



Date: January 20, 2021

To: High-Performance Transportation Enterprise Board / Colorado Transportation Commission (TC)

From: Nick Farber, Director, HPTE, Simon Logan, HPTE Liaison and Program Coordinator

Subject: Updated HPTE and CDOT Memorandum of Understanding

#### Purpose

The current HPTE and CDOT MOU is seven years old and was signed in 2013. Following a review of governance documents during the 2020 HPTE Board Retreat, HPTE Board Members directed HPTE staff to develop a revised MOU with CDOT.

#### Background

The current MOU between HPTE and CDOT is outdated and centers on clarifying the role between the Office of Major Project Development (OMPD) and HPTE. HPTE assumed the roles and responsibilities of OMPD in 2017. Since then, HPTE has matured into a dedicated P3 office with 108 lane miles of Express Lanes in Operation and 115 under construction.

The revised MOU concentrates on the services HPTE and CDOT offer and how we coordinate. It looks at the relationship at a high level and references other agreements, like IAA's. As HPTE has grown into a successful tolling operator, challenges and growing pains have emerged around operations and maintenance of Express Lanes.

The MOU does not address these directly. Instead, it refers to a new IAA that HPTE and CDOT staff are developing to address the challenges both organizations face, which HPTE and CDOT staff hope to bring to the TC and HPTE Board later in 2021.

The MOU includes the following articles:

1. General Provision
2. HPTE's Value to the State and CDOT
3. HPTE Services
4. CDOT Services
5. CDOT and HPTE Coordination
6. Operations, Maintenance, Rehabilitation of Express Lane and Tolling Equipment
7. Procurement
8. CDOT Policies and Procedures (HPTE adopts all existing policy and procedure directives)
9. Termination

The attached MOU is the product of many months of effort to define the update the operating relationship between HPTE and CDOT. HPTE staff developed this updated MOU in closed consultation with the CDOT Executive Management Team, which approved this version in December 2020.

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## HIGH PERFORMANCE TRANSPORTATION

2829 W. Howard Place, Denver, Colorado 80204 | 303.757.9249 | FAX: 303.757.9179 |



#### Action

The TC and HPTE Board is asked to approve the proposed updated HPTE and CDOT MOU included in Attachment B.

#### Options / Decision Matrix

1. Staff Recommendation: Approve the revised HPTE and CDOT MOU.
2. Review but do not approve the MOU. Provide instructions on changes or revisions.

#### Attachments

- A. TC #
- B. New HPTE and CDOT MOU (2021).
- C. Existing HPTE and CDOT MOU (2013) for comparison.

MEMORANDUM OF UNDERSTANDING

By and between the

COLORADO DEPARTMENT OF TRANSPORTATION

AND

HIGH PERFORMANCE TRANSPORTATION ENTERPRISE

THIS AMENDED MEMORANDUM OF UNDERSTANDING, entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the Colorado Department of Transportation (“CDOT”), an agency of the State of Colorado (“State”), and the High Performance Transportation Enterprise (“HPTE”), a government-owned business created as a Division of CDOT by the “Funding Advancements for Surface Transportation and Economic Recovery Act of 2009” (“FASTER”). CDOT and HPTE are referred to in this Memorandum of Understanding 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 of the State found and determined in FASTER (Section 43-4-806(1), C.R.S.) that:

- (a) It is necessary, appropriate and in the best interests of the State to aggressively pursue innovative means of more efficiently financing important surface transportation infrastructure projects that will improve the safety, capacity, and accessibility of the surface transportation system; and
- (b) The HPTE should actively seek out opportunities for public-private partnerships for the purpose of completing surface transportation infrastructure projects; and
- (c) The authority of the HPTE should be broadly construed to allow HPTE sufficient flexibility, consistent with the requirements of the state constitution, to pursue any available means of financing such surface transportation infrastructure projects that will allow the efficient completion of the projects; and

(d) The types of innovative financing opportunities include, but are not limited to, public-private partnerships, operating concession agreements, user fee-based project financing, and availability payment and design-build contracting; and

WHEREAS, FASTER (Section 43-4-806(2), C.R.S.) created an HPTE board (“Board”) and the Board adopted on November 17, 2010, Articles of Organization (as amended from time to time “Articles of Incorporation”) and Bylaws (as amended from time to time “Bylaws”) providing for its operation and management and setting forth its powers; and

WHEREAS, FASTER (Section 43-4-806(2)(d), C.R.S.) provides that the HPTE shall constitute an “enterprise” for purposes of section 20 of article X of the State Constitution so long as it receives less than ten percent of its total revenues in grants from all Colorado state and local governments combined; and

WHEREAS, the funding for HPTE is expected to be derived from multiple sources including toll revenues, work and fee for service and completion fee agreements with CDOT and other entities, concession fees, bond issuance fees, federal funds, and loans from the Transportation Commission; and

WHEREAS, FASTER (Sections 43-4-806(2)(c), 6(f) and (h), C.R.S.) authorizes HPTE to enter into agreements with the Transportation Commission or CDOT in furtherance of the purposes for which HPTE was created; and

WHEREAS, CDOT and HPTE have determined that it will advance and promote the respective missions of CDOT and HPTE to define and set forth in this Memorandum of Understanding their operating roles and responsibilities as they relate to those missions.

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

## **Article One**

### **General Provisions**

1.1 Definitions. Terms defined in FASTER (Section 43-4-803, C.R.S.) have the same meanings when used in this Memorandum of Understanding.

1.2 Effective Date and Term. This Memorandum of Understanding shall be effective immediately upon its execution and shall continue in effect until terminated in accordance with its terms.

1.3 Termination of Prior Memorandum Of Understanding. This Memorandum of Understanding constitutes the entire agreement between the Parties and terminates and supersedes any and all prior agreements.

## **Article Two**

### HPTE's Value to the State and CDOT

2.1 Colorado's highway infrastructure is severely congested and, in many areas, it is more than 50 years old and in need of repairs and maintenance. The rapid growth of Colorado's population points to even greater congestion in the decades ahead unless innovative ways to accelerate key projects are pursued.

2.2 As Colorado faces the realities of aging infrastructure, rapid population growth, and budgetary shortfalls, HPTE is a key means of exploring and developing innovative ways to address these challenges.

2.3 HPTE was formed to aggressively pursue innovative means of more efficiently financing important surface transportation infrastructure projects. Since the creation of the Enterprise, nine out of ten HPTE projects have used some form of innovative financing. Innovative financing enabled by HPTE, through Express Lanes, has helped deliver more than \$3 billion in projects in five years (2014-2019).

2.4 Without the use of Express Lanes as a financing tool, the state of Colorado would have had to find an additional \$1.27 billion in funds to deliver these projects. Otherwise, the projects would have been significantly delayed, the scope would have been reduced substantially, or money would have been reallocated from other projects around the state to fill the funding gaps. Without the use of Express Lanes as a financing tool, HPTE and CDOT would not have been able to deliver nine projects in five years, totaling more than \$3 billion in project value.

2.5 Instead, without tolled Express Lanes, CDOT would have been able to deliver one, or possibly two, of the projects, with a value well under \$1 billion.

## **Article Three**

### HPTE Services

3.1 Overall program management including the establishment of policies, strategic master planning, communications and marketing, establishment of procedures and budget planning and reporting.

3.2 Provide the necessary resources, in coordination with other CDOT divisions, and CDOT regions, for a unified management structure for the development and implementation of major projects. Major projects are defined as (i) projects involving public-private partnerships, other financing requiring the powers of HPTE, or other powers vested to HPTE pursuant to 43-4-806(6) C.R.S.; (ii) projects involving toll operations, technologies and equipment; or (iii) projects with non-traditional or innovative contracting methods requiring or otherwise benefitting from the centralized management or expertise of HPTE, to be determined by the Chief Engineer of CDOT (Chief Engineer), in coordination with the Director of HPTE as appropriate.

3.3 In order to determine the feasibility of candidate major projects as defined above, HPTE will lead the following development activities, which may occur concurrently with CDOT services identified below:

- A. Traffic and revenue studies, value-for-money analyses and overall financial planning and feasibility;
- B. Recommendation of a project delivery structure to pursue based on the outcome of item A.
- C. Industry engagement, procurement, bidder selection, contract development, negotiations, contract award and monitoring.

3.4 HPTE support will come from full time employees, participating staff from appropriate CDOT divisions and regions on an as needed basis, and consultants as necessary to support the HPTE programmatic and project specific efforts.

3.5 In addition to working with CDOT to develop major projects, HPTE will also engage the private sector through its unsolicited proposal program. In November of 2020, the HPTE Board adopted a revised unsolicited proposal policy (superseding the 2019 version) for the acceptance and evaluation by CDOT and/or HPTE of unsolicited proposals involving potentially eligible major projects, which policy provides that HPTE shall be the sole entity within CDOT to receive and evaluate unsolicited proposals for any such projects which are expected to offer innovative and efficient means of completing surface transportation infrastructure projects or generate revenue and/or other value that will enable HPTE to better pursue its legislative mandate.

