

Resolution – HPTE #290

Approving the Fiscal Year 2019-20 Fee for Service Intra-Agency Agreement between HPTE and the Colorado Department of Transportation

WHEREAS, the General Assembly created the Colorado High Performance Transportation Enterprise (“HPTE”), pursuant to Section 43-4-806, C.R.S., as a government-owned business within the Colorado Department of Transportation (“CDOT”) to pursue innovative means of more efficiently financing important surface transportation projects that will improve the safety, capacity, and accessibility of the surface transportation system; and

WHEREAS, HPTE is empowered, pursuant to Section 43-4-806(6)(h), C.R.S., to make and enter into all other contracts and agreements that are necessary or incidental to the exercise of its powers and performance of its duties; and

WHEREAS, HPTE and CDOT previously entered into prior year Fee for Service Intra-Agency Agreements in which CDOT acknowledged that HPTE possesses expertise and legal powers unavailable to CDOT, and agreed to compensate HPTE for the fair market value of certain services to be provided to CDOT during those fiscal years; and

WHEREAS, for the upcoming fiscal year, HPTE has prepared a new scope of work describing the services CDOT has requested HPTE to provide CDOT during the 2019-20 fiscal year (the “Services”), which is attached as Exhibit A (the “Scope of Work”) to the Fiscal Year 2019-20 Fee for Service Intra-Agency Agreement (the “Agreement”); and

WHEREAS, the HPTE Board of Directors (the “Board”) has reviewed the Scope of Work and finds the compensation amounts set forth to constitute fair and reasonable compensation for the specific Services to be provided by HPTE to CDOT during the 2019-20 fiscal year as detailed in the Scope of Work; and

WHEREAS, the Board has also reviewed the Agreement and by this Resolution accepts and confirms the findings and statements contained in the recitals.

NOW THEREFORE BE IT RESOLVED, the Board hereby approves the Agreement in substantially the form presented and authorizes the HPTE Director to execute the Agreement with such changes therein and additions thereto, including revisions or modifications to the Scope of Work, as the HPTE Director may determine to be necessary or appropriate.

Signed as of March 20, 2019

Simon Logan
Secretary, HPTE Board



Date: March 20, 2019

To: High Performance Transportation Enterprise Board / Colorado Transportation Commission

From: Piper Darlington, HPTE Budget & Special Projects Manager; Nicholas Farber, HPTE Head of Innovative Project Delivery; Andrew Gomez, HPTE General Counsel

Subject: Approval of the Fiscal Year 2019-20 Scope of Work/Fee for Service Intra-Agency Agreement between HPTE and CDOT

Purpose:

To present the Transportation Commission (TC) with the Fiscal Year (FY) 2019-20 Fee for Service Intra-Agency Agreement (IAA), including the FY 2019-20 Scope of Work (SOW), between the High Performance Transportation Enterprise and the Colorado Department of Transportation (CDOT).

Requested Action:

HPTE staff is seeking TC approval of the resolution authorizing the IAA and proposed SOW between HPTE and CDOT for FY 2019-20.

Background:

In recognition of the specialized nature of the expertise and services HPTE provides to CDOT, CDOT pays HPTE through a fee for service IAA. This IAA documents the terms of the overall business relationship between CDOT and HPTE. It includes the scope of work CDOT wishes HPTE to provide in FY 2019-20, the value being compensated for key areas of work and the process by which HPTE charges CDOT for the fair market value of the services HPTE provides to CDOT. The value of services provided must correspond with the HPTE fee for service budget that the Transportation Commission (TC) will be asked to approve.

Overview of the Fiscal Year 2019-20 HPTE Scope of Work:

HPTE will, among other things (see Exhibit A under Attachment B), under the FY 2019-20 IAA and Scope of Work:

- Provide Central 70 Traffic Demand Management (TDM) services for residents, businesses and commuters in order to reduce travel demand along the I-70 corridor during construction of the Central 70 Project.
- Providing ongoing toll rate adjustment sensitivity analysis and recommendations in order to provide a more reliable travel time across all lanes in the corridor, general purpose and express lanes. Corridors in operation that will be actively monitored by HPTE to ensure that optimal congestion management is being achieved include: I-25 North U.S.36 to 120th and the I-70 Eastbound Mountain Express Lane
- Lead the development and implementation of tolling strategies on Express Lane corridors projects currently under construction and development including I-25 North 120th to E-470/Northwest Parkway (Segment III), C-470 and Central 70.

