



MEMORANDUM

TO: THE TRANSPORTATION COMMISSION
FROM: JEFF SUDMEIER, CHIEF FINANCIAL OFFICER
BETHANY NICHOLAS, BUDGET DIRECTOR
DATE: DECEMBER 16, 2021
SUBJECT: FY22 LOAN REQUEST FOR CLEAN TRANSIT AND NONATTAINMENT AREA AIR POLLUTION MITIGATION ENTERPRISES

Purpose

The purpose of this memorandum is to request a Transportation Commission loan to temporarily fund expenses incurred by the Clean Transit and Nonattainment Area Air Pollution Mitigation Enterprises before the Enterprises receive fee revenue.

Action

The Division of Accounting and Finance (DAF) is requesting funds from the Program Reserve Fund to enable the Clean Transit and Nonattainment Area Air Pollution Mitigation Enterprises to operate prior to receiving revenue from new fees in FY 2022-23. As the Enterprises receive sufficient revenue in excess of expenses, the Enterprises will reimburse the State Highway Fund for the principal amount of the loan made by the Commission plus 2.0% interest.

Background and Details

The passage of SB21-260 formed the Clean Transit and Nonattainment Area Air Pollution Mitigation Enterprises. These Enterprises are to operate as government-owned businesses within the Colorado Department of Transportation, each governed by a Board of Directors.

The purpose of the Clean Transit Enterprise is to mitigate the adverse environmental and health impacts of air pollution and greenhouse gas emissions from motor vehicles through electric vehicle and fleet adoption, congestion reduction, and acquisition of charging infrastructure. A clean transit retail delivery fee will be credited to the Enterprise, which will fund these remediation efforts. The Clean Transit Enterprise is required to publish a ten-year plan on its website no later than June 1, 2022, which details how the Enterprise will execute its business purpose and estimates the amount of funding needed.

The Nonattainment Area Air Pollution Mitigation Enterprise has the business purpose of providing funding for eligible projects that reduce traffic congestion and emissions. The Enterprise may impose an air pollution mitigation per ride share fee and an air pollution mitigation retail delivery fee to fund these activities. The Nonattainment Area Air Pollution Mitigation Enterprise is required to publish a ten-year plan on its website no later than June 1, 2022, which details how the Enterprise will execute its business purpose and estimates the amount of funding needed.

FY22 Funding Request

The budget estimate for launching the Clean Transit Enterprise is **\$74,350** for FY 2021-22. This total includes CDOT staff time and meeting-related expenses.

Clean Transit Enterprise		
Expense Description	Quantity	FY22 Funding
Director	5.0% of 1.0 FTE	\$6,500
Office of Innovative Mobility (OIM) Chief	2.5% of 1.0 FTE	\$3,500
OIM Staff	50.0% of 1.0 FTE	\$37,500
Program Assistant	5.0% of 1.0 FTE	\$2,750
Division of Accounting and Finance (DAF) Staff	15.0% of 1.0 FTE	\$15,000
Policy Staff	2.5% of 1.0 FTE	\$2,500
Board Travel/Reimbursement	\$1,000 per meeting for 6 meetings	\$6,000
Meeting Expenses	\$100 per meeting for 6 meetings	\$600
Total		\$74,350

The budget estimate for the initial phase of the Nonattainment Area Air Pollution Mitigation Enterprise is **\$74,700**. This includes CDOT staff time and meeting-related expenses.

Nonattainment Area Air Pollution Mitigation Enterprise		
Expense Description	Quantity	FY22 Funding
Deputy Director	20.0% of 1.0 FTE	\$25,000
Division of Transportation Development (DTD) Staff (10-Year Plan Development)	15.0% of 1.0 FTE	\$12,000
Fellow	30.0% of 1.0 FTE	\$18,000
DAF Staff	15.0% of 1.0 FTE	\$15,000
Policy Staff	2.5% of 1.0 FTE	\$2,500
Board Travel/Reimbursement	\$1,000 per meeting for 2 meetings	\$2,000
Meeting Expenses	\$100 per meeting for 2 meetings	\$200
Total		\$74,700

Options and Recommendation

1. Review and approve the \$149,050 request to fund initial expenses for the Clean Transit and Nonattainment Area Air Pollution Mitigation Enterprises
2. Review and request additional information from Enterprise(s)
3. Deny the amendment and request staff to return with additional information in January 2022

Next Steps

- Once convened, Enterprise Boards will also be asked to approve loan agreements.
- Enterprise staff will coordinate with the Office of Financial Management and Budget (OFMB) to ensure that the approved funding is distributed and available for use in order to meet project deadlines.
- Enterprise staff will communicate and coordinate on all future requests for project funding under the Agreement to CDOT CFO and OFMB Staff.

