

MASTER AGREEMENT

By and between the

COLORADO DEPARTMENT OF TRANSPORTATION

AND

COLORADO BRIDGE ENTERPRISE

THIS AGREEMENT, entered into as of the ^{21st} day of January 2009, by and between the Colorado Department of Transportation ("CDOT"), an agency of the State of Colorado (the "State"), and the Colorado Bridge Enterprise (the "Bridge Enterprise"), a government-owned business created in CDOT by the "Funding Advancements for Surface Transportation and Economic Recovery Act of 2009" ("FASTER"), cited as Chapter 5, Session Laws of Colorado 2009, First Regular Session, 67th General Assembly ("FASTER"). CDOT and the Bridge Enterprise are referred to in this Agreement individually as a "Party" and jointly as the "Parties".

RECITALS

WHEREAS, CDOT has the responsibility to plan, develop, construct, coordinate, and promote an integrated transportation system within the State; and

WHEREAS, the General Assembly (as defined below) found and determined in FASTER (Section 43-4-805(1), C.R.S.) that:

(a) The completion of Designated Bridge Projects (as defined below) is essential to address increasing traffic congestion and delays, hazards, injuries, and fatalities; and

(b) Due to the limited availability of state and federal funding and the need to accomplish the financing, repair, reconstruction, and replacement of Designated Bridges (as defined below) as promptly and efficiently as possible, it is necessary to create a statewide bridge enterprise and to authorize the enterprise to:

(1) Enter into agreements with the Colorado Transportation Commission (the "Commission") or CDOT to finance, repair, reconstruct, and replace Designated Bridges in the State; and

(2) Impose a Bridge Safety Surcharge (as defined below) at rates reasonably calculated to defray the costs of completing Designated Bridge Projects and distribute the burden of defraying the costs in a manner based on the benefits received by persons paying the fees and

using Designated Bridges: receive and expend revenues generated by the surcharge and other moneys; issue revenue bonds and other obligations; contract with the state, if required approvals are obtained, to receive one or more loans of moneys received by the State under the terms of one or more lease-purchase agreements authorized by part 8, article 4 of title 43, Colorado Revised Statutes, as amended; expend revenues generated by the Bridge Safety Surcharge to repay any such loan or loans received: and exercise other powers necessary and appropriate to carry out its purposes; and

(c) The creation of a statewide bridge enterprise is in the public interest and will promote the health, safety, and welfare of all Coloradans and visitors to the State by providing bridges that incorporate the benefits of advanced engineering design, experience, and safety;

and

WHEREAS, FASTER (Section 43-4-805(2), C.R.S.) created a statewide bridge enterprise as a government-owned business in the Department for the business purpose of financing, repairing, reconstructing, and replacing any Designated Bridge in the State, and as agreed upon by the Bridge Enterprise and the Commission or CDOT to the extent authorized by the Commission, to maintain the Designated Bridges it finances, repairs, reconstructs, and replaces; and

WHEREAS, the Bridge Enterprise Board (as defined below) has adopted Articles of Organization and Bylaws providing for the organization and governance of the Bridge Enterprise; and

WHEREAS, the General Assembly in FASTER (Section 43-4-805(2)(c), C.R.S.), declared and provided that the Bridge Enterprise shall constitute an "enterprise" for purposes of section 20 of article X of the State Constitution so long as it retains the authority to issue revenue bonds and receives less than ten percent of its total revenues in grants from all Colorado state and local governments combined. So long as it constitutes an enterprise pursuant to Section 43-4-805(2)(c), C.R.S., the enterprise shall not be subject to any provisions of section 20 of article X of the state constitution: and

WHEREAS, consistent with the determination of the Colorado supreme court in *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859 (Colo. 1995), that the power to impose taxes is inconsistent with "enterprise" status under section 20 of article X of the state constitution, the General Assembly found and declared in FASTER (Section 43-4-805(2)(c), C.R.S.), that a Bridge Safety Surcharge imposed by the Bridge Enterprise pursuant to Section 43-4-805(5)(g), C.R.S., is not a tax but is instead a fee imposed by the Bridge Enterprise to defray the cost of completing Designated Bridge Projects that the Bridge Enterprise provides as a specific service to the persons upon whom the fee is imposed and at rates reasonably calculated based on the benefits received by such persons: and

WHEREAS, FASTER (Section 43-4-805(5)(f), C.R.S.) authorizes the Bridge Enterprise Board to enter into agreements with the Commission or CDOT, to the extent authorized by the Commission, under which the Bridge Enterprise agrees to finance, repair reconstruct, replace,

and, if any given agreement so specifies, maintain Designated Bridges as specified in the agreements; and

WHEREAS, in furtherance of the such business purposes and additionally to preserve the status of the Bridge Enterprise as an “enterprise” under section 20 of article X of the State Constitution, the Bridge Enterprise Board has determined it is necessary and convenient to enter into this Agreement with CDOT, acting with the authorization of the Commission, to define and provide for the roles, responsibilities and powers of the Parties relating to Designated Bridge Projects in the State.