- Leading the development of Standard Operating Procedures (SOPs) and Traffic Incident Management Plans (TIMs) for all Express Lane corridors prior to opening. SOP's describes all activities and steps that will need to followed by Department staff in order to ensure efficient transit operations, compliance with all Federal requirements for safety and successful tolling operations.
- Engage with lenders to finance a portion of the I-25 North Johnstown to Ft. Collins project as well as manage the cash flows once financial close has been reached.
- Finalize a study of park and rides used by the Division of Transit and Rails bus service Bustang and partner with CDOT, the City and County of Denver, Broncos Stadium District and West Colfax Business District to explore the redevelopment of the Federal and Colfax intersection.

Key Policy Considerations:

- The fee for service model describes the business relationship between HPTE and CDOT and enables HPTE to recoup the fair market value of its services to CDOT in an exchange transaction.
- The fee for service TABOR enterprise model has been validated by the Colorado Attorney General's Office in a legal opinion discussing the hospital provider fee.
- Documents the necessary contractual obligations between CDOT and HPTE
- Approval of the IAA will reinforce the mutually beneficial partnership between CDOT and HPTE and fairly compensates HPTE for the value it provides to CDOT.

Commission Options/Decision Matrix

1. Review and approve the final scope of work and IAA for FY 2019-20. **Staff Recommendation.**
2. Review the scope of work and IAA, but with instructions to add scope of work for particular projects or programs. Staff would make the necessary revisions and return with a revised scope and increased budget supplement at the beginning of the next fiscal year.
3. Review the scope of work and IAA, but with instructions to eliminate scope of work for particular projects or programs. Staff would make the necessary revisions and return with a revised scope and revised budget at the beginning of the next fiscal year.

Next Steps

- HPTE budget staff will coordinate with the Office of Financial Management and Budget (OFMB) to ensure that the approved FY 2019-20 fee for service amount is distributed appropriately and available for use at the beginning of the fiscal year.
- HPTE program staff will provide a mid-year update to the CDOT and the Transportation Commission on the progress being made to complete the activities outlined in the approved FY 2019-20 SOW.

Attachments:

Attachment A: Resolution Approving the Fiscal Year 2019-20 Fee for Service Intra-Agency Agreement between CDOT and HPTE

Attachment B: Fiscal Year 2019-20 Fee for Service Intra-Agency Agreement

**FISCAL YEAR 2020
FEE FOR SERVICE
INTRA-AGENCY AGREEMENT**

THIS AGREEMENT (the “**Agreement**”) is made this ____ day of _____, 2019 by and between the STATE OF COLORADO for the use and benefit of the COLORADO DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the “**Department**” or “**CDOT**,” and the COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE, a government-owned business and a division of CDOT, hereinafter referred to as the “**Enterprise**” or “**HPTE**.” CDOT and HPTE are referred to herein individually each as a “**Party**” and collectively as the “**Parties**.”

RECITALS

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

B. Pursuant to § 43-1-110, C.R.S., the executive director of CDOT is authorized to execute certain agreements on behalf of CDOT.

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

D. Pursuant to § 43-4-806(6)(g), C.R.S., HPTE is empowered to enter into contracts or agreements with any public entity to facilitate a public-private partnership, including, but not limited to, an agreement in which the Enterprise, on behalf of CDOT, provides services in connection with a surface transportation infrastructure project.

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

F. The business purpose of HPTE, as provided for in § 43-4-806(2)(c), C.R.S. 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 § 43-4-806(6)(f), C.R.S.

G. On September 30, 2013, CDOT and HPTE entered into a Memorandum of Understanding, which set forth each Party’s operating roles and responsibilities as they relate to their respective missions and provided, in relevant part, that HPTE is to be reimbursed by CDOT for personal goods or services procured by HPTE.