3.6 Funding for HPTE programmatic work and Express Lane operations will come from user fees generated on HPTE Express Lanes, Intra agency Agreements (IAA) entered into between CDOT and HPTE, including the annual Fee for Service IAA, as well as loans from the Transportation Commission that may be requested by HPTE under eligible agreements such as the Tolling Equipment Finance Agreement.

3.7 HPTE will prepare an annual budget, including travel plan, in the format and by the deadlines set by the CDOT Office of Financial Management and Budget (OFMB)

each year. HPTE agrees to coordinate the development of the budgets to assure consistency and completeness. This coordination does not limit the HPTE Board's authority during the fiscal year to adjust its budget as it deems necessary so long as those actions do not exceed annually available revenues, nor does it limit the Board's authority to delegate budget authority to the Director.

3.8 The HPTE annual budget may contain a request for a CDOT loan to fund staff positions and other program costs.

3.9 Pursuant to the statutory requirements of FASTER and except as the terms of any relevant project-specific agreements may otherwise require, HPTE shall use available revenues to repay CDOT loans at the discretion of the Board. Furthermore, at the discretion of the Board and based on the HPTE annual budget, excess revenue derived from project-related operations may be retained by the HPTE in the statewide transportation enterprise operating fund or the transportation special fund, pursuant to 43-4-806(4), after fulfillment of all appropriate obligations, for HPTE priorities and for the sustained operations of the HPTE.

3.10 In addition, the HPTE Director is also responsible for developing and implementing operating procedures and protocols and for communicating with and reporting to the Executive Director and Transportation Commission and to the HPTE Board, as outlined in the P3 Management Manual.

### Governance

3.11 The HPTE Board of Directors, which provides oversight of HPTE activities, consists of three members of the Transportation Commission (TC) and four members appointed by the Governor from each of the following geographic areas: (1) the planning area of the Denver Regional Council of Governments (DRCOG), (2) the planning area of the North Front Range Metropolitan Planning Organization (NFRMPO), (3) the planning area of the Pikes Peak Area Council of Governments, and (4) the I-70 Mountain Corridor area. To provide continuity, the Directors term expiration dates are staggered every two years. The HPTE Board of Directors generally meets on the third Wednesday of every month at CDOT Headquarters (2829 W. Howard Place, Denver). These meetings are open to the public under the Colorado Open Meetings Law.

## **Article Four**

### CDOT Services

4.1 HPTE may, with the approval of and subject to such conditions as are imposed by the Executive Director, utilize the professional and administrative services of CDOT employees or agents and CDOT facilities in connection with its authorized activities.

4.2 In order to determine the feasibility of candidate major projects as defined above, CDOT will lead the following development activities, which may occur concurrently with HPTE services identified above:

- A. Project scoping, conceptual design and preliminary environmental evaluations;
- B. Input from affected stakeholders and the public to identify prioritized list of surface transportation projects by region e.g. Your Transportation Plan.
- C. Identification of available project funding.
- D. Leading the NEPA process on identified projects

4.3 Specific services CDOT will provide to the HPTE include but are not limited to accounting and budget support. CDOT's Chief Financial Officer (CFO) will act as the Chief Financial Officer for HPTE and ensure, among other things necessary for its ongoing budgetary and accounting needs, that HPTE's annual budget, budget supplements, ongoing accounting, and annual audited financial statements are prepared timely and correctly in accordance with FASTER and this Memorandum of Understanding. The CFO will ensure that accountants and budget analysts within the Division of Accounting and Finance assigned to support the HPTE will develop the specialized policies, procedures, and expertise required to meet the needs of HPTE.

4.4 CDOT staff will support HPTE with the preparation of contracts, Intra-Agency Agreements (IAA's) and Intergovernmental Agreements (IGA), the execution of task orders, the creation of purchase orders, the encumbrance of funds whether or not the state procurement code, or applicable Federal Purchasing Rules, are followed or not by HPTE, as long as they meet the HPTE Boards Guidelines and the state's fiscal rules. HPTE is exempt from state procurement laws, policies, and guidance. This is to allow flexibility to implement P3 projects in the most efficient and cost-effective manner.

4.5 CDOT Office of Communications will support HPTE staff and consultants in establishing a broad understanding among key stakeholders and members of the general public of HPTE's mission, its policies and procedures, and how the HPTE is improving mobility in the state, particularly through the use of Express Lanes. The CDOT communications team also provides direction and support to HPTE consultants on outreach at key phases of Express Lane project delivery, e.g. communications related to tolling equipment testing and commencement.



4.6 HPTE will reimburse CDOT, at CDOT's regularly burdened rates, for any administrative services provided by CDOT, its employees or agents. To the extent reimbursement is not immediately forthcoming and the funds expended by the Transportation Commission derived from the state highway fund, pursuant to FASTER (section 43-4-806(d)(4), C.R.S.) the value of such services or facilities shall, notwithstanding any state fiscal rule or generally accepted accounting principle that could be interpreted to require a contrary conclusion, constitute a loan from the Transportation Commission to HPTE.

### Governance

4.7 The state's transportation system is managed by the Colorado Department of Transportation under the direction of the Transportation Commission of Colorado. The commission is composed of 11 commissioners who represent specific districts.

4.8 Each commissioner is appointed by the governor, confirmed by the senate, and serves a four-year term. To provide continuity, the commissioners' term expiration dates are staggered every two years.

4.9 Under state law, the powers and duties of the Transportation Commission of Colorado include:

- Formulating general policy with respect to the management, construction, and maintenance of public highways and other transportation systems in the state;
- Advising and making recommendations to the governor and the General Assembly, relative to transportation policy; and
- Promulgating and adopting CDOT's budgets and programs, including construction priorities and approval of extensions or abandonment of the state highway system. (The General Assembly appropriates the administrative budget for the Department.)

## **Article Five**

### CDOT and HPTE Coordination

5.1 The Board has the authority to establish policies for HPTE under which it will identify and prioritize HPTE projects and make and enter into agreements and contracts with private entities for the financing, design, construction, operations and maintenance of surface transportation infrastructure projects. Nevertheless, as a division of CDOT, HPTE must coordinate and integrate its mission with CDOT in the fulfillment of its duties and the exercise of its powers

5.2 As of 2020, HPTE had 108 lane miles of Express Lanes in operation and an additional 115 under construction and due to come online by 2023 to help address

congestion across the Front Range area. As a result of this growth, additional staff are required to monitor, manage, and maintain these facilities when they come online. CDOT will support HPTE with current and future staffing needs by helping identify full-time equivalent (FTE) positions that are vacant and could be used to support the expanding Express Lanes Network oversight, operations, maintenance, and management with the recognition that there might not be FTEs to transfer at the time of the request because of, but not limited to, HPTE or CDOT budget, lack of FTEs to transfer, or higher priority CDOT staffing needs. HPTE and CDOT will work together to develop an appropriate staffing plan that meets the needs of the growing Express Lanes Network and will meet on a yearly basis to discuss staffing needs.

### Intra Agency Agreements

5.3 The majority of Intra Agency Agreements (IAAs) between CDOT and HPTE are for allocating the rights and responsibilities of the overall business relationship on specific shared projects, which may encompass planning, construction and post-construction duties between the parties. IAAs may include the anticipated funding sources for the project, any fees to be paid to HPTE for services for completing the financing for the project or otherwise, the rights and obligations of the parties with respect to the assets to be acquired, and such other matters as may be appropriate in the circumstances.

5.4 In addition, projects under construction that include financing obligations HPTE has assumed responsibility for, will include a section in the IAA which enumerates CDOT's responsibilities to HPTE if there are delays associated with the project. Specifically, CDOT shall be liable for costs incurred by HPTE that are the direct result of a project delay (except if the delay is caused by HPTE). Costs may include, but are not limited to, debt service, operation and maintenance costs, reserve fund costs, or other financing related costs.

## **Article Six**

### Operations, Maintenance, and Rehabilitation of Express Lanes and Tolling Equipment

6.1 HPTE's revenue generation on operating Express Lanes is crucial to its ability to repay the debt incurred to construct the facility and to create trust among those who choose to use them. If tolling equipment is non-functioning or an Express Lane is closed, it can negatively impact the HPTE's ability to repay the debt as well as its ability to provide reliable trips to its customers. Therefore, CDOT shall make every effort to

work with HPTE to prioritize operations, maintenance, and rehabilitation work to either minimize or eliminate any revenue loss or impacts to Express Lane users.

6.2 HPTE and CDOT agree to execute operations, maintenance, and rehabilitation (OM&R) IAA to specify areas of responsibility, acceptable repair and lane closure time frames, preventative maintenance, and reasonable reimbursement for CDOT costs. To the extent reimbursement is not immediately forthcoming and the funds expended by the Transportation Commission derived from the state highway fund, pursuant to FASTER (section 43-4-806(d)(4), C.R.S.) the value of such services or facilities shall, notwithstanding any state fiscal rule or generally accepted accounting principle that could be interpreted to require a contrary conclusion, constitute a loan from the Transportation Commission to HPTE.