Attachments

- Attachment A: Clean Transit Enterprise CDOT TC IntraAgency Loan Agreement
- Attachment B: Nonattainment Area Air Pollution Mitigation Enterprise

**CDOT AND CLEAN TRANSIT ENTERPRISE
INTRA-AGENCY LOAN AGREEMENT
AND PROMISSORY NOTE**

THIS INTRA-AGENCY LOAN AGREEMENT and PROMISSORY NOTE (the “Agreement”) is made this ___ day of _____, 2022 by and between the COLORADO TRANSPORTATION COMMISSION (“COMMISSION”) and the DEPARTMENT OF TRANSPORTATION (“CDOT” or the “Department”), an executive agency of the State of Colorado (“State”), collectively referred to herein as “LENDERS” and the CLEAN TRANSIT ENTERPRISE, a government-owned business within CDOT (“TRANSIT ENTERPRISE”). LENDERS and TRANSIT ENTERPRISE are hereinafter referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

A. CDOT is an agency of the State authorized pursuant to C.R.S. § 43-1-105, to plan, develop, construct, coordinate, and promote an integrated transportation system in cooperation with federal, regional, local, and other state agencies.

B. Pursuant to C.R.S. § 43-1-106(8) the COMMISSION is authorized to formulate the general policy and promulgate and adopt all department budgets on behalf of CDOT.

C. TRANSIT ENTERPRISE was created pursuant to C.R.S. § 43-4-1203(1) and operates as a government-owned business within CDOT.

D. TRANSIT ENTERPRISE has the primary business purpose of reducing and mitigating the adverse environmental and health impacts of air pollution and greenhouse gas emissions produced by motor vehicles used to make retail deliveries by supporting the replacement of existing gasoline and diesel transit vehicles with electric motor transit vehicles and providing the associated charging infrastructure for electric transit fleet vehicles, supporting facility modifications that allow safe operation and maintenance of electric transit vehicles and funding planning studies that enable transit agencies to plan for transit vehicle electrification.

E. TRANSIT ENTERPRISE is authorized pursuant to C.R.S. § 43-4-1203(7) to impose a clean transit retail delivery fee on retailers who make retail deliveries beginning in state fiscal year 2022-2023 to serve its business purpose. Fiscal year 2022-2023 commences on July 1, 2022.

F. Pursuant to C.R.S. § 43-4-1203(8) TRANSIT ENTERPRISE is authorized to make grants, loans or rebates to support electrification of public transit within the state.

G. TRANSIT ENTERPRISE is further empowered, pursuant to C.R.S. § 43-4-1203(6) to employ and supervise consultants and contractors as necessary to carry out its business purpose and to contract with any public or private entity necessary or incidental to the exercise of its powers and performance of its duties.

H. The COMMISSION is authorized pursuant to C.R.S. 43-4-1203(5)(b) to transfer money from the state highway fund to the TRANSIT ENTERPRISE for the purpose of defraying

expenses incurred by the TRANSIT ENTERPRISE before it receives fee revenue and the TRANSIT ENTERPRISE may accept and expend any money so transferred, and, notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, such a transfer is a loan from the COMMISSION that is required to be repaid and is not a grant for purposes of Section 20(2)(d) of Article X of the State Constitution or as defined in C.R.S. 24-77-102(7).

I. The LENDERS and TRANSIT ENTERPRISE are authorized under law to execute this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS, THE PARTIES TO THIS AGREEMENT HEREBY AGREE AS FOLLOWS:

1. Incorporation by Reference. The Recitals set forth above are incorporated herein by reference.

2. Loan. The LENDERS shall disburse the sum of \$74,350.00 from the State Highway Fund created in C.R.S. 43-1-219 to the Clean Transit Enterprise Initial Expenses Fund as provided in C.R.S. 43-4-1203(5)(b). The loan disbursement shall be made to the TRANSIT ENTERPRISE by means of a financial instrument or transfer acceptable to CDOT.