H. 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; and

I. CDOT and HPTE previously entered into Fee for Service Intra-Agency Agreements, in Fiscal Years 2016, 2017, 2018, and 2019 (each an “Agreement” and collectively the “Agreements”) in which CDOT agreed to compensate HPTE for the fair market value of certain services to be provided to CDOT during those fiscal years.

J. The Parties agree and acknowledge that the Services to be provided by HPTE to CDOT (for purposes of this recital, as such term was defined in the FY 2017 Agreement and subsequently modified by mutual agreement of the Parties over the course of the fiscal year) are anticipated to be provided in their entirety prior to the conclusion of the fiscal year, with such satisfactory completion to be documented in the final progress report to be submitted no later than July 15, 2019.

K. HPTE has prepared a new scope of work describing the services CDOT has requested HPTE to provide CDOT during the 2020 fiscal year (the “**Services**”), which is attached hereto and incorporated herein as **Exhibit A** (the “**Scope of Work**”).

L. 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 and legal powers to provide the Services, in exchange for which CDOT agrees to compensate HPTE in the amounts set forth in the Scope of Work.

M. HPTE shall continue to be an enterprise for purposes of Section 20 of Article X of the Colorado Constitution (“**TABOR**”), so long as it receives less than ten percent (10%) of its total revenues in grants from all Colorado state and local governments combined.

N. Pursuant to §§ 24-77-102(7)(b) and 43-4-803(13)(b), C.R.S., grants do not include revenues or income derived from any authorized rate, fee, assessment, or other charge imposed by an enterprise for the provision of goods or services by such enterprise.

O. On March 11, 1997, in Opinion No. 97-01, the Colorado Attorney General also concluded, *inter alia*, that a designated enterprise may continue to qualify as an enterprise under TABOR, even though it receives a direct appropriation of monies, so long as the appropriation constitutes revenues resulting from the provision of goods or services pursuant to § 24-77-102(7)(b)(II), C.R.S.

P. Citing *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859 (Colo. 1995), the Colorado Attorney General further noted that the very concept of an enterprise under TABOR envisions an entity that is owned by a government institution, but is financially distinct from it, and also, that the financial affairs of the enterprise must be those of a self-supporting business-like activity that provides goods and services for a fee.

Q. On February 29, 2016, in Opinion 16-01, the Colorado Attorney General also concluded, *inter alia*, that an enterprise must charge a fee in exchange for a government service, and a fee for service arrangement – broadly construed – is nearly synonymous with enterprise status;

R. HPTE engaged Stifel, Nicolaus & Company, Incorporated to prepare an analysis of the market value of the services HPTE could provide to CDOT, based on a review of costs incurred by comparable agencies for similar services (the “**Stifel Report**”); and

S. The Stifel Report concluded that HPTE provides the necessary benefit to CDOT for CDOT to support compensation for the Services as contemplated in this Agreement;

T. Based on the findings of the Stifel Report and their own examinations of the benefit CDOT receives for HPTE's services, the Parties find and agree that the amounts CDOT intends to compensate HPTE for fiscal year 2020, as set forth in the Scope of Work, are reasonable and represent the fair market value of the specific Services to be provided.

U. CDOT and HPTE each hereby affirm that, consistent with Colorado law, moneys paid by CDOT to HPTE under this Agreement are not grants of money from CDOT to HPTE, but rather, payment for the Services to be provided by HPTE to CDOT as more particularly set forth in the Scope of Work.