6.3 The Express Lanes exist adjacent to the free General Purpose Lanes and as such are monitored by staff in the Traffic Operations Center. For the Express Lane corridors monitored by HPTE (including HPTE contractors), traffic monitoring activities will be performed in conjunction with CDOT who are monitoring non-Express Lane corridors. As needed, due to accidents, incidents or inclement weather, HPTE may be called upon to assist CDOT in monitoring non-Express Lane corridors. For the Express Lane corridors monitored by HPTE, CDOT will monitor the Express Lanes during the times when the HPTE are not scheduled to work, i.e. weekends or after hours. HPTE time shall be paid by HPTE. CDOT staff time monitoring the Express Lanes will be reimbursed by HPTE per Section 4.6 above.

## **Article Seven**

### **Procurement**

7.1 The State Procurement Code is not applicable to HPTE and in order to facilitate its pursuit of public-private partnerships and other innovative and efficient means of financing surface transportation infrastructure projects, the HPTE Board adopted a revised Unsolicited Proposal Policy in 2019 to identify new revenue generating ideas for the state. The Unsolicited Proposal Policy is attached as Attachment X.

7.2 The parties agree that the HPTE will coordinate its procurement processes with the CDOT Center for Procurement and Contract Services and other CDOT entities that support the processes of contracting and procuring for goods and services. CDOT procurement, and other internal entities that are components of a procurement process, will support the preparation of contracts and the encumbrance of funds for the HPTE whether or not the state procurement code is followed by the HPTE so long as they meet the HPTE Board's Guidelines and the state's fiscal rules.

7.3 HPTE will abide by the State Procurement Code if it is deemed appropriate by the HPTE Director and the CDOT CFO for CDOT to be a party to the contract.

7.4 The parties agree that if either of the following will occur, HPTE will use the modified procurement process related to unsolicited proposals set forth in the HPTE Unsolicited Proposal Policy (2020).

7.5 CDOT has the ability to utilize personal services or goods procured by HPTE for CDOT projects provided the cost is reflected in the Fee for Service IAA.

7.6 The parties agree that HPTE will utilize CDOT processes and procedures for the procurement of any professional services.

7.7 The parties agree the procurement for outside legal services will be done by HPTE in coordination with the Attorney General's office.

## **Article Eight**

### CDOT Policies and Procedures

8.1 The parties agree that only the CDOT Policy and Procedural Directives listed on Attachment C shall apply to HPTE; except as they may be superseded by the terms of this Memorandum of Understanding. The Board will pass a Resolution adopting the Policy and Procedural Directives listed on Attachment A

8.2 Future Policy and Procedural Directives adopted by the Transportation Commission shall not apply to HPTE unless the HPTE Board adopts them by Resolution.

## **Article Nine**

### Termination

9.1 This Memorandum of Understanding may be terminated at any time by mutual agreement of the parties.

## **Article Ten**

### Amendments

10.1 Amendments to this Memorandum of Understanding must be in writing and must be duly authorized and approved by the Transportation Commission and the Board.

**SIGNATURE PAGE**

Effective this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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**Shoshana Lew, Executive Director, Colorado Department of Transportation**

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**Nicholas Farber, Director, High Performance Transportation Enterprise**

## Attachment A

### Policies and Procedural Directives

Hazardous Materials Routing Procedure	1903.1
Hazardous Materials Routing Policy	1903.0
Comprehensive Accessibility for Persons with Disabilities	605.0
Policy on Non-Discrimination	604.0
Title VII Procedures to Address Employee Discrimination Complaints	600.6
Equal Employment Opportunity and Affirmative Action	600.0
Construction Project Standard Plans (M & S Standards)	513.2
Construction Project Specifications	513.1
Requirements for Storm Drainage Facilities and Municipal Separate Storm Sewer System Facilities	501.1
Out of State Travel	207.2
In State Travel	207.1
CDOT Requirements for Workers' Compensation, Accident Reporting, and Claim Handling	89.1
Risk and Insurance Management	89.0
Drug and Alcohol Testing	81.1
Confined Spaces Entry	80.9
Accident Review Board	80.3
Personal Protective Equipment (Including Respiratory Protection Program)	80.1
Employee Safety Program Excellence in Safety	80.0
Website and Webpage Development and Management	31.1
CDOT Facility Access Control	28.1
Use of Computer and Internet Including Social Media and Email	27.1
Rule Making Procedural Directive	20.1
Rule Making Policy Directive	20.0
Notification of Division Authority When Out of State or on Vacation	18.1
Regional Transportation Director Authority for Administrative Settlement of Construction Contract Claims	16.0
Employee Wellness Program	15.1
Policy Guiding Statewide Plan Development	14.0
Workplace Accommodations for Nursing Mothers	12.1
Communicating with the Media on Behalf of CDOT	11.2
Expressing the DOT Position on Policy Matters	11.0
Workplace Violence Procedural Directive	10.1
CDOT Heavy Fleet Management	9.2
CDOT Light Fleet Management	9.1
Equipment Management	9.0
Audit Division Policy	4.0
CDOT Values	2.0
Creating & Updating & Procedural Directives & PD Flow Chart	1.1
Policy Directives & Procedural Directives	1.0
Policy Prohibiting Sexual Harassment	603.0
Colorado State Infrastructure Bank (SIB)	720.1

State/R.R. Contracts and State/Local Entity/R.R. Contracts	500.5
ADA and PWFA Accommodation Procedures	602.1
Noise Mitigation Policy	1900.0
Snow Removal on State Highways	1055.0
Education and Professional Development Reimbursement	1262.1
CDOT Policy on Air Quality	1901.0
Removal and Disposal of Wildlife Carcasses from State Highways & ROW	1005.1
Flextime	1230.1
CDOT Water Quality Compliance	1902.0
Adopt-A-Highway Volunteer and Sponsorship Programs	1006.1
Grants from the Leave Bank and the Military Leave Bank	1204.1
Annual Budget, Project Budgeting and Cash Management Principles	703.0
Employee Driver's License Requirements	1222.1
Elevating Bicycle and Pedestrian Opportunities in Colorado	1602.1
Rockfall Management Policy	1004.0
Maintaining Linear Referencing System	1606.1
Flex Place	1230.4
Employee Organization Access	1205.1
Inclement Weather	1240.1
Service of Legal Action and Contact with Outside Attorneys	19.1
General Leave	1204.2
Disposition of Excess Land	1300.0
CDOT Cost Savings IDEA Incentive Program	1207.1
Maintaining Linear Referencing System	1606.0
Interchange Approval Process	1601.1
Professional Engineers Stamp	508.1
Security and Confidentiality of the Engineer's Detailed Estimate	511.1
Rail Corridor Preservation Policy	1607.0
Interchange Approval Process	1601.0
Promptly Reopening Roadway to Traffic	1510.1
State Memorial Signing for Private Citizens	1501.1
CDOT University (CDOTU) Administration	1260.0
Product Evaluation & Experimental Features	1401.1
Memorial Naming and Designations	1503.0
Compensation for Overtime, on-call, call-back, Shift Differential, and Compensatory Time	1230.2
Contracts with Local Agencies for Maintenance of State Highways	1050.1
Outside Employment and Outside Business Interests	1200.2
Printing Center Services and Forms Management	52.1
Requirements for the Retention of Records for Specified Design, Construction, Engineering, and Specialty Groups (Paper and Electronic)	21.1
Shoulder Policy	902.0
Reporting and Investigating Cash Shortages or Thefts Renumbered from 201.1	206.1
Retention of Documents	51.1
Guide Signing Practices and Procedures	1500.0



Elevating Bicycle and Pedestrian Opportunities in Colorado	1602.0
Property Management Funds Allocation	60.1
Priorities and Level of Service for Snow and Ice Control	1055.2
Workplace Violence	10.0
CDOT University (CDOTU) Administration	1260.1
Division of Authority over State Highways within Cities, Cities & Counties, and Incorporated Towns	1050.0
Construction Public Notification Policy	1604.0
Mobile Device Procedure	46.1
Fuel Controls for CDOT Fleet	6.0
Family Medical Leave Program	1206.1
Anti-Trust Monitoring and Detection Program	302.1
Managed Lanes Policy	1603.0
Anti-Trust Monitoring and Detection Program	302.0
Obtaining and Modifying Professional Services Contracts	400.1
ADA Accessibility Requirements in CDOT Transportation Projects	605.1
National Environmental Policy Act Compliance	1904.0
Procurement Violations	3.1
CDOT's Colorado Open Records Act Procedure	25.1
Evaluation of Proposals and Bids Submitted for CDOT Engineering Contracts	303.2
Procedures to Address Sexual Harassment in the Workplace	603.1
Interregional Express Bus Service Program	1605.0
Procedures Governing CDOT's Outdoor Advertising Program	1501.2
Employment Screening	1200.4
Traffic Control for Planned and Unplanned Work	1502.1
BE Oversight of FASTER Funding for State Bridges	16.0
BE Management of FASTER Revenue and Selection of FASTER Bridge Projects	16.1
Policy Governing the Efficient Use of FASTER Revenue	704.0
Financial Management of FASTER Revenues	704.1
FASTER Safety Mitigation Program	1504.1
FASTER Transit Program	1608.1
Asset Management Program Use of FASTER Funds	1608.2
Landscaping with CO Native Plant Species and Managing the CO Pollinator Highway	503.1
CDOT Public Private Partnerships for Fiber Optic Cable and Conduit	1504.2
Contact Requirements for Maintenance Employees and Designated Essential Personnel Required to Respond to Emergencies	8.1
Office Space Allocation	2.1
CDOT Use of Unmanned Aircraft Systems (UAS)	70.1
Avalanche Mitigation Operations	9.3
Transportation Safety Protocol	80.0
CDOT Heavy Fleet Management Protocol	9.2
CDOT Fuel Controls Protocol	6.0
AVL Light Fleet Protocol	9.1
Roadside Fire Prevention During Red Flag Warning Days	7.1

