required by the Colorado Open Meetings Law. Notices have been posted, along with agendas and meeting minutes, at the HPTE website (http://www.coloradodot.info/programs/high-performance-transportation-enterprise-hpte) since the HPTE's establishment.

On page 25 of the agreement summary is the statement, it states: "The Maximum Toll for the Managed Lanes for Tolled Vehicles from and after the first year after the Full Services Commencement Date will be $13.91 (Indexed). Initially, the transponder tolls will range between $0.60 and $4.45, depending on the time of day." Does this mean that the toll lanes could charge $13.91 in one direction for a single car? At what point will this begin? If not, please explain. I believe the quote indicates that the $13.91 is indexed to inflation, so that US 36 drivers could actually be paying a much higher amount. Is that correct? Theoretically, the maximum that *could* be charged will be $13.91; this is a contract limit to protect the state. However, the optimal toll revenue for a facility like this is measured on a bell curve, meaning not so expensive as to deter traffic, but not so cheap as to draw so many cars that the lane will be congested thereby clogging the lane for bus and HOV travel. CDOT/HPTE anticipates that maximum toll limit set forth in the contract will never be reached. Under the agreement tolls are set by the HPTE Board.

CDOT and HPTE have stated that they held meetings with locally elected officials. Can CDOT/HPTE provide more information about when these meetings occurred and with whom? HPTE has compiled a list of outreach activities during 2012 and 2013. Attendance was not recorded, however. Thus, CDOT/HPTE is unable to provide what specific persons were in attendance at each event. In terms of numbers, meetings and events with these groups ranged from a half dozen to in excess of 100 at 36 Commuting Solutions events. In response to concerns and feedback received recently regarding the public process, CDOT will be cooperating in developing legislation to require additional public outreach specific to non-elected persons that are members of the general public.

01/06/12	Presentation to 36 Commuting Solutions Legislative Breakfast
02/14/12	Presentation to 36 Commuting Solutions DC Congressional meeting
02/21/12	HPTE-DRCOG: US36 gap
03/01/12	Briefing with Adams County Officials
03/20/12	Briefing/meeting with DRCOG
04/05/12	Briefing/meeting with U.S. 36 Mayors/Commissioners Coalition (MCC)
04/16/12	Briefing/meeting with Adams County officials
04/18/12	Presentation to DRCOG Board
04/20/12	Presentation to Denver Metro Chamber of Commerce
05/08/12	Presentation to 36 Commuting Solutions Breakfast
05/23/12	Briefing/meeting with U.S. 36 Mayors/Commissioners Coalition (MCC)
06/14/12	Briefing/meeting with U.S. 36 Mayors/Commissioners Coalition (MCC)
07/03/12	Briefing/meeting with Westminster mayor's office
07/03/12	Briefing/meeting with Superior and Louisville
07/09/12	Briefing/meeting with HPTE/CDOT/RTD/Louisville/Superior (DDI Transit)
07/09/12	Briefing/meeting with Westminster/Superior/Boulder (HOV)
07/16/12	Briefing/meeting with U.S. 36 Mayors/Commissioners Coalition on HOV Policy
08/17/12	Briefing/meeting with Boulder County and Louisville officials
09/06/12	Briefing/meeting with U.S. 36 Mayors/Commissioners Coalition (MCC)
10/05/12	TDM in Phase 2 US 36 project
10/11/12	North Area Transportation Alliance (HOV)
10/11/12	Bagels with Barry event (Transportation Commission, city/county officials, local staff)
10/25/12	North Area Transportation Alliance Board Meeting (HOV Policy)
10/26/12	Meeting with Louisville/Boulder officials
11/26/12	DRCOG Transportation Advisory Committee
11/29/12	CDOT-RTD-HPTE TIFIA workshop

