

**STATE HIGHWAY 119 TRAFFIC AND REVENUE STUDY
INTRA-AGENCY AGREEMENT**

THIS STATE HIGHWAY 119 TRAFFIC AND REVENUE STUDY INTRA-AGENCY AGREEMENT (the “Agreement”) is made this ___ day of _____, 2019 by and between the COLORADO DEPARTMENT OF TRANSPORTATION (“CDOT” or the “Department”), an executive agency of the State of Colorado (“State”), and the COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE, a government-owned business and a division of CDOT (“HPTE”). CDOT and HPTE 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. § 43-1-110 the executive director of CDOT is authorized to execute certain agreements on behalf of CDOT.

C. HPTE was created pursuant to C.R.S. § 43-4-806(2) and operates as a government-owned business within CDOT.

D. The business purpose of HPTE, as provided for in C.R.S. § 43-4-806(2)(c), is to pursue public-private partnerships and other innovative and efficient means of completing surface transportation infrastructure projects, which HPTE may agree to complete for CDOT under agreements entered into with the Department in accordance with C.R.S. § 43-4-806(6)(f).

E. Pursuant to C.R.S. § 43-4-806(6)(g) HPTE is empowered to prepare, or cause to be prepared, detailed plans, specifications, or estimates for any surface transportation infrastructure project within the state.

F. HPTE is further empowered, pursuant to C.R.S. § 43-4-806(6)(h) to make and enter into all other contracts and agreements, including intergovernmental agreements under C.R.S. § 29-1-103 that are necessary or incidental to the exercise of its powers and performance of its duties.

G. CDOT acknowledges that HPTE possesses expertise and legal powers unavailable to CDOT, which enable it to accelerate the development and delivery of critical surface transportation infrastructure projects.

H. Currently, CDOT has included State Highway 119 (“SH 119”) in its 10-year development plan in Region 4, with only partial funding secured to complete the more than \$509 million in improvements needed.

I. As part of CDOT's development plan in Region 4, CDOT desires for HPTE to implement a traffic and revenue study (the "T&R Study") to evaluate the feasibility of tolling SH 119 based on revenue generation and traffic demand management as a means to shrink the existing funding gap.

J. Previously, HPTE has selected and commissioned contractors to complete traffic and revenue studies for several of CDOT's corridors, including, but not limited to, the Interstate 70 Mountain Corridor Project, the Interstate I-25 "Gap" Project, and the C-470 Express Lanes Project.

K. Recognizing the usefulness of HPTE's expertise and legal powers unavailable to CDOT, as well as HPTE's experience in procuring and administering traffic and revenue studies, CDOT desires to provide funding to HPTE for the development of the SH 119 T&R Study.

L. The Parties further desire to enter into this Agreement to define their respective roles and responsibilities with respect to the T&R Study, specifically related to funding the T&R Study and to allocate the costs related thereto.

M. HPTE has prepared a scope of work describing the services it intends to provide during the T&R Study (the "T&R Study Services"), which is attached hereto and incorporated herein as **Exhibit A** (the "Scope of Work").

N. In order to further the efficient completion of surface transportation infrastructure projects necessary to CDOT's development of an integrated transportation system, CDOT desires that HPTE utilize its expertise to provide the T&R Study, in exchange for which CDOT agrees to compensate HPTE in the amounts set forth in the Scope of Work.

O. Both CDOT and HPTE 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. Scope of Work and Responsibilities.

a. HPTE shall provide the T&R Study Services set forth in Exhibit A.

b. The Parties may agree to modify the specific tasks set forth in the Scope of Work to be undertaken by HPTE during the term of this Agreement, provided that such modifications do not result in an increase or decrease in the overall maximum dollar CDOT contribution of the T&R Study Services to be provided under this Agreement. Any modifications to the Scope of Work resulting in an increase or decrease in the overall maximum dollar amount of the T&R Study Services shall not be undertaken unless agreed to in writing by the Parties in an amendment to this Agreement.