3. Loan Term. The term of the loan shall be from the date this Agreement is signed by the State Controller, as evidenced by the date first appearing above, until full payment of the loan principal and the interest thereon is received by CDOT. The TRANSIT ENTERPRISE shall repay to CDOT the principal amount of the loan and the interest on the unpaid principal balance by June 30, 2023.

4. Interest. The loan to the TRANSIT ENTERPRISE shall bear interest at a rate of two percent (2%) on the unpaid balance compounded annually which is the current interest rate established by the COMMISSION for the State Infrastructure Bank. The rate shall be fixed for the term of the loan and interest shall begin to accrue from the date of the loan disbursement.

5. Repayment. The TRANSIT ENTERPRISE shall repay the loan and all accrued interest out of the unrestricted revenues of the TRANSIT ENTERPRISE generated by the clean transit retail delivery fee which will commence on July 1, 2022. No repayments shall be due until September 1, 2022 at the earliest. Loan payments of both principal and interest shall be payable to the Colorado Department of Transportation, 2829 West Howard Place, Denver, CO 80204 or to such other location or person as may be designated in writing from time to time by CDOT. The TRANSIT ENTERPRISE shall have the option to prepay all or a portion of the loan principal without prepayment penalty if it so chooses.

6. Promissory Note. For value received, the TRANSIT ENTERPRISE hereby promises to pay to the order of the Colorado Department of Transportation and send to its cash receipts office at 2829 West Howard Place, Denver, CO 80204, or to such other location or person as may be designated in writing by CDOT, the principal sum of Seventy Four Thousand Three Hundred Fifty Dollars (\$74,350.00) with interest thereon from the date hereof as hereinafter set forth.

A. This promissory note shall bear interest at the rate of two percent (2%) per annum on any unpaid balance, compounded annually. The principal and interest shall be payable out of unrestricted revenues of the TRANSIT ENTERPRISE generated by the clean transit retail delivery fee which commences on July 1, 2022. The date and schedule for such payments of principal and accrued interest shall not be fixed in time or manner except that no payments shall be due prior to September 1, 2022 and all principal and interest on the unpaid principal balance shall be due by June 30, 2023.

B. This promissory note is not assumable without the written consent of CDOT. The TRANSIT ENTERPRISE shall have the option to prepay all or a portion of the loan principal without penalty. The TRANSIT ENTERPRISE waives demand, presentment, protest and notice.

C. If payments do not commence beginning September 1, 2022, the TRANSIT ENTERPRISE shall be in default of this Agreement, unless the TRANSIT ENTERPRISE has prior written approval to defer the repayment of the loan. In the event of default, CDOT shall have all rights and remedies available at law or in equity, and such other remedies as provided herein. The rate of interest for payment on which the TRANSIT ENTERPRISE is in default hereof shall be ten percent (10%) over the effective rate described above, computed from the date of any default to the date of cure.

D. The TRANSIT ENTERPRISE shall use the loan amount of Seventy Four Thousand Three Hundred Fifty Dollars (\$74,350.00) for its initial operating expenses. The TRANSIT ENTERPRISE shall, at all times during this Agreement, comply with all federal and State laws as they currently exist and may hereafter be amended.

7. Remedies in Event of Default. Upon the TRANSIT ENTERPRISE'S default in the performance of any covenant or agreement contained in this Agreement, and upon notice to the TRANSIT ENTERPRISE and failure by the TRANSIT ENTERPRISE to cure within thirty (30) days thereof, CDOT, at its option, may (a) terminate the loan commitment herein and take such other steps associated with such termination as are set forth below in the General Provisions; (b) declare the entire principal amount of the loan then outstanding immediately due and payable; (c) take any other appropriate legal action. Notwithstanding the exercise of any of the remedies above, the TRANSIT 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 TRANSIT ENTERPRISE.

8. General Provisions.

A. All federal and state statutes, regulations, specifications, administration checklists, directives, procedures, documents, and publications that are specifically identified and/or referenced in this Agreement, together with all exhibits and attachments and addenda to this Agreement, are incorporated herein by this reference as terms and conditions of this Agreement as though fully set forth.