NOW, THEREFORE, in consideration of the mutual covenants, obligations, and conditions expressed below, the Parties agree as follows:

Article One

General Provisions

1.1 Definitions. As used in this Agreement, unless the context otherwise requires:

- (1) **Articles of Organization** means the Amended and restated Articles of Organization, adopted by the Bridge Enterprise Board on December 17, 2009 .
- (2) **Bonds** has the meaning set forth in Section 43-4-803(2), C.R.S.
- (3) **Bylaws** means the Bylaws, adopted by the Bridge Enterprise Board on July 23, 2009.
- (4) **Bridge Enterprise Board** means the board of directors of the Bridge Enterprise.
- (5) **Bridge Executive Director** means the director of the Bridge Enterprise appointed pursuant to Section 43-4-805(2)(a)(1), C.R.S.
- (6) **Bridge Safety Surcharge** means the bridge safety surcharge authorized to be imposed by the Bridge Enterprise Board by Section 43-4-805(5)(g), C.R.S.
- (7) **Bridge Special Fund** means the statewide bridge enterprise special revenue fund created in the State treasury by Section 43-4-805(3)(a), C.R.S.
- (8) **Designated Bridge** has the meaning set forth in Section 43-4-803(10), C.R.S.
- (9) **Designated Bridge Project** has the meaning set forth in Section 43-4-803(11), C.R.S.
- (10) **Executive Director** means the Executive Director of CDOT.

(11) **Federal Funds** means funds and other moneys distributed to the State by the federal government (i) for the purpose of bridge construction, repair or maintenance, or (ii) that may at the discretion of the State be used by for bridge construction, repair, or maintenance.

(11) **General Assembly** means the General Assembly of the State of Colorado

(12) **State Highway Fund** means the fund created in Section 43-1-219, C.R.S.

1.2 **Effective Date and Term**

This Agreement shall be effective immediately upon its execution and shall continue in effect until terminated in accordance with its terms.

Article Two

Bridge Designation and Transfer

2.1 **Identification of Designated Bridges**

(1) Concurrently with the adoption of the CDOT budget by the Commission in April of each year, and thereafter on such additional dates in each year as the circumstances permit or require, the Executive Director of CDOT, in consultation with the Bridge Executive Director, shall identify bridges and connected or adjacent infrastructure that are eligible to be Designated Bridges and that the Executive Director proposes to be undertaken by the Bridge Enterprise as a Designated Bridge Project.

(2) The Designated Bridge Projects so proposed shall include a general description of the nature and scope of the required work, including without limitation any maintenance responsibilities, an estimate of its cost, and an estimate of the time required for its completion.

(3) The Designated Bridge Projects so proposed shall be subject to the approval of the Commission and the Bridge Enterprise Board.

2.2 **Transfer of Designated Bridges**

(1) Upon the approval by the Commission and the Bridge Enterprise Board of a Designated Bridge Project, CDOT shall immediately take such steps as are required to transfer ownership of, and responsibility for, the related Designated Bridge (including connected or adjacent infrastructure) to the Bridge Enterprise. CDOT and the Bridge Enterprise shall maintain complete and accurate records of such transfer and the Commission and the Bridge Enterprise Board shall take any and all necessary action to effect such transfer.

(2) Any Designated Bridge (including connected or adjacent infrastructure) transferred to the Bridge Enterprise under paragraph 1 of this Section 2.2 shall, notwithstanding such transfer, be deemed to remain a part of a “state highway” as defined in Section 43-1-205, C.R.S.

(3) The Commission and Bridge Enterprise Board may, after full consideration of the effect of such action under section 20 of article X of the State Constitution, jointly determine, for whatever reason, that any Designated Bridge Project previously approved is no longer necessary or appropriate, and in such event the ownership of, and responsibility for, the related Designated Bridge (including connected or adjacent infrastructure) shall be transferred back to CDOT.

(4) Bridges transferred to the Bridge Enterprise prior to the effective date of this Agreement shall be treated as Designated Bridges under this Agreement.