Transportation Commission Guidelines to Determine Whether Acquisition of Property for a CDOT Highway Project Will Serve the Public Interest	1301.0
Housing Assistance	1209.0
Policy on Fostering Small Business Capacity	606.0
CDOT's Open Records Act Procedure for Engineering Contracts	508.2
Protection of Personally Identifiable Information (PII)	1215.1
Housing Assistance	1209.1
Title VI Non-Discrimination	604.1
Employee Appreciation and Recognition Programs	1200.5
CDOT All-Hazard and Wildland Fire Mobilization and Reimbursement	7.2
Building Resilience into Transportation Infrastructure and Operations	1905.0
Caution and Restrictions for High Wind on Highways	9.4
Temporary Reduction in Speed Limits	1502.2
CDOT Commercial Card Program	3.3
Use of Recording Devices	46.2
Employee Transfers	1208.1
Official Functions	1200.1
Statutory Violations	3.2

MEMORANDUM OF UNDERSTANDING

By and between the

COLORADO DEPARTMENT OF TRANSPORTATION

AND

HIGH PERFORMANCE TRANSPORTATION ENTERPRISE

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(d) The types of innovative financing opportunities include, but are not limited to, public-private partnerships, operating concession agreements, user fee-based project financing, and availability payment and design-build contracting; and

WHEREAS, FASTER (Section 43-4-806(2), C.R.S.) created an HPTE board (“Board”) and the Board adopted on November 17, 2010, Articles of Organization (as amended from time to time “Articles of Incorporation”) and Bylaws (as amended from time to time “Bylaws”) providing for its operation and management and setting forth its powers; and

WHEREAS, FASTER (Section 43-4-806(2)(d), C.R.S.) provides that the HPTE shall constitute an “enterprise” for purposes of section 20 of article X of the State Constitution so long as it receives less than ten percent of its total revenues in grants from all Colorado state and local governments combined; and

WHEREAS, the funding for HPTE is expected to be derived from multiple sources including toll revenues, work and fee for service and completion fee agreements with CDOT and other entities, concession fees, bond issuance fees, federal funds, and loans from the Transportation Commission; and

WHEREAS, FASTER (Sections 43-4-806(2)(c), 6(f) and (h), C.R.S.) authorizes HPTE to enter into agreements with the Transportation Commission or CDOT in furtherance of the purposes for which HPTE was created; and

WHEREAS, CDOT and HPTE have determined that it will advance and promote the respective missions of CDOT and HPTE to define and set forth in this Memorandum of Understanding their operating roles and responsibilities as they relate to those missions.

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

## **Article One**

### **General Provisions**

1.1 Definitions. Terms defined in FASTER (Section 43-4-803, C.R.S.) have the same meanings when used in this this Memorandum of Understanding.

1.2 Effective Date and Term. This Memorandum of Understanding shall be effective immediately upon its execution and shall continue in effect until terminated in accordance with its terms.

1.3 Termination of Master Agreement. The Master Agreement by and between the Colorado Department of Transportation and the Colorado High Performance Transportation Enterprise, entered into as of the 30<sup>th</sup> day of November, 2010, is terminated.

## **Article Two**

### **Coordination between CDOT and HPTE**

2.1 The Board has the authority to establish policies for HPTE under which it will identify and prioritize HPTE projects and make and enter into agreements and contracts with private entities for the financing, design, construction, operations and maintenance of surface transportation infrastructure projects. Nevertheless, as a division of CDOT, HPTE must coordinate and integrate its mission with CDOT in the fulfillment of its duties and the exercise of its powers.

2.2 Accordingly, CDOT has created and will maintain an Office of Major Project Development (OMPD) as a resource and center of expertise for the coordinated fulfillment of the joint missions of CDOT and HPTE. As a resource to both CDOT and HPTE, the purpose of the OMPD will be to provide the following services for P3 and other major projects:

(a) Supporting HPTE in overall program-level activities including the establishment of policies, strategic master planning, communications and marketing, establishment of procedures and budget planning and reporting, all in fulfillment of the mission of HPTE.

(b) Conducting early development activities and determining the overall feasibility of potentially eligible major projects, including project scoping, conceptual design, preliminary environmental evaluations, and support of HPTE with its initial financial analyses. In coordination with HPTE, define the initial project delivery structure to pursue.

(c) Identifying, analyzing and prioritizing corridors that are candidates for public-private partnerships, other innovative financing, or are potentially eligible for inclusion in a major project effort.

(d) Supporting HPTE in the value-for-money analyses and financial planning for candidate HPTE projects and in coordination with the HPTE, coordinating project delivery planning with the DTD, other relevant CDOT divisions, and CDOT regions for overall project funding and programming.

(e) In conjunction with HPTE, establishing criteria to determine when HPTE leads project procurement.

(f) In support of HPTE, deciding whether a project will be administered and contracted by the HPTE or CDOT. For non-HPTE projects, assessing the eligibility of the project for inclusion in the OMPD project program and making recommendations to the Chief Engineer for his final determination.

(g) For eligible major projects determined to be administered by HPTE:

(i) Leading the effort within CDOT to implement the project including overall project management, preliminary design, environmental studies and documentation, and agency and public coordination utilizing a team led by an OMPD project manager; and

(ii) Supporting HPTE-led activities including financial analyses, financial implementation and the procurement, including contract development, bidder selection, negotiations, and industry engagement.

(h) In conjunction with HPTE, developing a policy as to the acceptance and evaluation by CDOT and/or HPTE of unsolicited proposals involving potentially eligible major projects, which policy shall in any event provide that HPTE shall be the sole entity within CDOT to receive and evaluate unsolicited proposals for any such projects which are expected to be revenue-producing projects.

2.3 The goal of the OMPD will be to provide the necessary resources, in coordination with HPTE, other CDOT divisions, and CDOT regions, for a unified management structure for the development and implementation of major projects. Major projects are defined as (i) projects involving public-private partnerships or other financings requiring the powers of HPTE; (ii) projects involving toll operations, technologies and equipment; or (iii) projects with non-traditional or innovative contracting methods requiring or otherwise benefitting from the centralized management or expertise of the OMPD, to be determined by the Chief Engineer of CDOT (Chief Engineer), in coordination with the OMPD and HPTE as appropriate.

2.4 The OMPD will be led by a Director, reporting directly to the Executive Director or his/her designee and the Director of HPTE. Primary personnel management will be the responsibility of the Executive Director or his/her designee. Funding of the OMPD will come from the annual CDOT budget as well as ongoing project funding allocations as part of the annual budgeting actions by the Transportation Commission. Technical staff support to the OMPD will come from full time employees assigned to the OMPD, participating staff from appropriate divisions and regions on an as needed basis,

and consultants as necessary to support the office's programmatic and project specific efforts.

2.5 The role and responsibilities of the OMPD will include, in coordination with other CDOT divisions and CDOT regions, leadership, overall management and/or support in identifying, selecting, developing and implementing eligible projects. Specifically, the responsibilities and resources of the OMPD and HPTE in respect of HPTE eligible major projects will be allocated as set forth in Attachment A.

2.6 Before any substantial work is done in respect of an eligible major project, HPTE and CDOT, working through the OMPD, will enter into a project-specific agreement defining the roles and responsibilities of the parties, the anticipated funding sources for the project, any fees to be paid to HPTE for services for completing the financing for the project or otherwise, the rights and obligations of the parties with respect to the assets be acquired, and such other matters as may be appropriate in the circumstances.

2.7 The OMPD Director and the Director of HPTE will be responsible for developing and implementing operating procedures and protocols for coordinating the activities of the OMPD and HPTE and for communicating with and reporting to the Executive Director and Transportation Commission and to the HPTE Board. In particular, the OMPD Manager and the Director of HPTE will develop for adoption by the Transportation Commission and the HPTE Board a "Program Implementation Process" for mutual approvals by each body at critical decision points of the planning, development, procurement, construction and operation phases of eligible projects.

### **Article Three**

#### **CDOT Services**

3.1 HPTE may, with the approval of and subject to such condition as are imposed by the Executive Director, utilize the professional and administrative services of CDOT employees or agents and CDOT facilities in connection with its authorized activities.

3.2 HPTE will reimburse CDOT, at CDOT's regularly burdened rates, for any administrative services or facilities provided by CDOT, its employees or agents. To the extent reimbursement is not immediately forthcoming and the funds expended by the Transportation Commission derived from the state highway fund, pursuant to FASTER (section 43-4-806(d)(4), C.R.S.) the value of such services or facilities shall, notwithstanding any state fiscal rule or generally accepted accounting principle that

could be interpreted to require a contrary conclusion, constitute a loan from the Transportation Commission to HPTE.