B. Neither the commitment of CDOT funds to the Transit Enterprise through this Agreement nor any other security or debt financing instrument issued or executed in

connection with the loan to the Transit Enterprise shall constitute a commitment, guarantee, or obligation of the United States.

C. This Agreement may be terminated as follows:

(a) Termination for Cause. If, through any cause, the Transit Enterprise shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if the Transit Enterprise shall violate any of the covenants, agreements, or stipulations of this Agreement, CDOT shall thereupon have the right to terminate this Agreement for cause by giving written notice to the Transit Enterprise 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 Transit Enterprise shall return any funds that have been disbursed to the Transit Enterprise as part of the loan and any accrued interest thereon within 45 days of the date of termination. Notwithstanding above, the Transit Enterprise shall not be relieved of liability to CDOT for any damages sustained by CDOT by virtue of any breach of the Agreement by the Transit Enterprise.

(b) Termination for Convenience. CDOT may terminate this Agreement at any time CDOT determines that the purposes of the distribution of funds under the Agreement would no longer be served by the Transit Enterprise. CDOT shall effect such termination by giving written notice of termination to the Transit Enterprise and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.

(c) Termination Due to Loss of Funding. The parties hereto expressly recognize that the loan is made to the Transit Enterprise with funds which are available to CDOT for the purposes of making a loan to the Transit Enterprise, and therefore, the Transit Enterprise 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 CDOT. In the event that such funds or any part thereof are not available to CDOT, CDOT may immediately terminate or amend this Agreement.

D. 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.

E. To the extent that this Agreement may be executed and performance of the obligations of the Parties may be accomplished within the intent of the Agreement, 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.

F. This Agreement is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved pursuant to the State Fiscal Rules.

G. 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.

H. 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 contract shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the Parties that any person or entity other than the Parties receiving services or benefits under this Agreement be deemed to be an incidental beneficiary only.

I. The Transit Enterprise shall maintain all books, documents, papers, accounting records and other evidence pertaining to any costs incurred, and if requested by CDOT, make such materials available to CDOT for three years from the execution date of this Agreement.

J. This Agreement shall not be deemed valid until the Controller of the State of Colorado or such assistant as he may designate shall have approved it.

K. Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

L. No term or condition of this contract 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.

M. The Transit Enterprise agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

N. 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.

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

P. 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.

Q. Notwithstanding any provision hereof, all financial obligations herein of the Transit Enterprise payable after the current fiscal year, including, without limitation, repayment of the principal amount of the loan evidenced hereby, payment of interest thereon, and payment of any damages, penalty interest, or any other financial obligations in the event of a default by the Transit Enterprise, shall be made solely from the revenues of the Transit Enterprise and are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available by the Board of the Transit Enterprise, acting in its capacity as the governing body of the Transit Enterprise (in such capacity, the "Enterprise Board").

R. Resolutions of the COMMISSION authorizing execution of this Agreement and of the Enterprise Board authorizing execution of this Agreement are attached hereto as Exhibits 1 and 2.

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

STATE OF COLORADO
Jared S. Polis, Governor

COLORADO CLEAN TRANSIT
ENTERPRISE

By: _____
SHOSHANA LEW
EXECUTIVE DIRECTOR
DEPARTMENT OF TRANSPORTATION

By: _____
DIRECTOR

COLORADO TRANSPORTATION COMMISSION

By: _____
Chairperson

APPROVED:

Philip J. Weiser

ATTORNEY GENERAL

By: _____
ASSISTANT ATTORNEY GENERAL

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

§ 24-30-202, C.R.S. requires the State Controller to approve all State Contracts. This Agreement is not valid until signed and dated below by the State Controller or delegate of the State of Colorado.