Article Three

Obligations of Enterprise

3.1 Designated Bridge Projects

(1) The Bridge Enterprise shall have full authority to design, develop, finance, construct, reconstruct, repair, replace, operate, and maintain a Designated Bridge in furtherance of any Designated Bridge Project approved as provided in this Agreement, and in that connection the Bridge Enterprise and the Bridge Enterprise Board may exercise any and all rights and powers provided by FASTER, including without limitation obtaining necessary environmental clearances and right-of-way and the issuance of Bonds by the Bridge Enterprise in its own name.

(2) CDOT agrees to cooperate fully with the Bridge Enterprise in undertaking Designated Bridge Projects and agrees not to take any actions that would impair or obstruct the Bridge Enterprise in undertaking any Designated Bridge Project.

(3) Any contract or other obligation incurred by the Bridge Enterprise in connection with a Designated Bridge Project or otherwise shall be a special, limited obligation of the Bridge Enterprise, payable solely from, and secured solely by, the Bridge Special Fund or such other of its funds and revenues as are duly pledged by the Bridge Enterprise. No such obligation may be deemed or construed as creating a debt or multiple fiscal year direct or indirect debt or financial obligation of the State, the Commission, or CDOT.

3.2 Use of CDOT Services and Facilities

(1) The Bridge Enterprise may, with the approval of and subject to such conditions as are imposed by the Executive Director, utilize the professional services of CDOT employees or

agents and CDOT facilities in connection with its authorized activities, including without limitation any Designated Bridge Project approved under this Agreement.

(2) The Bridge Enterprise shall reimburse CDOT, at CDOT's regularly burdened rates, for professional and administrative services (including legal services) rendered, or facilities provided, by CDOT employees or agents to the Bridge Enterprise in connection with any Designated Bridge Project, or otherwise.

3.3 Maintenance Obligations

(1) For Fiscal Year 2010, maintenance of Designated Bridges transferred to the Bridge Enterprise under this Agreement shall be performed by CDOT, until and unless the Bridge Enterprise shall have issued a notice to proceed for construction of the related Designated Bridge Project. The Bridge Enterprise shall reimburse CDOT for the actual cost of such maintenance.

(2) For all subsequent periods, the Bridge Enterprise and CDOT shall negotiate a separate maintenance agreement providing the terms of each Party's maintenance obligations with respect to Designated Bridges transferred to the Bridge Enterprise under this Agreement.

Article Four

Revenues and Expenditures

4.1 Bridge Special Fund

(1) Except as otherwise provided by this Agreement, all revenues received by the Bridge Enterprise, including, but not limited to, any revenues from the Bridge Safety Surcharge and any moneys loaned to the Bridge Enterprise by the State pursuant to Section 43-4-805(5)(r), C.R.S., shall be deposited into the Bridge Special Fund. The Bridge Enterprise Board may establish separate accounts within the Bridge Special Fund as needed in connection with any specific Designated Bridge Project. The Bridge Enterprise also may deposit or permit others to deposit other moneys into the Bridge Special Fund, but in no event may revenues from any tax otherwise available for general purposes be deposited into the Bridge Special Fund. The State Treasurer, after consulting with the Bridge Enterprise Board, shall invest any moneys in the Bridge Special Fund, including any surplus or reserves, but excluding any proceeds from the sale of bonds or earnings on such proceeds invested pursuant to section 43-4-807 (2), C.R.S., that are not needed for immediate use. Such moneys may be invested in the types of investments authorized in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S.

(2) All interest and income derived from the deposit and investment of moneys in the Bridge Special Fund shall be credited to the Bridge Special Fund and, if applicable, to the

appropriate Designated Bridge Project account. Moneys in the Bridge Special Fund shall be continuously appropriated to the Bridge Enterprise for its authorized purposes. All moneys deposited in the Bridge Special Fund shall remain in the Bridge Special Fund for its authorized purposes, and no part of the Bridge Special Fund shall be used for any other purpose.

4.2 **Bridge Safety Surcharge; Other Revenues**

(1) As necessary for the achievement of its business purpose, the Bridge Enterprise may, pursuant to, and subject to the limitations of, Section 43-4-805(5)(g), C.R.S., impose a Bridge Safety Surcharge upon the registration of any vehicle for which a registration fee must be paid pursuant to the provisions of part 3 of article 3 of title 42, C.R.S. The Bridge Safety Surcharge may not exceed the amounts set forth in Section 43-4-805(5) (g) and the rates shall be calculated to defray the costs of completing Designated Bridge Projects and distributing the burden of defraying such costs in a manner based on the benefits received by persons paying the fees and using the Designated Bridges. The Resolution adopted by the Bridge Enterprise Board on June 18, 2009, imposing a Bridge Safety Surcharge for registration periods commencing in Fiscal Year 2010 is acknowledged and accepted by the Parties.