V. 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 Services set forth in Exhibit A over a one year period, commencing on July 1, 2019, and ending on June 30, 2020, which comprises the 2020 fiscal year.

b. No later than January 15th and July 15th of the fiscal year, HPTE shall submit to CDOT a progress report. The progress report is to include a narrative summary of HPTE's activities during the previous six months, as well as a detailed report on the progress being made in the performance of the Services. The submissions of the semi-annual reports will be used by HPTE and CDOT to recognize revenue and expenses, respectively, and are to be tied to the specific tasks, and categories of work within each task, described in the Scope of Work.

c. 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 estimated value of the Services to be provided under this Agreement. Any such modifications shall be specifically identified, and their estimated values reconciled, in the progress report submitted by HPTE on July 15th following the close of the prior fiscal year. Any modifications to the Scope of Work resulting in an increase or decrease in the overall estimated value of the 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 on July 1, 2019, CDOT shall provide payment in the amount of Five Million Six Hundred Thousand Dollars (\$5,600,000) to HPTE for the provision of the Services in fiscal year 2020 under this Agreement (the "**Payment Amount**").

HPTE intends to record the full Payment Amount as deferred revenue, and recognize revenue on a pro-rata basis as Services are performed during the course of the fiscal year. HPTE will conduct a “true-up” of balances at both mid-year and at the end of the fiscal year, to coincide with the Services actually provided, in conjunction with the preparation and submittal of the progress reports described in Section 1.

b. The Services to be provided, and the Payment Amount therefor, are for the full fiscal year covered by this Agreement, as may be amended from time to time. Milestone deadlines contained in the Scope of Work are for informational and work progress tracking purposes only and are not binding on HPTE. Services provided by HPTE within the fiscal year shall be compensated as part of the Payment Amount provided for herein. No deductions shall be made for Services completed outside the timeframes set forth in the Scope of Work, provided such Services are completed within the current fiscal year.

c. Any Services not completed within the term of this Agreement shall be reflected in the progress report submitted by HPTE on July 15th following the close of the prior fiscal year. In the event the value of the Services actually completed during the fiscal year is less than was estimated in the Scope of Work, HPTE may be required to reimburse CDOT for the value of Services not completed. The value of the uncompleted portion of the Services, if any, shall reflect the fair market value of the same, and shall be mutually agreed upon and set forth in writing by the Parties in an amendment to this Agreement.

3. Term. The term of this Agreement shall be from July 1, 2019, through June 30, 2020, unless the Parties mutually agree in writing to an earlier termination.

4. Amendment; Renewal.

a. It is expressly contemplated that the Parties intend to extend this Agreement for additional one-year terms for services to be provided by HPTE to CDOT in future fiscal years. Such extensions shall be documented by formal written amendment, and shall include an updated scope of the services to be provided in the subsequent fiscal years.

b. HPTE agrees to provide CDOT a proposed draft scope of services for the following fiscal year no later than November 2019.

c. If the scope of services and payment amount for the following fiscal year are deemed acceptable by CDOT, the same shall be set forth in a written amendment executed and approved by the Parties.

d. If during its budget approval process for the following fiscal year, the Transportation Commission allocates funds for HPTE in the full amount included in the proposed scope of services submitted by HPTE, such proposed scope of services shall be deemed approved by CDOT, notwithstanding any failure of the Parties to execute a written amendment prior to the July 1 start of the subsequent fiscal year. The Parties shall thereafter execute a written amendment for such subsequent fiscal year, the terms and conditions of which shall not be inconsistent with the budget action taken by the Transportation Commission.

e. If the scope of services and payment amount to be provided by HPTE are approved by CDOT as provided for in this Section 4, CDOT agrees that it shall pay HPTE the agreed upon payment amount for the following fiscal year on July 1, which date represents the first day of the fiscal year in which the proposed services are anticipated to be provided.

f. If the Parties are unable to agree upon a scope of services and payment amount for the following fiscal year prior to June 30 of any year, this Agreement shall terminate and be of no further force and effect for the subsequent fiscal year.

5. 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.

6. 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.

7. 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 which are or have been undertaken pursuant to this agreement.

8. 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.

9. 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.

10. 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 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 9 prior to any termination becoming effective. In the event of termination, including voluntary termination by the Parties under Section 3, HPTE shall be required to reimburse CDOT for the value of the Services not yet completed as of the date of termination.

11. 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 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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:

Joshua Laipply, Chief Engineer
Colorado Department of Transportation
2829 W. Howard Place, 5th Floor
Denver, CO 80204
Email: joshua.laipply@state.co.us

If to HPTE:

HPTE Director
Colorado Department of Transportation
2829 W. Howard Place, 5th Floor
Denver, CO 80204

21. 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: _____
DAVID I. SPECTOR
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.