**STATE CONTROLLER
Robert Jaros, CPA, MBA, JD**

By: _____

Date: _____

**CDOT AND AIR POLLUTION MITIGATION ENTERPRISE
INTRA-AGENCY LOAN AGREEMENT
AND PROMISSORY NOTE**

THIS INTRA-AGENCY LOAN AGREEMENT and PROMISSORY NOTE (the “Agreement”) is made this ___ day of _____, 2022 by and between the DEPARTMENT OF TRANSPORTATION (“CDOT” or the “Department”), an executive agency of the State of Colorado (“State”), referred to herein as “LENDER” and the NON ATTAINMENT AREA AIR POLLUTION MITIGATION ENTERPRISE, a government-owned business within CDOT (“AIR POLLUTION MITIGATION ENTERPRISE”). LENDER and AIR POLLUTION MITIGATION ENTERPRISE are hereinafter referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

A. CDOT is an agency of the State authorized pursuant to C.R.S. § 43-1-105, to plan, develop, construct, coordinate, and promote an integrated transportation system in cooperation with federal, regional, local, and other state agencies.

B. Pursuant to C.R.S. § 43-1-106(8) the COLORADO TRANSPORTATION COMMISSION is authorized to formulate the general policy and promulgate and adopt all department budgets on behalf of CDOT.

C. AIR POLLUTION MITIGATION ENTERPRISE was created pursuant to C.R.S. § 43-4-1303(1) and operates as a government-owned business within CDOT.

D. AIR POLLUTION MITIGATION ENTERPRISE has the primary business purpose of mitigating the adverse environmental and health impacts of air pollution and greenhouse gas emissions produced by motor vehicles used to make retail deliveries and in prearranged rides provided by transportation network companies by providing funding for eligible projects that reduce traffic, including demand management projects that encourage alternatives to driving alone or that directly reduce air pollution, such as retrofitting of construction equipment, construction of roadside vegetation barriers and planting trees along medians.

E. AIR POLLUTION MITIGATION ENTERPRISE is authorized pursuant to C.R.S. § 43-4-1303(8) to impose an air pollution mitigation retail delivery fee on retailers who make retail deliveries beginning in state fiscal year 2022-2023 to serve its business purpose. AIR POLLUTION MITIGATION ENTERPRISE is also authorized pursuant to C.R.S. 43-4-1303(7) to impose an air pollution mitigation per ride fee to be paid by a transportation network company for each prearranged ride requested and accepted through the company’s digital network beginning in state fiscal year 2022-2023 to serve its business purpose. Fiscal year 2022-2023 commences on July 1, 2022.

F. Pursuant to C.R.S. § 43-4-1303(9) AIR POLLUTION MITIGATION ENTERPRISE is authorized to make grants to eligible entities for eligible projects within a nonattainment area.

G. AIR POLLUTION MITIGATION ENTERPRISE is further empowered, pursuant to C.R.S. § 43-4-1303(6) to employ and supervise consultants and contractors as necessary to carry out its business purpose and to contract with any public or private entity necessary or incidental to the exercise of its powers and performance of its duties.

H. CDOT is authorized pursuant to C.R.S. 43-4-1303(5)(b) to transfer money from the any legally available source to the AIR POLLUTION MITIGATION ENTERPRISE for the purpose of defraying expenses incurred by the AIR POLLUTION MITIGATION ENTERPRISE before it receives fee revenue and the AIR POLLUTION MITIGATION ENTERPRISE may accept and expend any money so transferred, and, notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, such a transfer is a loan from CDOT that is required to be repaid and is not a grant for purposes of Section 20(2)(d) of Article X of the State Constitution or as defined in C.R.S. 24-77-102(7).

I. The LENDER and AIR POLLUTION MITIGATION ENTERPRISE are authorized under law to execute this Agreement.

J. The COLORADO TRANSPORTATION COMMISSION has approved the budget action for this transaction as evidenced by the Resolution attached hereto as Exhibit 1.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS, THE PARTIES TO THIS AGREEMENT HEREBY AGREE AS FOLLOWS:

1. Incorporation by Reference. The Recitals set forth above are incorporated herein by reference.

2. Loan. The LENDER shall disburse the sum of \$74,700.00 from the State Highway Fund created in C.R.S. 43-1-219 to the Nonattainment Area Air Pollution Mitigation Enterprise Initial Expenses Fund as provided in C.R.S. 43-4-1303(5)(b). The loan disbursement shall be made to the AIR POLLUTION MITIGATION ENTERPRISE by means of a financial instrument or transfer acceptable to CDOT.

3. Loan Term. The term of the loan shall be from the date this Agreement is signed by the State Controller, as evidenced by the date first appearing above, until full payment of the loan principal and the interest thereon is received by CDOT. The AIR POLLUTION MITIGATION ENTERPRISE shall repay to CDOT the principal amount of the loan and the interest on the unpaid principal balance by June 30, 2023.