(2) Federal Funds relating to any Designated Bridge Project shall be transferred to the Bridge Special Fund as they become available. Except as otherwise provided in this Agreement, all other revenues of whatsoever nature received by the Bridge Enterprise shall also be accounted for in the Bridge Special Fund.

(3) The Commission may transfer moneys from the State Highway Fund to the Bridge Enterprise for the purpose of defraying expenses incurred by the Bridge Enterprise prior to the receipt of bond proceeds or revenues by the Bridge Enterprise. The Bridge Enterprise may accept and expend any moneys so transferred, and, except in the case of State funds in the amount of \$1,126,644 transferred to the Bridge Enterprise by the Commission on October 15, 2009, and notwithstanding any State fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, any such a transfer shall constitute a loan from the Commission to the Bridge Enterprise and shall not be considered a grant for purposes of section 20 (2) (d) of article X of the State Constitution. Any moneys loaned from the State Highway Fund to the Bridge Enterprise pursuant to this subsection shall be deposited into a fund to be known as the "Statewide Bridge Enterprise Operating Fund", created by Section 43-4-805(4), C.R.S., and shall not be deposited into the Bridge Special Fund. Moneys from the Bridge Special Fund may, however, be used to reimburse the State Highway Fund for the amount of any loan from the State Highway Fund or any interest thereon.

4.3 **Expenditures**

(1) The Bridge Enterprise may expend moneys in the Bridge Special Fund to pay bond or loan obligations, to fund the administration, planning, financing, repair, reconstruction,

replacement, or maintenance of Designated Bridges, and for the acquisition of land to the extent required in connection with any Designated Bridge Project. The Bridge Enterprise may also expend moneys in the Bridge Special Fund to pay its operating costs and expenses. The Bridge Enterprise Board shall have exclusive authority to budget and approve the expenditure of moneys in the Bridge Special Fund.

(2) As the Bridge Enterprise receives sufficient revenues in excess of expenses, the Bridge Enterprise shall reimburse the State Highway Fund for the principal amount of any loan from the State Highway Fund made by the Commission pursuant to Section 4.2(3) of this Agreement, plus interest at a rate set by the Commission.

Article Five

Termination

5.2 **By Parties** This Agreement may be terminated at any time by mutual agreement of the Parties.

5.3 **By General Assembly** The Parties acknowledge that the General Assembly has the power to terminate this Agreement and/or dissolve one or both Parties, except as any such action impairs the obligation of contracts entered into by either Party under this Agreement.

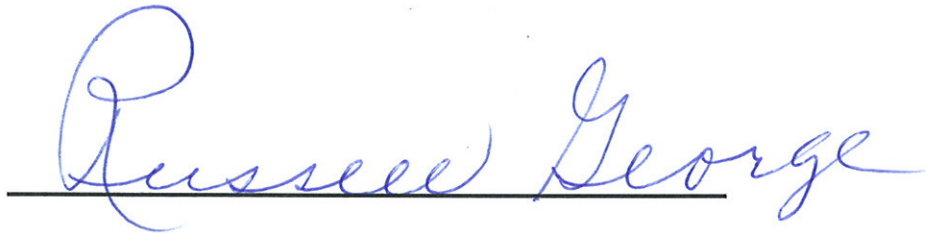
Article Six

Miscellaneous

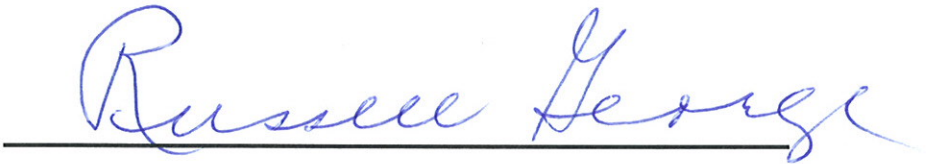
6.1 **Amendment** Amendments to this Agreement must be in writing and must be duly authorized and approved by the Commission and the Enterprise Board.

SIGNATURE PAGE

Effective this 21st day of January 2010



Russell George, Director, Colorado Bridge Enterprise



Russell George, Executive Director, Colorado Department of Transportation