3.3 Specific services CDOT will provide to the HPTE include but are not limited to accounting and budget support. CDOT's Chief Financial Officer will act as the Chief Financial Officer for HPTE and ensure, among other things necessary for its ongoing budgetary and accounting needs, that HPTE's annual budget, budget supplements, ongoing accounting, and annual audited financial statements are prepared timely and correctly in accordance FASTER and this Memorandum of Understanding. The CFO will ensure that accountants and budget analysts within the Division of Accounting and Finance assigned to support the HPTE will develop the specialized policies, procedures, and expertise required to meet the needs of HPTE.

## **Article Four**

### **Procurement**

4.1 The State Procurement Code is not applicable to HPTE and in order to facilitate its pursuit of public-private partnerships and other innovative and efficient means of financing surface transportation infrastructure projects, the HPTE Board has adopted a set of Project Proposal Guidelines (as modified, the "Guidelines") which the Board has determined to be consistent with best practice principles of transparency, competition and fair-dealing. The Guidelines are attached as Attachment B and are confirmed in their current form by the parties.

4.2 The parties agree that the HPTE will coordinate its procurement processes with the OMPD, the CDOT procurement office and other CDOT entities that support the processes of contracting and procuring for goods and services. CDOT procurement, and other internal entities that are components of a procurement process, will support the preparation of contracts and the encumbrance of funds for the HPTE whether or not the state procurement code is followed or not by the HPTE so long as they meet the HPTE Board's Guidelines and the state's fiscal rules.

4.3 The parties agree that if either of the following will occur, HPTE will use the modified procurement process set forth in section 4.14 of Attachment B.

(a) HPTE is to be reimbursed by CDOT for personal services or goods procured by HPTE, or

(b) CDOT will utilize personal services or goods procured by HPTE for CDOT projects.



4.4 The parties agree that HPTE will utilize CDOT processes and procedures for the procurement by it of any professional services.

4.5 The parties agree the procurement for outside legal services will be done by HPTE in coordination with the Attorney General's office.

## **Article Five**

### **Budget Coordination**

5.1 HPTE will prepare an annual budget and other budgeting documents in the format and by the deadlines set by the CDOT budget office each year. Additional required reports may include, but are not limited to, the long range plan and annual travel plan. HPTE and the OMPD agree to coordinate the development of the budgets to assure consistency and completeness. This coordination does not limit the HPTE Board's authority during the fiscal year to adjust its budget as it deems necessary so long as those actions do not exceed annually available revenues, nor does it limit the Board's authority to delegate budget authority to the Director.

5.2 The HPTE annual budget may contain a request for a CDOT loan to fund staff positions and other program costs.

5.3 Pursuant to the statutory requirements of FASTER and except as the terms of any relevant project-specific agreements may otherwise require, HPTE shall use available revenues to repay CDOT loans at the discretion of the Board. Furthermore, at the discretion of the Board and based on the HPTE annual budget, excess revenue derived from project-related operations may be retained by the HPTE in the statewide transportation enterprise operating fund or the transportation special fund, pursuant to 43-4-806(4), after fulfillment of all appropriate obligations, for HPTE priorities and for the sustained operations of the HPTE.

## **Article Six**

### **CDOT Policies and Procedures**

6.1 The parties agree that only the CDOT Policy and Procedural Directives listed on Attachment C shall apply to HPTE; except as they may be superseded by the

terms of this Memorandum of Understanding. The Board will pass a Resolution adopting the Policy and Procedural Directives listed on Attachment C

6.2 Future Policy and Procedural Directives adopted by the Transportation Commission shall not apply to HPTE unless the HPTE Board adopts them by Resolution.

## **Article Seven**

### **Termination**

7.1 This Memorandum of Understanding may be terminated at any time by mutual agreement of the parties.

## **Article Eight**

### **Amendments**

8.1 Amendments to this Memorandum of Understanding must be in writing and must be duly authorized and approved by the Transportation Commission and the Board.

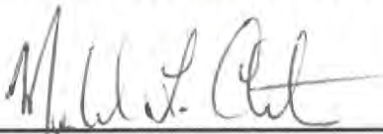
**SIGNATURE PAGE**

Effective this 30th day of September, 2013.



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**Don Hunt, Executive Director, Colorado Department of Transportation**



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**Michael Cheroutes, Director, High Performance Transportation Enterprise**

**Attachment A**

**Office of Major Project Development (OMPD)/High Performance Transportation Enterprise (HPTE)**

**Resources and Responsibilities for Basic Functions**

The following table assigns the source of resources and responsibilities for the fulfillment of the basic functions for the OMPD and HPTE for the coordinated implementation of the HPTE P3 and Innovative Finance Program. The HPTE and the OMPD will work collaboratively to accomplish the mutual and joint goals of CDOT and the HPTE, in compliance with the statutory authority of the HPTE, as follows:

Program/ Project Phase	Description	Responsibilities and Resources (HPTE Eligible Projects Only)	
		OMPD*	HPTE
Overall Program	<u>Management and Oversight:</u> Provide communications, overall administration and reporting of P3 Program	Support	Lead
	• Establish policies	Support	Lead
	• Provide strategic master planning	Lead	Support
	• Conduct program communications and marketing	Lead	Support
	• Establish procedural guidelines and procedures	Lead	Support
	• Conduct program-level budget planning and reporting	Lead (Commission)	Lead (Board)
Program Planning	<u>Management and Oversight:</u> Conduct initial feasibility, conceptual design, financial plan, initial environmental planning, delivery plan, ID and select projects, prioritization	Lead	Support
	• Identify and prioritize potential projects	Lead	Support
	• Determine initial feasibility of potential projects	Lead	Support
	• Prepare conceptual project definition/scope/design	Lead	Support
	• Conduct Phase I T&R Study (revenue projections)	Support	Lead
	• Prepare conceptual cost estimates and scheduling	Lead	Support
	• Conduct environmental review (pre-NEPA)	Lead	Support
	• Prepare value-for-money analysis	Support	Lead
	• Prepare initial financing plan	Support	Lead
	• Engage industry (program info, initial interest)	Support	Lead
	• Conduct public engagement	Lead	Support
	• Conduct stakeholder engagement (local TR agencies)	Lead	Support
• Provide FHWA coordination and approvals	Lead	Support	
• Make P3 decision and prepare delivery plan	Support	Lead	
Project Development	<u>Management and Oversight:</u> Conduct final feasibility, financing plan, NEPA, and preliminary engineering	Lead	Support
	• Provide overall project management	Lead	Support
	• Determine final feasibility of project	Lead	Support

	<ul style="list-style-type: none"> <li>• Prepare preliminary project design</li> </ul>	Lead	Support
	<ul style="list-style-type: none"> <li>• Conduct Phase II T&amp;R Study (revenue projections)</li> </ul>	Support	Lead
	<ul style="list-style-type: none"> <li>• Prepare preliminary cost estimates and scheduling</li> </ul>	Lead	Support
	<ul style="list-style-type: none"> <li>• Provide environmental clearance/approval (NEPA)</li> </ul>	Lead	Support
	<ul style="list-style-type: none"> <li>• Prepare value-for-money analysis</li> </ul>	Support	Lead
	<ul style="list-style-type: none"> <li>• Prepare final financing plan</li> </ul>	Support	Lead
	<ul style="list-style-type: none"> <li>• Engage industry (project information, RFI)</li> </ul>	Support	Lead
	<ul style="list-style-type: none"> <li>• Conduct public engagement (project specific)</li> </ul>	Lead	Support
	<ul style="list-style-type: none"> <li>• Conduct stakeholder engagement (local TR agencies)</li> </ul>	Lead	Support
	<ul style="list-style-type: none"> <li>• Provide FHWA coordination and approvals</li> </ul>	Lead	Support
	<ul style="list-style-type: none"> <li>• Develop project communications plan</li> </ul>	Lead	Support
	<ul style="list-style-type: none"> <li>• Develop project management plan</li> </ul>	Lead	Support
	<ul style="list-style-type: none"> <li>• Make P3 procurement decision and define delivery plan</li> </ul>	Support	Lead
Project Procurement	<u>Management and Oversight: Procure the project</u>	Lead	Support
	<ul style="list-style-type: none"> <li>• Provide overall project management</li> </ul>	Lead	Support
	<ul style="list-style-type: none"> <li>• Prepare solicitation documents (RFI, RFP, others)</li> </ul>	Support	Lead
	<ul style="list-style-type: none"> <li>• Prepare contract documents</li> </ul>	Support	Lead
	<ul style="list-style-type: none"> <li>• Prepare investment-grade T&amp;R (revenue projections)</li> </ul>	Support	Lead
	<ul style="list-style-type: none"> <li>• Prepare final financial documents and requirements</li> </ul>	Support	Lead
	<ul style="list-style-type: none"> <li>• Prepare value engineering and technical requirements</li> </ul>	Lead	Support
	<ul style="list-style-type: none"> <li>• ATC reviews</li> </ul>	Lead	Support
	<ul style="list-style-type: none"> <li>• Coordinate procurement with industry bidders</li> </ul>	Support	Lead
	<ul style="list-style-type: none"> <li>• Review proposals and conduct evaluations</li> </ul>	Support	Lead
	<ul style="list-style-type: none"> <li>• Conduct public engagement (project specific)</li> </ul>	Lead	Support
	<ul style="list-style-type: none"> <li>• Conduct stakeholder engagement (local TR agencies)</li> </ul>	Lead	Support
	<ul style="list-style-type: none"> <li>• Provide FHWA coordination and approvals</li> </ul>	Lead	Support
<ul style="list-style-type: none"> <li>• Select winning bidder and negotiate contract</li> </ul>	Support	Lead	
Construction	<u>Management and Oversight: Construct the project</u>	Lead	Support
	<ul style="list-style-type: none"> <li>• Provide contract management and administration</li> </ul>	Lead	Support
	<ul style="list-style-type: none"> <li>• Provide change management</li> </ul>	Lead	Support
	<ul style="list-style-type: none"> <li>• Provide budget management</li> </ul>	Lead	Support
	<ul style="list-style-type: none"> <li>• Provide financial reviews</li> </ul>	Support	Lead
	<ul style="list-style-type: none"> <li>• Conduct design reviews</li> </ul>	Lead	Support
	<ul style="list-style-type: none"> <li>• Construction oversight and quality audits</li> </ul>	Lead	Support
	<ul style="list-style-type: none"> <li>• Conduct final project acceptance</li> </ul>	Lead	Support
O&M	<u>Management and Oversight: Operating the Project</u>		
	<ul style="list-style-type: none"> <li>• Manage concession and related contracts (incl. reporting)</li> </ul>	Lead	Support
	<ul style="list-style-type: none"> <li>• Toll collection</li> </ul>	Support	Lead
	<ul style="list-style-type: none"> <li>• Maintenance</li> </ul>	Lead	Support