4. Interest. The loan to the AIR POLLUTION MITIGATION ENTERPRISE shall bear interest at a rate of two percent (2%) on the unpaid balance compounded annually which is the current interest rate established by the COLORADO TRANSPORTATION COMMISSION for the State Infrastructure Bank. The rate shall be fixed for the term of the loan and interest shall begin to accrue from the date of the loan disbursement.

5. Repayment. The AIR POLLUTION MITIGATION ENTERPRISE shall repay the loan and all accrued interest out of the unrestricted revenues of the AIR POLLUTION MITIGATION ENTERPRISE generated by the air pollution mitigation retail delivery fee and the

air pollution mitigation per ride fee which will commence on July 1, 2022. No repayments shall be due until September 1, 2022 at the earliest. Loan payments of both principal and interest shall be payable to the Colorado Department of Transportation, 2829 West Howard Place, Denver, CO 80204 or to such other location or person as may be designated in writing from time to time by CDOT. The AIR POLLUTION MITIGATION ENTERPRISE shall have the option to prepay all or a portion of the loan principal without prepayment penalty if it so chooses.

6. Promissory Note. For value received, the AIR POLLUTION MITIGATION ENTERPRISE hereby promises to pay to the order of the Colorado Department of Transportation and send to its cash receipts office at 2829 West Howard Place, Denver, CO 80204, or to such other location or person as may be designated in writing by CDOT, the principal sum of Seventy Four Thousand Seven Hundred Dollars (\$74,700.00) with interest thereon from the date hereof as hereinafter set forth.

A. This promissory note shall bear interest at the rate of two percent (2%) per annum on any unpaid balance, compounded annually. The principal and interest shall be payable out of unrestricted revenues of the AIR POLLUTION MITIGATION ENTERPRISE generated by the air pollution mitigation retail delivery fee and the air pollution mitigation per ride fee which commence on July 1, 2022. The date and schedule for such payments of principal and accrued interest shall not be fixed in time or manner except that no payments shall be due prior to September 1, 2022 and all principal and interest on the unpaid principal balance shall be due by June 30, 2023.

B. This promissory note is not assumable without the written consent of CDOT. The AIR POLLUTION MITIGATION ENTERPRISE shall have the option to prepay all or a portion of the loan principal without penalty. The AIR POLLUTION MITIGATION ENTERPRISE waives demand, presentment, protest and notice.

C. If payments do not commence beginning September 1, 2022, the AIR POLLUTION MITIGATION ENTERPRISE shall be in default of this Agreement, unless the AIR POLLUTION MITIGATION ENTERPRISE has prior written approval to defer the repayment of the loan. In the event of default, CDOT shall have all rights and remedies available at law or in equity, and such other remedies as provided herein. The rate of interest for payment on which the AIR POLLUTION MITIGATION ENTERPRISE is in default hereof shall be ten percent (10%) over the effective rate described above, computed from the date of any default to the date of cure.

D. The AIR POLLUTION MITIGATION ENTERPRISE shall use the loan amount of Seventy Four Thousand Seven Hundred Dollars (\$74,700.00) for its initial operating expenses. The AIR POLLUTION MITIGATION ENTERPRISE shall, at all times during this Agreement, comply with all federal and State laws as they currently exist and may hereafter be amended.

7. Remedies in Event of Default. Upon the AIR POLLUTION MITIGATION ENTERPRISE'S default in the performance of any covenant or agreement contained in this Agreement, and upon notice to the AIR POLLUTION MITIGATION ENTERPRISE and failure by the AIR POLLUTION MITIGATION ENTERPRISE to cure within thirty (30) days thereof,

CDOT, at its option, may (a) terminate the loan commitment herein and take such other steps associated with such termination as are set forth below in the General Provisions; (b) declare the entire principal amount of the loan then outstanding immediately due and payable; (c) take any other appropriate legal action. Notwithstanding the exercise of any of the remedies above, the AIR POLLUTION MITIGATION 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 AIR POLLUTION MITIGATION ENTERPRISE.