<p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p>Date: _____</p>
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EXHIBIT A
HPTE Scope of Work for FY 2020

(Attached)

Colorado High Performance Transportation Enterprise Scope of Work

Fiscal Year 2019-20

1. Organizational Overview

In order to accelerate the development and delivery of critical transportation infrastructure projects through the use of innovative financing, the Colorado Department of Transportation (CDOT) utilizes the expertise and legal power of the High Performance Transportation Enterprise (HPTE). In 2009, the HPTE was created under 43-4-806 C.R.S., known as FASTER, in order to accelerate critical surface transportation infrastructure projects throughout the state. To achieve this objective, the HPTE was given the power to enter into public-private partnerships, impose user fees on surface transportation projects, issue revenue bonds and enter into private commercial loan agreements. HPTE is also the Colorado tolling entity (the successor to the Colorado Tolling Enterprise), managing Colorado's network of tolled Express Lanes. By law, HPTE is required to "aggressively" pursue innovative finance solutions to improving Colorado's surface transportation infrastructure. Due to Taxpayer Bill of Rights (TABOR) restrictions, CDOT cannot exercise these powers. Although a division of CDOT, HPTE is an independent, government owned business and TABOR enterprise, which exempts it from certain TABOR restrictions. The powers given to the HPTE through statute provide a direct benefit to CDOT and the traveling public by accelerating surface transportation infrastructure projects that ordinarily would not be undertaken due to a constrained fiscal environment. By contracting with HPTE to perform certain services, CDOT is able to deliver projects in key corridors around the state that when completed, will increase transportation options, may promote carpooling, expand capacity, and assist with traffic demand management.

2. Fiscal Year Services to be Provided

For the 2019-20 fiscal year, CDOT has tasked HPTE to oversee work in five core areas: 1) serve as the successor to the Colorado Tolling Enterprise, managing the network of corridors that contain both express lanes and general purpose lanes both in operation and under construction 2) use its statutory authority to manage current public private partnerships (P3) and explore other future surface transportation related P3 opportunities; 3) serve as think tank for CDOT by exploring the possibility of using innovative finance to accelerate other needed projects and deliver maximum project scope 4) manage public outreach and communications work for all corridors that have express lanes and general purpose lanes; and 5) represent the Department¹ at industry events such as conferences in order to promote the Colorado P3 market and attract interest and investment in future surface transportation projects that will benefit the statewide transportation system.

2.1. Express Lane Corridors: Ongoing Management and Implementation

CDOT has tasked HPTE with providing congestion management strategies in critical corridors in the Denver metro area. HPTE will accomplish congestion management for CDOT through the implementation and ongoing management of Managed Lane corridors, which for the purposes of this Scope of Work (SOW) are defined as sections of the interstate and state highway system that have both tolled Express Lanes and General Purpose (GP) lanes operating side by side. HPTE's congestion management strategies for CDOT are:

- Providing ongoing toll rate adjustment sensitivity analysis and recommendations in order to provide a more reliable travel time across all lanes in the corridor, general purpose and express lanes. Corridors in operation that will be actively monitored by HPTE to ensure that optimal congestion management is being achieved include: I-25 North U.S.36 to 120th and the I-70 Eastbound Mountain Express Lane.

¹The Department is defined as all divisions and entities under the Department of Transportation, including the Enterprises.