## Attachment B

### COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE PROJECT PROPOSAL GUIDELINES (THE "GUIDELINES")

#### 1. INTRODUCTION

- 1.1 These Guidelines are intended to provide a project identification and evaluation process to be utilized by the Colorado High Performance Transportation Enterprise (the "Enterprise") in connection with its pursuit of public-private partnerships and other innovative and efficient means of completing surface transportation infrastructure projects in accordance with the provisions of Section 43-4-806, Colorado Revised Statutes, as amended. The Enterprise recognizes that each project will have its unique characteristics and goals and that tailored approaches to assessing and implementing projects will be required for the Enterprise's program to be successful. The Enterprise intends to retain the flexibility to modify or deviate from these Guidelines as it sees fit and in the interest of the State and the public.
- 1.2 These Guidelines may be revised from time to time and such revisions will be promptly posted on the Enterprise's website. Those performing work or otherwise relying on these Guidelines assume all risks related to any revisions. The Enterprise will not be liable for any damages sustained by anyone based on a modification or failure to modify the Guidelines. In addition, the Enterprise, at its sole discretion, may waive or deviate from some or all of these Guidelines where it deems such waiver(s) or deviation to be in the best interest of the State. In no event shall any such waiver or deviation result in any liability for the Enterprise, the State or any other party.

#### 2. INTERPRETATION

- 2.1 Definitions. The following definitions are provided to assist in understanding of the Guidelines and may be modified in any Solicitation Documents or Agreements issued by the Enterprise:

"Agreement" means a binding document or series of documents between the Enterprise (or the Enterprise and CDOT) and a Person that outline the basis on which to plan, finance, design, engineer, construct, install, acquire, operate and maintain (or any combination of these activities) an Eligible Project.

"Bidder" means a Person or Consortium who seeks to enter into an Agreement in response to Solicitation Documents.

"CDOT" means, the Colorado Department of Transportation created in Section 24-1-128.7, Colorado Revised Statutes, as amended.

“Consortium”	means two or more Persons acting together for the purpose of seeking to enter into an Agreement.
"Eligible Project"	means any surface transportation infrastructure project as defined in Section 43-4-803(23), Colorado Revised Statutes, as amended.
"Person"	means any individual, sole proprietorship, corporation, partnership, unincorporated association or public entity and includes successors and permitted transferees and their assigns.
“Project Participant”	means any Person or Consortium who or which enters into an Agreement.
“Solicitation Documents”	means procurement documents, including but not limited to requests for information, requests for proposals, requests for qualifications and statements of qualifications, initiated by the Enterprise in connection with an Eligible Project.
“Solicited Proposal”	means a procurement initiated and issued by the Enterprise in connection with an Eligible Project either (i) through a determination by the Enterprise that, based on its findings and evaluations, a procurement for such Eligible Project is in the best interest of the State or (ii) through a determination by the Enterprise that, based on an Unsolicited Proposal, a procurement is in the best interest of the State.
“State”	means the State of Colorado.
“Unsolicited Proposal”	means a submittal by a potential Project Participant with respect to an Eligible Project which has not been initiated by the Enterprise.

## 2.2 In these Guidelines

- (a) the singular includes the plural and vice versa;
- (b) the headings are inserted for convenience only and shall not affect interpretation of the Guidelines;
- (c) when there are references with general words followed by a list to make it clear that those general words "include" the matters set out in that list, then the contents of the list shall be taken not to limit the generality of those general words; and
- (d) in accordance with these Guidelines the Enterprise is free to exercise its discretion in such matters as it considers necessary or expedient in the light of all circumstances prevailing at the time which the Enterprise considers to be relevant.

3. **UNSOLICITED PROPOSALS**

- 3.1 The Enterprise may consider and evaluate an Unsolicited Proposal, or decline to do so, in accordance with the provisions of this Section 3. The Enterprise may, in its sole discretion, decline to consider and evaluate an Unsolicited Proposal, in which case it shall so notify the Person or Consortium submitting that Unsolicited Proposal. If the Enterprise makes a determination to consider and evaluate an Unsolicited Proposal, then, upon completion of its evaluation in accordance with the provisions of this Section 3, it shall proceed as provided in Paragraph 3.5 hereof.
- 3.2 In determining whether to consider and evaluate an Unsolicited Proposal, the Enterprise shall have regard to all or any facts and matters which the Enterprise considers to be relevant, including:
- (a) the resources available to the Enterprise, both from its own staff and from any necessary or desirable consultants and external resources, to enable it to conduct the evaluation;
  - (b) the extent to which the Unsolicited Proposal appears to offer benefits to the State by fulfilling requirements related to an Eligible Project identified by the Enterprise or CDOT as a priority;
  - (c) the extent to which the Unsolicited Proposal presents a financing plan that efficiently includes Enterprise/CDOT funding and/or maximizes project revenues to present a viable funding proposal;
  - (d) the extent to which the Unsolicited Proposal may significantly shorten a timetable for satisfying a known requirement in any plan set out by CDOT or the Enterprise; and
  - (e) the extent to which the Enterprise or CDOT is already developing its own plans for meeting the requirement which the Unsolicited Proposal is seeking to address.
- 3.3 Except as otherwise determined by the Enterprise, the Enterprise will only consider an Unsolicited Proposal if the Enterprise is given a royalty-free license in any and all intellectual property rights comprised in the Unsolicited Proposal to the full extent necessary to enable the Enterprise to accept the proposal (with or without amendments) for the purpose of seeking competitive proposals as contemplated in Subparagraph 3.5(a) hereof. The Person or Consortium making an Unsolicited Proposal may identify appropriate material contained therein as proprietary or confidential; however, the Enterprise may disclose proprietary or confidential material contained in the Unsolicited Proposal to CDOT personnel, the Transportation Commission or the Enterprise Board of Directors. At the time of submission to the Enterprise the Proposer must also include an executive summary covering the major elements of the Unsolicited Proposal that do not address the Proposer's price, financing plan or other confidential or proprietary information or trade secrets that the Proposer intends to be exempt from disclosure. The Executive Summary will be a public document and will be posted on the Enterprise's website. The executive summary will also be used in connection with seeking competitive proposals as contemplated in Subparagraph 3.5(a) hereof. In the event the Enterprise determines that it is unable to effectively solicit competitive proposals due to the scope of the material in the Unsolicited Proposal that has been designated as proprietary or confidential, the Enterprise may either (i) negotiate with the Person or



Consortium submitting the Unsolicited Proposal to allow the use of so much of such proprietary or confidential information as the Enterprise determines is required for use in connection with seeking competitive proposals or (ii) determine not to proceed further with the Unsolicited Proposal.