8. General Provisions.

A. All federal and state statutes, regulations, specifications, administration checklists, directives, procedures, documents, and publications that are specifically identified and/or referenced in this Agreement, together with all exhibits and attachments and addenda to this Agreement, are incorporated herein by this reference as terms and conditions of this Agreement as though fully set forth.

B. Neither the commitment of CDOT funds to the Air Pollution Mitigation Enterprise through this Agreement nor any other security or debt financing instrument issued or executed in connection with the loan to the Air Pollution Mitigation Enterprise shall constitute a commitment, guarantee, or obligation of the United States.

C. This Agreement may be terminated as follows:

(a) Termination for Cause. If, through any cause, the Air Pollution Mitigation Enterprise shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if the Air Pollution Mitigation Enterprise shall violate any of the covenants, agreements, or stipulations of this Agreement, CDOT shall thereupon have the right to terminate this Agreement for cause by giving written notice to the Air Pollution Mitigation Enterprise 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 Air Pollution Mitigation Enterprise shall return any funds that have been disbursed to the Air Pollution Mitigation Enterprise as part of the loan and any accrued interest thereon within 45 days of the date of termination. Notwithstanding above, the Air Pollution Mitigation Enterprise shall not be relieved of liability to CDOT for any damages sustained by CDOT by virtue of any breach of the Agreement by the Air Pollution Mitigation Enterprise.

(b) Termination for Convenience. CDOT may terminate this Agreement at any time CDOT determines that the purposes of the distribution of funds under the Agreement would no longer be served by the Air Pollution Mitigation Enterprise. CDOT shall effect such termination by giving written notice of termination to the Air Pollution Mitigation Enterprise and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.

(c) Termination Due to Loss of Funding. The parties hereto expressly recognize that the loan is made to the Air Pollution Mitigation Enterprise with funds which are available to CDOT for the purposes of making a loan to the Air Pollution Mitigation

Enterprise, and therefore, the Air Pollution Mitigation Enterprise 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 CDOT. In the event that such funds or any part thereof are not available to CDOT, CDOT may immediately terminate or amend this Agreement.

D. 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.

E. To the extent that this Agreement may be executed and performance of the obligations of the Parties may be accomplished within the intent of the Agreement, 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.

F. This Agreement is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved pursuant to the State Fiscal Rules.

G. 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.

H. 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 contract shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the Parties that any person or entity other than the Parties receiving services or benefits under this Agreement be deemed to be an incidental beneficiary only.

I. The Air Pollution Mitigation Enterprise shall maintain all books, documents, papers, accounting records and other evidence pertaining to any costs incurred, and if requested by CDOT, make such materials available to CDOT for three years from the execution date of this Agreement.

J. This Agreement shall not be deemed valid until the Controller of the State of Colorado or such assistant as he may designate shall have approved it.

K. Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

L. No term or condition of this contract 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.

M. The Air Pollution Mitigation Enterprise agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

N. 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.

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

P. 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.

Q. Notwithstanding any provision hereof, all financial obligations herein of the Air Pollution Mitigation Enterprise payable after the current fiscal year, including, without limitation, repayment of the principal amount of the loan evidenced hereby, payment of interest thereon, and payment of any damages, penalty interest, or any other financial obligations in the event of a default by the Air Pollution Mitigation Enterprise, shall be made solely from the revenues of the Air Pollution Mitigation Enterprise and are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available by the Board of the Air Pollution Mitigation Enterprise, acting in its capacity as the governing body of the Air Pollution Mitigation Enterprise (in such capacity, the "Enterprise Board").

R. Resolutions of the COMMISSION authorizing execution of this Agreement and of the Enterprise Board authorizing execution of this Agreement are attached hereto as Exhibits 1 and 2.

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

STATE OF COLORADO

COLORADO AIR POLLUTION
MITIGATION ENTERPRISE

By: _____
SHOSHANA LEW
EXECUTIVE DIRECTOR
DEPARTMENT OF TRANSPORTATION

By: _____
DIRECTOR

APPROVED:

Philip J. Weiser
ATTORNEY GENERAL

By: _____
ASSISTANT ATTORNEY GENERAL

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

§ 24-30-202, C.R.S. requires the State Controller to approve all State Contracts. This Agreement is not valid until signed and dated below by the State Controller or delegate of the State of Colorado.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____

Date: _____

DRAFT