12/03/12	Meeting with the Denver Post
12/07/12	U.S.36 TDM Funding
01/03/13	U.S. 36 Mayors/Commissioners Coalition (MCC) Update/Washington, DC trip
01/04/13	Presentation to 36 Commuting Solutions Legislative Breakfast
01/08/13	US 36 Executive Oversight Committee (EOC)
01/24/13	RTD-HPTE-CDOT: US36 IGA
02/12/13	Briefing/meeting with Erie mayor
02/19/13	DRCOG Regional Transportation Committee
02/20/13	U.S. 36 Mayors/Commissioners Coalition (MCC) IGA discussion
03/05/13	Regional Transportation District
03/14/13	Briefing/meeting with U.S. 36 Mayors/Commissioners Coalition (MCC)
03/14/13	Bagels with Barry event (Transportation Commission, city/county officials, local staff)
03/15/13	Meeting with Boulder officials
03/19/13	Regional Transportation District and DRCOG
03/28/13	North Area Transportation Alliance/ North Metro Chamber
04/02/13	Regional Transportation District/HPTE corridor funding
04/03/13	Denver Post
04/04/13	US 36 Executive Oversight Committee (EOC)
04/16/13	Presentation to the General Assembly House and Senate Transportation Committees
04/18/13	Denver Post Interview
04/24/13	RTD/HPTE US36 IGA
06/11/13	US 36 Executive Oversight Committee (EOC)
07/15/13	Legislator meeting/briefing
07/19/13	Boulder Daily Camera Interview
07/30/13	NAMS/Broomfield
08/01/13	U.S. 36 Mayors/Commissioners Coalition (MCC)
08/15/13	Legislator meeting
09/16/13	Meeting/briefing with Adams County commissioner and county staff
10/08/13	Presentation to the General Assembly Transportation Legislation Review Committee
10/18/13	Meeting/briefing with Adams County staff
10/18/13	Meeting/briefing with SWEEP
10/24/13	Presentation to North Area Transportation Alliance Board Meeting
11/13/13	TDM: Broomfield/36 Commuting Solutions
11/14/13	Bagels with Barry event (Transportation Commission, city/county officials, local staff)
12/05/13	Briefing/meeting with U.S. 36 Mayors/Commissioners Coalition (MCC)

Who pays for HOV enforcement? Do local jurisdictions have some responsibility for enforcement? If they do, what are their obligations to enforce and how are they paid for this? If local jurisdictions do have enforcement authority or obligations, does PRD compensate local jurisdictions for enforcement? For routine traffic safety matters on U.S. 36, both state and local law enforcement will remain as the traffic enforcement authority just as is currently the case. For enforcement of the managed lanes (i.e. ensuring that non-HOV drivers have remitted the correct toll amount), PRD will contract directly with the Colorado State Patrol and will also cover enforcement costs. The contract also provides PRD with the option to contract with local governments for HOV enforcement as well. There are no mandates for law enforcement agencies in the contract.

In answering why this is a good deal for the public, CDOT/HPTE stated that PRD holds the risk for toll revenues and long term maintenance and operation. There are dozens of "Compensation Events" and "Relief Events," including Force Majeure, which shift risk from PRD back to the government. It seems that these events take much of the risk out of the deal. Where will the funding come from for all the events which require CDOT/HPTE to pay PRD in a position "no better and no worse" than they would have been, had the triggering event not taken place? Has CDOT/HPTE modeled their potential obligations under these scenarios? What do those models indicate? The occurrence of many of the compensation events (which generally entail direct interruption of the managed lane's operation) are within the control of HPTE. HPTE has reserved funds against the need to compensate PRD for these, should they ever occur. Generally speaking, force majeure events call for a temporary suspension of PRD's obligations under the contract ("Relief") rather than compensation. Regarding risk transfer, under the existing U.S. 36 Phase I debt agreements HPTE currently bears all the risk for repayment of the $54 million TIFIA obligation. Under the contract, PRD will be assuming that particular obligation as part of the transaction, thus relieving HPTE of a significant risk.

Legislators have heard there are instances when other P3 toll road projects have ended up in the default of the private party. In those instances, what was the impact to the public and how have those impacts been mitigated? In all instances where a concessionaire has defaulted, the improved highway has remained in operation providing continued transportation benefits to the traveling public. In almost all these cases, the concessionaire has lost its equity and its investment expectations. Senior debtors receive whatever is available in the process of work out financing. The same scenario applies in this instance. If a default occurs it will not impact the traveling public and HPTE will have the option to terminate the contract on very favorable terms.