2. Payment Amount and Procedures.

a. The Parties agree that CDOT shall contribute payment of Two Hundred Thousand Dollars (\$200,000.00) to HPTE for the provision of the T&R Study Services in fiscal year 2020 under this Agreement (the “Maximum Payment Amount”).

b. The T&R Study Services to be provided, and the Maximum Payment Amount thereof, may be amended from time to time. T&R Study Services provided by HPTE shall be compensated as part of the Maximum Payment Amount provided for herein.

c. HPTE shall initiate payment requests by invoice to CDOT, in a form and manner approved by the Parties. CDOT shall pay each invoice within 45 days following CDOT’s receipt of that invoice.

3. Availability of Funds. Payment pursuant to this agreement is subject to and contingent upon the continuing availability of funds appropriated for the purposes hereof. If any of said funds become unavailable, as determined by CDOT, either Party may immediately terminate or seek to amend this Agreement.

4. Record Keeping Requirements. HPTE shall maintain a complete file of all books, records, papers, accounting records, and other documents pertaining to its execution of the Scope of Work under this Agreement, and shall make such materials available to CDOT upon request for a period of three years.

5. Right to Audit. HPTE shall permit CDOT, the State Auditor and/or their designee(s) to inspect all records of HPTE and audit all activities that are or have been undertaken pursuant to this Agreement.

6. Consideration; Exchange Transaction. The Parties acknowledge that the mutual promise and covenants contained herein, and other good and valuable consideration, are sufficient and adequate to support this Agreement. The Parties further acknowledge that, for accounting purposes, this Agreement represents an exchange transaction for CDOT’s purchase of specific services provided by HPTE at the market value of such services.

7. Dispute Resolution. Any dispute concerning the performance of this Agreement shall be referred to the CDOT Chief Engineer and the HPTE Director. Failing resolution by such officers, the dispute shall be submitted in writing by both parties to the State Controller, whose decision on the dispute shall be final.

8. Default; Termination. Any failure of either Party to perform in accordance with the terms of this Agreement shall constitute a breach of the Agreement. CDOT reserves the right to terminate this Agreement upon thirty (30) days written notice to HPTE of its nonperformance of the T&R Study Services; provided, however that HPTE shall not be in default under this Agreement if it has promptly commenced a cure of such nonperformance and is diligently pursuing the same. Any finding of nonperformance and failure to cure under this Section shall be referred for dispute resolution as provided for in Section 7 prior to any termination becoming effective. In

the event of termination, HPTE shall be required to reimburse CDOT for the value of the T&R Study Services not yet completed as of the date of termination.

9. Delegation. Except as identified or otherwise implied in the Scope of Work, the duties and obligations of HPTE with respect to the provision of the T&R Study Services under this Agreement shall not be assigned, delegated or subcontracted without the prior consent of CDOT. All subcontractors will be subject to the requirements of this Agreement.

10. Modification. 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.

11. Severability. 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.

12. Waiver. The waiver of any breach of a term, provision, or requirement of this Agreement shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement, or the same term, provision or requirement upon subsequent breach.

13. No Third Party Beneficiaries. This agreement shall inure to the benefit of and be binding only upon the Parties hereto and their respective successors and assigns. No third party beneficiary rights or benefits of any kind are expressly or impliedly provided herein. 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 CDOT and HPTE. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of CDOT and HPTE that any such person or entity, other than CDOT or HPTE, receiving services or benefits under this Agreement, shall be deemed an incidental beneficiary only.

14. Entire Understanding. 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 affect whatsoever. Except as otherwise provided in this Agreement, no subsequent renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved by the Parties.

15. Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671 *et seq.*, as applicable now or hereafter amended.

16. Adherence to Laws. At all times during the performance of this Agreement, HPTE shall strictly adhere to all applicable federal and state laws, rules, and regulations that have been or may hereafter be established, including, but not limited to state and federal laws respecting discrimination and unfair employment practices.

17. Legal Authority. The Parties each warrant that they possess the legal authority to enter into this Agreement and that each has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind CDOT or HPTE, as applicable, to its terms. The persons executing this Agreement on behalf of CDOT and HPTE each warrant that they have full authorization to execute this Agreement.

18. Notices. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of CDOT and HPTE. All communication, notices, and correspondence shall be addressed to the individuals identified below. Either Party may, from time to time, designate in writing new or substitute representatives.