- 3.4 The Enterprise will only accept submission of an Unsolicited Proposal if, at the time the Unsolicited Proposal is submitted, the Person or Consortium making the Unsolicited Proposal pays to the Enterprise an initial fee of \$1,000. Such initial fee shall be nonrefundable, whether or not the Enterprise chooses to consider and evaluate the Unsolicited Proposal. If the Enterprise decides to proceed to consider and evaluate an Unsolicited Proposal, then it may make it a condition of proceeding that the Person or Consortium making the Unsolicited Proposal agrees to pay an amount to be determined by the Enterprise to cover the actual costs incurred by the Enterprise in considering and evaluating the Unsolicited Proposal. The Person or Consortium making the Unsolicited Proposal may withdraw such Unsolicited Proposal if it is unwilling to pay such actual costs. In the event that, following a solicitation based upon an Unsolicited Proposal, an award is made for the Eligible Project described in the Unsolicited Proposal to a Bidder other than the Person or Consortium making the Unsolicited Proposal, the Enterprise will require that the successful Bidder pay the Enterprise an amount sufficient for the Enterprise to reimburse the Person or Consortium making the Unsolicited Proposal for amounts paid by such Person or Consortium to the Enterprise for the actual costs incurred by the Enterprise to consider and evaluate the Unsolicited Proposal.
- 3.5 On completion of the evaluation of an Unsolicited Proposal, the Enterprise may:
- (a) seek proposals for the Eligible Project described in the Unsolicited Proposal either (i) in accordance with the procedures set forth in Section 4 hereof, subject to such amendments to the Unsolicited Proposal as the Enterprise may consider appropriate, or (ii) in accordance with such alternative procedures as the Enterprise may determine are appropriate under the relevant circumstances and will encourage competition, provide transparency and ensure nondiscriminatory treatment of potential bidders, subject, however, in either case to exceptions of the type described in Paragraph 4.8 hereof; or
  - (b) notify the proposer(s) that the Enterprise will not proceed any further with the Unsolicited Proposal, and provide a general description of the reasons for that decision.

#### 4. **SOLICITED PROPOSALS**

- 4.1 The Enterprise may solicit proposals in connection with an Eligible Project when it determines either that, based on its findings and evaluations, a procurement for such Eligible Project is in the best interest of the State or that, based on an Unsolicited Proposal, a procurement for such Eligible Project is in the best interest of the State.
- 4.2 In connection with any Solicited Proposal, the Enterprise will issue such Solicitation Documents as it determines may be appropriate under the circumstances. The Solicitation Documents may include such terms and requirements as are determined by the Enterprise to be appropriate and may request submission of such information, including financial and

technical information, as the Enterprise determines to be necessary or useful in evaluating any proposal and the viability of the relevant Eligible Project.

- 4.3 The Enterprise may provide in the Solicitation Documents that the solicitation will take place in successive stages, in order to reduce the number of proposals to be negotiated at each stage, by applying criteria as set forth in the Solicitation Documents.
- 4.4 Prior to issuing any Solicitation Documents, the Enterprise may request expressions of interest in relation to an Eligible Project and take such other preliminary steps as it may deem appropriate to engage with potential Bidders, including but not limited to, conducting meetings with industry participants in order to inform the industry of the opportunity and to hear industry suggestions which may, in the Enterprise's sole discretion, be incorporated into the Solicitation Documents.
- 4.5 For the purpose of encouraging competition, providing transparency and ensuring the nondiscriminatory treatment of potential Bidders, the Enterprise shall, except in certain circumstances as set forth in Paragraph 4.8, provide public notices in connection with its solicitations by such means and in such forms as shall be appropriate under the circumstances, including the publication of the applicable Solicitation Documents. Such public notices may precede or be accompanied by the applicable Solicitation Documents and may include an estimated timetable relating to the solicitation process if available.
- 4.6 The Enterprise may consider requests for further information relating to the Solicitation Documents as may be reasonably requested by a Bidder, and, if the Enterprise determines it appropriate under the circumstances to provide such further information, it will supply such information to all Bidders, provided that the request for such information is received in sufficient time to enable the Enterprise to supply it.
- 4.7 If the Bidder consists of or includes a Consortium, the Bidder may rely on the capacities of the members of the Consortium in responding to and complying with the requirements set forth in the Solicitation Documents regardless of whether or not the members of the Consortium have entered into a legal relationship for purposes of submitting a proposal. If the Enterprise awards an Agreement to a Consortium, it may, if the Enterprise deems it to be necessary or expedient for the satisfactory performance of the Agreement, require the Consortium to form a legal entity before entering into, or as a term of, the Agreement.
- 4.8 The Enterprise may elect not to provide a public notice in connection with the solicitation of work or services relating to an Eligible Project in certain circumstances, including the following:
  - (a) when, for technical, artistic or design reasons, or for reasons connected with the protection of exclusive rights, an Agreement may be awarded only to a particular Bidder;
  - (b) when for reasons of extreme urgency brought about by events unforeseeable by the Enterprise there is insufficient time to provide for the step of issuing a public notice;

- (c) when the Enterprise wants a Project Participant which has entered into an Agreement with the Enterprise to carry out additional work or to provide additional services
    - (i) which were not included in the project initially considered or in the original Agreement but which through unforeseen circumstances have become necessary; and
    - (ii) which cannot for technical or economic reasons be carried out or provided separately from those under the original Agreement without major inconvenience to the Enterprise; and
  - (d) when the Enterprise wants a Project Participant which has entered into an Agreement with the Enterprise to carry out new work or to provide new services which are a repetition of the work or services provided under the original Agreement and which are in accordance with the project for the purpose of which the first Agreement was entered into.
- 4.9 All material submitted by Bidders in response to Solicitation Documents will be the property of the Enterprise. As may be further provided in the Solicitation Documents, any material submitted by Bidders and requested to be treated as proprietary or confidential will be identified and treated in accordance with the relevant procedures set forth in the Solicitation Documents. After a final determination is made by the Enterprise in connection with a Solicited Proposal, all material submitted by Bidders, except material treated as proprietary or confidential in accordance with the Solicitation Documents, will become public record and open to inspection.
- 4.10 The evaluation of Solicited Proposals shall be made by a committee selected by the Director of the Enterprise to evaluate the merits of all responses received in connection with Solicited Proposals. The specific evaluation criteria to be utilized by the committee and any weighting of such criteria will be specified in the Solicitation Documents. Failure of a Bidder to provide in its proposal any information requested by the Solicitation Documents may result in disqualification of the proposal. During the evaluation process, meetings may be scheduled with Bidders, either individually or as a group, to the extent the committee determines that additional information or clarification is needed that would assist in the evaluation process. The recommendations of the committee will be forwarded to the Director of the Enterprise for final approval by the Board or, if the authority is delegated, by the Director.
- 4.11 The Enterprise reserves the right to reject any and all proposals received in response to Solicitation Documents or to cancel the Solicited Proposal process if it is in the best interest of the Enterprise or the State to do so. The Enterprise may reject any proposal received in response to Solicitation Documents if the Bidder, any member of a Consortium acting as a Bidder or any Person who has powers of representation, decision or control of the Bidder or any member of a Consortium acting as the Bidder is ineligible to contract with the State, CDOT or the Enterprise under applicable provisions of federal or state law or under any rules or regulations applicable to the State, CDOT or the Enterprise.
- 4.12 The Enterprise will not be liable for any costs incurred by Bidders prior to the execution of the relevant Agreement or other contract. All costs to prepare and submit responses to Solicitation Documents shall be borne solely by the Bidders. Nothing in Paragraph 4.12 will

prevent the Enterprise, in its sole discretion, from offering stipends and/or cancellation payments to Bidders on such terms as may be determined by the Enterprise.

- 4.13 The award in connection with a Solicited Proposal will be made to the Bidder whose proposal is determined to be the most advantageous to the State and the Enterprise, and shall be subject to negotiation and execution of an acceptable Agreement.
- 4.14 At the Enterprise's discretion, it may solicit a proposal that complies with the Colorado Procurement Code (CRS § 24-103-101, et al.). If the Enterprise determines that a solicitation will comply with the procurement code, the following shall occur to the extent that they have not already occurred following HPTE's process for Solicited Proposals outlined above:
- (a) Prior to a solicitation being advertised, a representative of the Enterprise shall meet with CDOT's Purchasing Director to discuss the solicitation and process, to discuss all written determinations that must be made under the Procurement Code and the development of the official file;
  - (b) CDOT's Purchasing Director may determine "competitive sealed proposals" is the most advantageous and practical procurement method for HPTE solicited proposals, and if this determination is made, Colorado Procurement Rule R-24-103-203 shall be followed;
  - (c) the Solicited Proposal will be advertised for a minimum of thirty (30) days unless CDOT's Purchasing Director determines a shorter time is warranted;
  - (d) If CDOT's Purchasing Director, pursuant to Colorado Procurement Rule R-24-102-202.5-.2, determines that the Colorado Bid Information and Distribution System (BID) is not likely to yield adequate competition, the Solicited Proposal will be advertised on the Enterprise's website and not on BIDS;
  - (e) the Solicited Proposal shall state the evaluation factors;
  - (f) If a Solicited Proposals warrants it, a shortlist will be created and individuals or firms will be given a minimum of seven business days to prepare for an interview;

The award shall be made to the responsible offer or whose Solicited Proposal is determined in writing to be the most advantageous to the Enterprise, taking into consideration the price and the evaluation factors set forth in the Solicited Proposal. No other factors or criteria shall be used in the evaluation.