Recognizing that PRD is contributing only $20 million in equity to the project (approximately 4 percent of total project costs) and will receive 50 years of cash flow, why was CDOT/HPTE unable to assemble essentially the same project financing without PRD? Succinctly, why was HPTE unable to bond the US36 project alone? PRD is contributing a little more than $20 million in pure equity ($20.5) but, importantly, it has also arranged for a deeply subordinated, equity-like debt infusion to the project (which would have been difficult for HPTE to bring to the table) of an equivalent amount — $20.5. So the effective capital contribution PRD is bringing to the project is more accurately reflected as about $41 million. To the question of why HPTE would be unable to bond for the U.S. 36 project, after taking into account RTD, DRCOG, CDOT, and local government cash contributions, the funding gap for Phase 2 would still have been about $120 million. The HPTE would likely not have been able to borrow this much money from TIFIA and/or the traditional tax-exempt bond market since the project revenues we projected would not have supported public debt on this scale, managed lane revenues being highly risky. So, it is important to note that one of the significant benefits of this concession model is the transfer of revenue risk. If toll revenue generated from the project was even 25 percent less than projections under the Base Model, the shortfall in revenue would be close to $130 million in nominal dollars, and over $50 million in net present value. It is unlikely that CDOT or the HPTE would or could have accepted the toll revenue risk.

The HPTE director recently stated that issuing revenue bonds for the project would have "put the credit of the state on the line." Our understanding is that revenue bonds generally do not encumber the credit of the issuer. How would this have been a risk for the state? Are not bondholders compensated for this extra risk in a higher coupon rate? It is true that when a revenue bond defaults that there is not a legal obligation on the part of the state to repay the bond holders. That said, if a default was to occur the market perception of the HPTE, CDOT and, in all likelihood the state, would be damaged. While there may not be an immediate legal obligation, and while the credit of the state might not be on the line in the sense of a downgrade, the markets would clearly be more cautious (and possibly more expensive) when investing in our projects.

It appears that an additional $40 million investment (equivalent to PRD's $20 million in equity and the $20 million PRD private loan) on the part of CDOT would have obviated the need for use of the P3 model on the U.S. 36 project. Is this true? Why is further CDOT funding unavailable for this project? Please keep in mind that from a funding point of view one must consider the total CDOT funding for both phases of this project. In addition to the $15 million the Transportation Commission allocated for Phase 2, CDOT, HPTE and the Bridge Enterprise previously committed almost $87 million to Phase 1. So, CDOT resources have contributed over $100 million to the improvements in this corridor. Given its other statewide priorities and in particular its limited ability to execute capacity improvement projects when its stated budgeting priorities are system maintenance and preservation, the Commission struggled to find and commit further funds for improvements in this corridor and opted against shifting funds from other important statewide projects to provide additional funds for this project.

CDOT asserts that without the P3, this project could not be completed for 20 years. Why is this? CDOT has experienced a budget reduction of approximately 25 percent over the past five fiscal years. As a result of this trend, approximately 80 percent of the budget is devoted to maintenance (i.e. resurfacing, rockfall/avalanche mitigation, road repairs, etc.), and the remaining funds are largely for debt service or are pass-through federal funds. This means that CDOT's regular annual budget provides zero dollars for new capacity (i.e. highway widening, new lanes, etc.). With increasing material and labor costs, projects that add capacity similar to U.S. 36 Phase 2 are reaching the billion dollar level. CDOT has struggled to find ways to inject one-time funds that will benefit some new capacity projects, by changing budgeting and cash flow procedures under the "Responsible Acceleration of Maintenance and Partnerships (RAMP) program." However, without a long-term federal or state revenue increase, and with continued flat revenue collections, public-private partnerships offer the only remaining tool to secure needed funding for new capacity projects. As such, CDOT/HPTE planning for future high priority projects – chiefly the I-70 viaduct, I-70 Mountain Corridor, and north I-25 to Fort Collins – all require that CDOT/HPTE evaluate the use of private partners.