If to CDOT:

Region 4
Regional Transportation Director
Colorado Department of Transportation
10601 W. 10th Street
Greeley, CO 80634

If to HPTE:

Nicholas J. Farber, Director
HPTE
Colorado Department of Transportation
2829 W. Howard Place, 5th Floor
Denver, CO 80204
Email: nicholas.farber@state.co.us

19. Controller's Approval. This agreement shall not be deemed valid until it has been approved by the State Controller or such assistant as he or she may designate.

[Signature page follows.]

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 HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE

By: _____
SHOSHANA LEW
EXECUTIVE DIRECTOR
DEPARTMENT OF TRANSPORTATION

By: _____
NICHOLAS J. FARBER
HPTE 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: _____

EXHIBIT A
CDOT Scope of Work for SH 119 Traffic and Revenue Study
(Attached)

DRAFT

EXHIBIT A

Level 2/Intermediate Grade Traffic and Revenue Studies (and associated data collection)

The purpose of the Level 2/Intermediate Grade study is to refine toll traffic forecasts and revenue estimates to strengthen and support the project financial plan feasibility activities and provide traffic operations support for the final design process. The traffic and revenue analysis at this level includes data collection to validate travel demand forecasts, desired travel patterns, and economic development assumptions. Level 2/Intermediate Grade may include conducting manned field traffic survey stations with origin and destination interviews and questionnaire surveys. Service orders completed under this work item will cover technical assistance and support activities related to survey design, development, administration, analysis, and application. Work activities may include:

- Utilize and reevaluate data and information gathered and processed in Level 1/Sketch-Level, enhancing traffic, revenue, and budget estimates to a higher degree of accuracy probability, hereinafter referred to as “forecasts.”
- Make maximum use of previous studies, reports, databases, and computer programs commissioned by city, county, state, and federal governments, COGs, MPOs, transportation authorities, public utilities, private enterprises, research organizations, and universities.
- Traverse and visually investigate all existing travel corridors that will either compete with or complement the tolled corridor.
- Conduct travel speed and travel time surveys and highway design, capacity, and condition evaluations.
- Develop an inventory/database of travel times and distances among the town, cities, and neighborhoods on direct or proximate roadways that will compete with the tolled corridor.
- Assemble development plans of cities and counties within the tolled corridor sphere of influence (as identified by HPTE in each individual work authorization) and analyze their impact on tolled corridor traffic demand.
- Research and develop a schedule of planned roadway improvements in the geographic region that will (i) enhance use of the tolled corridor or (ii) draw traffic from the tolled corridor. Develop a time schedule of funding by others of all such roadway improvements through construction.
- Perform demographic studies and traffic modeling to forecast tolled corridor usage and revenue earning potential by applying proven toll restraint factors.
- Analyze traffic passing through the tolled corridor’s sphere of influence (as identified by HPTE in each individual work authorization). Develop a diversion model tabulating traffic that will be attracted to the tolled corridor from existing travel paths outside of the tolled study corridor, thus identifying and demonstrating the traffic inducement power of the tolled corridor.
- Conduct, record, and analyze hourly machine or manually recorded traffic counts.
- Origin/destination data collection or surveys, as deemed necessary.
- Develop computer models and trip tables that will produce annual tolled corridor traffic growth trends for a minimum of 40 years (or longer term, to be determined by HPTE) by vehicle class. Provide forecasts of traffic volumes and revenue separately for two-axle vehicles and for vehicles with more than two axles, as warranted.

- Run computer studies under various toll rates and prepare a schedule of optimum tolls to fit the recommended toll collection plan. Prepare a recommended schedule of tolls by vehicle class. Provide an abstract of pros and cons and industry experience of computing and collecting tolls from commercial vehicle classes on the basis of weight.
- Integrate all research, trip table data, traffic modeling products, and other data collected into 40-year (or longer term, to be determined by HPTE) tables tabulating and forecasting traffic and revenue generated on the tolled corridor under various toll rate regimes, as warranted/recommended.
- Based upon the traffic volume forecasts produced by this study, provide recommendations of the number of tolled express lanes which should be initially constructed. Provide recommendations for opening year plaza configurations and toll rate schedules based on traffic growth forecasts over time. Provide a schedule for implementation of toll lane expansions and revisions to the toll rates.
- Develop all maps, tables, graphs, curves, illustrations, and text necessary to clearly report the results of the Level 2/Intermediate Grade Traffic and Revenue study.