## Attachment C

### CDOT Policy and Procedural Directives Applicable to HPTE

Short Name	Title
0001-0	Policy & Procedural Directives
0001-1	Procedure for Creating & Updating & Procedural Directives & PD Flow
0002-0	CDOT Values
0004-0	Audit Division
0004-1	Audit Division Responsibilities
0004-2	Audit Recommendation Tracking Report
0004-3	Coordination for Outside Audits and Studies
0006-0	Vehicle Fuels Control Policy Directive
0006-1	Vehicle Fuels Control Procedural Directive
0008-0	Residence and Telephone Requirements
0009-0	Equipment Management
0009-1	Commute Vehicles
0009-2	PD Utilization and Replacement of Road Equipment
0010-0	Workplace Violence
0010-1	Workplace Violence Procedural Directive
0012-0	Workplace Accommodation for Nursing Mothers Policy Directive
0012-1	Workplace Accommodation for Nursing Mothers Procedural Directive
0014-0	CDOT Vision, Mission, Investment Category Goals and Objectives
0015-1	Employee Wellness Program
0016-0	Regional Transportation Director Authority for Administrative Settlement of Construction Contract Claims
0018.1	Notification of Division Authority When Out of State or on Vacation
0019-1	Service of Legal Action
0020-0	Rule Making Policy Directive
0020-1	Rule Making Procedural Directive
0022-1	Mail and Messenger Service
0024-1	Publication Approval & State Publications Law Compliance
0025-2	Reimbursement of Cost Incurred Responding to Open Records
0026-0	Electronic Messaging Policy
0027-0	Internet Policy
0027-1	Social Marketing Use of Web 2.0 & Similar Applications
0028-1	Employee Identification Card
0029-1	Guidelines for Submitting Resolutions to the Transportation Commission
0031-1	Website Development
0032-1	Internal Web Page Development
0041-1	Disbursement of Motor Pool Vehicles
0042-1	Contact with Private Attorneys or their Agents

0043-1	Administration of Special Bridge Account
0044-1	Tort Lawsuits Against the Division of Highways
0046-1	Mobile Device Procedure
0051-1	Records Management
0051-2	Public Inspection of Department Records
0051-3	Confidential Records
0060-1	Property Funds - Maintenance and Operations Budget
0080-0	Occupational Health and Safety
0080-1	Personal Protective Equipment Use
0080-2	Reporting of Unsafe or Unhealthy Working Conditions
0080-3	Accident Review Board
0080-5	Voluntary medical Monitoring Program for Identified Positions
0080-6	Vehicle Backing
0080-7	Electrical Safety in the Workplace
0080-8	Lockout / Tagout/ Tryout - Controlling Hazardous Energy
0080-9	Confined Spaces Entry
0080-10	Respiratory Protection Program
0080-11	State Vehicle Operations and Wireless Mobile Devices
0081-1	Drug & Alcohol Policy
0081-1	CDOT Substance Abuse, Controlled Substance and Alcohol Testing for Safety-Sensitive Positions
0081-1	CDOT Substance Abuse, Controlled Substance and Alcohol Testing for Non Safety-Sensitive Positions
0081-2	Employee Disclosure of Alcohol Misuse or Controlled Substances Use Program
0081-3	Employee Disclosure of Alcohol Misuse or Controlled Substances Use Program
0089-0	Risk & Insurance Management
0089-1	Accident Reporting and Claim Handling
0089-2	Worker's Compensation
0089-3	Modified Duty
0206-1	Reporting and Investigating Cash Shortages or Thefts
0206-2	Maintenance Section Recovery of Cost for Highway Damage Repairs
0206-3	Securities in Lieu of Retainage
0207-0	Travel Policy
0207-1	In State Travel
0207-2	Out of State Travel
0302-0	PO Anti-Trust Monitoring and Detection Program
0302-1	PD Anti-Trust Monitoring and Detection Program
0306-1	Flagger Training & Certification Program
0315-0	Contract Time and Contract Time Extensions
0357-2	Revocation of Pre-qualifications and/ or Debarment for Bid-related Offenses
0384-0	Subletting a Contract
0387-0	Construction by Public Agencies
0390-0	Accommodation if Utilities within State Highway System ROW
0400-1	Obtaining and Modifying Professional Consultant Services

0500-1	Plans, Specifications, and Estimates (PS - E) to advance Federal-Aid Projects to Advertisement and Award in a
0500-0	PO Development of Federal Aid Projects under the CDOT Federal -Aid Highway Program Stewardship Agreement
0501-0	Drainage Design and Cooperative Storm Drainage System
0501-1	Drainage Design
0501-2	Cooperative Storm Drainage System
0503-0	Landscaping with Native Plant Material
0507-0	ADA Accessibility for CDOT Projects
0507-1	Standards for Rest Areas & Pedestrian Underpasses & Overpasses
0508-1	Release Memo PD's Engineer's Stamp
0600-0	Equal Employment Opportunity and Non-Discrimination Policy
0600-1	Equal Employment Opportunity and Non-Discrimination Policy
0600-2	Placement of Employees with Disabilities
0600-6	Internal Discrimination Complaint Procedures
0602-0	Diversity Policy
0603-0	Sexual Harassment
0604-0	Non-Discrimination Federally Funded Program Policy
0605-0	PO Release Memo Comprehensive Accessibility for Persons with Disabilities Release Memo PD ADA Accessibility Requirements in CDOT Transportation
0605-1	Projects
0611-0	Disadvantaged Business Enterprise Program Review Procedures for A-95 Notices of Intent/ Applications from Outside
0700-1	Agencies
0701-0	Access Control Policy
0707-3	Resource Allocation
0715-1	Financial Monitoring of Projects
0717-1	Fiscal Notes New
0720-0	Colorado State Infrastructure Bank (SIB)
0720-1	Colorado State Infrastructure Bank (SIB)
0800-0	State Highway Safety Agency
0800-1	State Highway Safety Agency
0803-0	Naming Highways, Bridges or Other Components of the Highways
0805-0	Work Safety and Mobility Policy
0805-1	Work Zone Safety and Mobility
0902-0	Shoulder Policy
1000-0	Maintenance Work Requiring State Highway Commission Action
1001-1	Handling of Hazardous Materials and Hazardous Waste
1003-0	Maintenance Incentive Pilot Program
1004-0	Rock fall Management Policy
1005-0	Removal and Disposal of Wildlife Carcasses from State Highway & ROW
1005-1	Removal and Disposal of Wildlife Carcasses from State Highway & ROW
1006-0	Adopt-A-Highway Program

1006-1	Adopt-A-Highway Program
1006-2	Adopt-A-Highway Program Signing
1050-0	Division of Authority over State Highways within Cities, Cities & Counties, and Incorporated Towns
1050-1	Contracts with local Agencies for Maintenance of State Highways
1055-0	Snow Removal on State Highways
1055-2	Priorities and Level of Service for Snow and Ice Control
1200-0	General Personnel Administration
1200-1	Limitation on State Spending for Meals, Gifts, and Official Functions
1200-2	Outside Employment and Outside Business Interest
1200-3	Procedure or Administration of Furlough
1204-1	Leave Sharing
1204-2	General Leave
1205-1	Employee Organization Access
1206-1	PD Family Medical Leave Program
1207-0	Employee Innovations Policy New
1207-1	PD CDOT Cost Savings IDEA Incentive Program
1221-1	Interviewer Guidelines
1222-0	Driving Record and License Requirements
1222-1	Driving Record and License Requirements
1226-1	Employee Orientation
1230-0	Hours of Work and Overtime Compensation
1230-1	Flextime Agreements
1230-2	Compensation for Overtime, on-call, call-back, shift differential, and compensatory time
1230-4	Flex place
1240-1	Inclement Weather
1260-0	Organizational Learning Policy
1260-1	CDOT University College Deans
1262-1	Education and Professional Development Reimbursement Program
1265-1	Service Awards
1280-1	Transfer Policies and Procedures
1291-1	Retirement Plaques
1300-0	Disposition of Excess Land
1300-1	Property Inventory & Review
1300-2	Disposal of Excess Property
1303-0	
1303-1	Annexation of Department Property
1307-0	Property Leases
1400-0	Surface Treatment Program
1401-0	Product Evaluation and Experimental Features
1401-1	Product Evaluation and Experimental Features
1500-0	Guide Sign Policy



1501-0	Roadside Memorial Signing
1501-1	Roadside Memorial Signing
1503-0	Naming Highways, Bridges, or Components of Highway Procedure of Implementing Commission Resolutions Regarding the Naming of
1503-1	Highways, Bridges, or Components of the Highway System
1505-1	Traffic Safety in Highway and Street Work Zones
1510-1	Promptly Reopening Roadway to traffic
1511-0	DUI/DUID Fatal Crash Signage
1511-1	DUI/DUID Fatal Crash Signage
1600-2	Research and Development Project Proposal Selection and Control Process
1601-0	Interchange Approval Process
1601-1	Interchange Approval Process
1602-0	Bike & Pedestrian
1602-1	Bike & Pedestrian
1603-0	Managed Lanes Policy
1604-0	Public Notification
1606-0	Maintaining Linear Reference System
1606-1	Maintaining Linear Reference System
1607-0	Rail Corridor Preservation Policy
1612-0	State Highway Relocation Policy
1800-1	Reproduction Work Orders and Charging to Using Organization
1900-0	Sound wall Policy
1900-1	Implementation of Sound wall Policy
1901-0	CDOT Policy on Air Quality
1902-0	CDOT Environmental Compliance (Water Quality)
1903-0	Hazardous Materials Routing Procedure
1903-1	Hazardous Materials Routing Procedure