KPMG has analyzed the value that Colorado and its taxpayers will receive from the P3 financing. Is this KPMG report public and available for review? Yes. The most recent present value report provided by KPMG is attached to this letter, and a post-closing update will be posted.

Has the relative distribution of state transportation resources in metro-area corridors been quantified? What is the per capita distribution of state and federal transportation resources by metro-area corridor in the last 15 years, including TREX? CDOT quantifies the distribution of both state and federal transportation resources not by corridor, but by the transportation planning regions (TPRs) and metropolitan planning organizations (MPOs). Table 1 provides a summary of project funding contained in the Statewide Transportation Improvement Program (STIP) for each TPR and MPO. These figures represent all funding that is included in the STIP for the past ten years, except for maintenance dollars and debt service on bond issuances.

Furthermore, breaking out the figures in Table 1 per capita may offer a misleading indication of funding benefits to each community. Unlike city and county transportation budgets, CDOT projects often span across multiple local jurisdictions, TPRs, and MPOs; and the benefits of these projects extend well beyond. For example, a north I-25 project can touch several dozen counties and cities, as well as cross through DRCOG and North Front Range. However, the benefits of the project will likely extend well beyond these boundaries and provide significant benefits for other nearby counties, cities, and TPRs – despite that the project may not be physically located within their jurisdictional boundaries.

Table 1.
Statewide Transportation Improvement Program (STIP)
Funding by TPR/MPO
(Dollars in thousands)

TPR/MPO	FYs 05-06 from 05-10 STIP	'FY07 (from 07-09 STIP)	FYs 08-11 (from 08-13 STIP)	FY 12-17 STIP - all years	TOTALS
Central Front Range	$13,639	$40,813	$115,999	$119,894	**$290,345**
DRCOG (non-MPO area)	$7,940	$12,638	$116,430	$41,231	**$178,239**
DRCOG (MPO area)	$558,679	$718,004	$4,477,433	$6,941,656	**$12,695,772**
Eastern	$44,234	$71,873	$183,951	$183,841	**$483,899**
Grand Valley (MPO area)	$50,549	$32,623	$112,126	$207,864	**$403,162**
Grand Valley (non-MPO)	$0	$217	$23,753	$48,192	**$72,162**
Gunnison Valley	$73,001	$36,887	$117,065	$187,162	**$414,115**
Intermountain	$55,621	$91,513	$374,957	$426,486	**$948,577**
North Front Range	$27,982	$50,053	$443,523	$467,640	**$989,198**
Northwest	$18,290	$18,597	$109,676	$151,747	**$298,310**
Pueblo (MPO area)	$36,164	$73,537	$153,970	$251,098	**$514,769**
Pueblo (non-MPO area)	$8,578	$2,150	$13,784	$34,309	**$58,821**
Pikes Peak	$211,416	$163,726	$347,989	$500,874	**$1,224,005**
South Central	$45,055	$26,414	$99,594	$60,523	**$231,586**
Southeast	$21,765	$35,012	$121,367	$142,363	**$320,507**
San Luis Valley	$41,095	$38,760	$101,034	$114,744	**$295,633**
Southwest	$41,464	$113,705	$177,102	$281,731	**$614,002**
Upper Front Range	$68,085	$53,964	$120,247	$185,525	**$427,821**
Grand Total	**$1,724,784**	**$1,580,486**	**$7,210,000**	**$10,346,878**	**$19,215,540**

Does the contract with PRD include a provision requiring PRD to maintain the regular highway lanes in the corridor at the same standards as the express lanes? The contract specifically states that the managed lanes and the general purpose lanes must both be maintained in a manner that provides a safe and reliable transportation system "at current CDOT standards or better."[1] Detailed performance measures are included. The contract also requires the concessionaire to meet and report monthly to CDOT/HPTE, specifically so the state may review the status of services provided by PRD.[2] Failure by PRD to adhere to these performance standards will result in financial penalties or cancellation of the contract.

Does CDOT plan additional public outreach on the financing package? This month, CDOT conducted two town hall meetings in Louisville and Westminster, presented before the Joint Transportation Committee, and heard public testimony at the HPTE Board meeting and Transportation Commission meeting. CDOT continues to answer questions from the public, General Assembly, and media on a daily basis. CDOT will continue to respond to requests for information and questions from the public after closing of the agreement.

Under the P3 financing scheme for U.S. 36 what entity will actually issue the bonds – HPTE or PRD? What entities will underwrite the bond issuance? The HPTE is a "conduit issuer" for the private activity bonds. PRD assumed the entire obligation to repay the bonds. Under the federal statutes and

1 Colorado High Performance Transportation Enterprise: US 36 Managed Lanes – Toll Concession Project, *Schedule 6: Service Requirements*, §1.1.
2 Colorado High Performance Transportation Enterprise: US 36 Managed Lanes – Toll Concession Project, *Schedule 6: Service Requirements*, §1.9.

regulations surrounding tax-exempt private activity bonds a governmental entity, in this case the HPTE, must act as the issuer. A failure of PRD to make the payments is without recourse to HPTE. The underwriter for the issuance was selected and paid by PRD. PRD chose to engage Goldman Sachs as the underwriter for the bonds; Goldman will have no continuing role in the operation of the project

Under the P3 proposal does PRD or HPTE assume the TIFIA loans? Under the P3 as proposed, PRD is the borrower for the Phase 2 TIFIA loan, and upon the completion of the Phase 1 construction project the U.S. Department of Transportation TIFIA office has agreed that PRD will assume the Phase 1 loan.

Why are the $2.6 million in toll revenues for the I-25 to downtown stretch included in the P3 financing package? Absent these revenues the project does not generate sufficient toll revenues to allow for the debt financing of the Phase 2 project. Also PRD is performing as part of its contract extensive rehabilitation work on many of the I-25 HOT structures and is taking on the cost of operating and maintaining them. Operationally the I-25HOT lanes and the US-36 project will operate as a single integrated entity.

In what instances do the non-compete provisions of the contract prohibit improvements to the U.S. 36 general purpose lanes? The very narrow non-compete limitation in the contract precludes the construction of <u>additional</u> general purpose lanes on US-36 (but not the completion of the full build-out provided for in the NEPA Record of Decision), or construction over the highway airspace (i.e. construction of a prohibitively expensive "double-decker" highway), without an accommodation with PRD. That stated, a key condition imposed upon this project by our local partners is that they do not ever want any additional general purpose lanes constructed on US-36. So in this instance the non-compete simply reflects the corridor coalitions desires. Importantly, there are no non-compete provisions that preclude area local governments from improving their transportation systems.

Thank you for allowing me to respond to the questions you have pertaining to this agreement. Should you require additional information, please contact me or Kurt Morrison at (303) 757-9703. Thank you.

Sincerely,

Michael Cheroutes
Director
High Performance Transportation Enterprise

cc: The Honorable Max Tyler, Chair, House Committee on Transportation & Energy
The Honorable Dominic Moreno, Vice-chair, House Committee on Transportation & Energy
The Honorable Ray Scott, Ranking Member, House Committee on Transportation & Energy
The Honorable Nancy Todd, Chair, Senate Committee on Transportation
The Honorable Cheri Jahn, Vice-chair, Senate Committee on Transportation
The Honorable Steve King, Ranking Member, Senate Committee on Transportation
Mr. Doug Aden, Chair, Transportation Commission/HPTE Board
Mr. Ed Peterson, Transportation Commission
Ms. Heather Barry, Transportation Commission
Ms. Kathy Connell, Transportation Commission

Ms. Shannon Gifford, Transportation Commission
Ms. Kathy Gilliland, Transportation Commission/HPTE Board
Mr. Les Gruen, Transportation Commission
Mr. Steve Hofmeister, Transportation Commission
Mr. Gary Reiff, Transportation Commission/HPTE Board
Mr. Bill Thiebaut, Transportation Commission
Ms. Sidny Zink, Transportation Commission
Mr. Tim Gagen, Chair, HPTE Board
Mr. Don Marostica, HPTE Board
Mr. Trey Rogers, HPTE Board
Ms. Brenda Smith, HPTE Board