- For Express Lanes Corridors opening in the 2019-20 Fiscal Year (including C470: I-25 to Wadsworth and I-25 North 120th to E-470/Northwest Parkway (Segment III), HPTE's Tolling Services Specialist will work with external tolling operations experts and financial advisors to develop a toll rate setting strategy that achieves the goal of providing a reliable travel time across all lanes on the corridor, ensuring that congestion management is being achieved. Analysis and recommendations will be provided to CDOT and the HPTE Board in order to set toll rates to achieve reliable travel time and congestion management.
- Leading the development of Standard Operating Procedures (SOPs) and Traffic Incident Management Plans (TIMs) for all Managed Lane corridors prior to tolling commencement. SOPs describes all activities and steps that will need to followed by Department staff in order to ensure efficient transit operations compliance with all Federal requirements for safety and successful tolling operations. TIMs establishes the processes to detect, respond to and clear all traffic incidents with the goal of restoring traffic flow throughout the corridor. By HPTE establishing SOPs and TIMs, this will assist CDOT with congestion and traffic management for corridors that have GP and Express Lanes. An example of an incident that will be included in a TIM, is how an accident in the general purpose lane would require traffic be diverted into the tolled Express Lanes in order to restore traffic flow in the corridor and ensure safety of incident response teams.
- Exploring options for delivering general maintenance and snow and ice control services on the C-470 I-25 to Wadsworth corridor. With additional lane miles being added to C-470, CDOT has identified that it does not have the resources to maintain the additional lane miles. CDOT's Division of Highway Maintenance (DHM) has requested that HPTE to solicit the private market for ideas, explore the feasibility of options for general maintenance and snow and ice removal, and implement a solution.

These activities will require close and ongoing coordination with the Federal Highway Administration (FHWA), E470 Public Highway Authority, and CDOT regional staff including traffic safety, incident management and maintenance. To accomplish these tasks, HPTE will provide in-house expertise to CDOT through its Tolling Services Specialist and Major Projects Manager as well outside industry expertise for operation related issues as needed.

2.2 Public-Private Partnership: Oversight and Contract Management

As P3 authority and contracting entity within the Department, HPTE will continue to oversee and manage the concession agreements for U.S.36 and the Central 70 Project on behalf of CDOT. Key tasks assigned to HPTE from CDOT for U.S.36 will include:

- Working with Region 1 maintenance staff and the CDOT budget team to develop the annual budget request for routine maintenance and snow and ice removal costs for the CDOT owned GP lanes on corridor by September 13, 2019 as required by the U.S.36 CDOT/HPTE Intra-Agency Agreement (IAA).
- Providing in house expertise through its Major Projects Manager who will work closely with Plenary Roads Denver (PRD) and CDOT Region 1 to develop a strategic plan for complying with CDOT's early works requirements under the concession agreement. These requirements are the responsibility of CDOT to ensure that its assets were of a certain condition when leased to Plenary Roads Denver.
- Supporting CDOT with any operational, service, or contractual issues or questions that arise in or relate to the General Purpose lanes on the corridor.

¹The Department is defined as all divisions and entities under the Department of Transportation, including the Enterprises.

Key tasks assigned to HPTE from CDOT on the Central 70 Project will include:

- Providing transportation demand management (TDM) services for residents, businesses, and commuters to reduce travel and relieve congestion along the corridor during construction.
- Providing in-house expertise to the CDOT Central 70 Project Manager through its Tolling Services Specialist and Major Projects Manager as well outside industry expertise for contractual questions related to construction and other issues as needed.
- To comply with the training requirement from the U.S.36 Legislative Audit and to promote CDOT and HPTE projects to the infrastructure industry. HPTE will travel to conferences, trainings, and project related meetings. Please see Exhibit A for a full list of out of state travel that HPTE is proposing starting on July 1, 2019.

2.3 Innovative Financing

On Managed Lane corridor projects where HPTE has or will secure financing to accelerate project delivery; CDOT has tasked HPTE to serve as its financial manager for projects where HPTE debt has been issued. Key tasks assigned to HPTE include:

- On behalf of CDOT, HPTE will also continue to address findings from the U.S.36 Legislative Audit for better document control on large projects by providing specialized document management services through Aconex.
- HPTE will oversee the cash flows for the C-470 project, including processing the remaining disbursements for the TIFIA Loan which will continue throughout most of the 2019-20 fiscal year. The process for disbursement includes collecting all necessary documentation from CDOT Project staff and providing it to the FHWA Division Office. By securing financing on behalf of the Department, HPTE has provided a direct benefit to CDOT by accelerating the completion and delivery of the C-470 Project. In exchange for accelerating project delivery, CDOT is compensating HPTE for ensuring proper oversight of the funds and complying with all ongoing reporting requirements to lenders and bondholders.
- HPTE will oversee cash flows for the I-25 North 120th to E470/Northwest Parkway (Segment III) project. By securing financing on behalf of the Department, HPTE has provided a direct benefit to CDOT by accelerating the completion and delivery of the I-25 North Segment III project. In exchange for accelerating project delivery, CDOT is compensating HPTE for ensuring proper oversight of the funds and complying with all ongoing reporting requirements to lenders.
- CDOT has requested that project financing for a portion of the I-25 North Johnstown to Ft. Collins be secured in fiscal year 2019-20 to assist CDOT with meeting critical project timelines. At CDOT's request, HPTE will engage with lenders to finance a portion of the I-25 North Johnstown to Ft. Collins project as well as manage the project cash flows once financial close has been reached.

On active construction projects with financing include C-470 and I-25 North Segment III, HPTE's Major Projects Manager will continue to monitor construction progress to ensure schedules communicated to lenders remain accurate. Providing project expertise and advice is critical to CDOT as they have financial responsibilities under existing HPTE loan agreements and Intra-Agency Agreements between CDOT and HPTE to pay for any costs related to the delay in the opening of the corridor and/or toll commencement.

In order to reduce the risk that CDOT will have to incur these costs, HPTE will provide ongoing expertise and advice to CDOT in the following areas: material change orders (including changes to the project

¹The Department is defined as all divisions and entities under the Department of Transportation, including the Enterprises.

schedule), changes affecting lenders and project cash flow, changes that have the potential to affect debt repayment or are above 10 percent of the total cost of the project.

On all large, innovatively financed projects with the Department, CDOT has provided credit support to HPTe. Failure to complete required processes or reporting on innovative financing projects could jeopardize the Department's ability to complete future projects or future borrowings. CDOT has given responsibility to HPTe for completing any additional reporting and monitoring as required by existing loan agreements and Intra-Agency Agreements between CDOT and HPTe so the Department stays in compliance with all laws and contracts.

2.4. Project Development

HPTe will continue to serve as a think-tank within the Department; exploring big picture ideas for innovative projects brought forth by CDOT. For FY 2019-20 HPTe will provide strategic advisory work in the following key areas per CDOT's request:

- Finalizing phase 1 of the CDOT park and ride study with the Division of Transit and Rail (DTR), the recommendations of which will help Bustang users better access parking when using the CDOT transit service. HPTe will also begin phase 2 of this project, which will help CDOT consider the concept of using park and rides as mobility hubs.
- Partnering with CDOT, the City and County of Denver, Broncos Stadium District and West Colfax Business District to explore the redevelopment of the Federal and Colfax intersection. Specifically, CDOT has requested HPTe's support in exploring how it could receive fair market value for the land and while transfer its asset ownership responsibility through a partnership with a private entity.
- CDOT is currently drafting Statewide Managed Lanes Guidelines as a result of a Transportation Commission (TC) policy directive. As the tolling entity and Express Lanes experts within the Department, CDOT has tasked HPTe with drafting the Concept of Operations (ConOps) plan for all current and future Managed Lane corridors which utilize tolled Express Lanes for congestion management. A ConOps plan will outline how a Managed Lane Corridor would be designed (e.g.: location and frequency ingress and egress points) to ensure that the tolled Express Lane and General Purpose lane function together so the corridor operates safely and that optimal congestion management can be achieved.

HPTe will also continue to provide assistance to CDOT in other areas as needed. Key areas include: The RoadX program through its current IAA, assessing financial feasibility of rapid speed technologies and any other necessary corridor development work and/or general advising on P3 or innovative finance projects.

2.5 Public Outreach and Communications

On both U.S.36 and Central 70, HPTe will coordinate with CDOT Region 1 staff and CDOT's Communications Office on all stakeholder outreach efforts. To ensure comprehensive public outreach and education for corridors with Express Lanes and general purpose lanes, Public-Private Partnerships (P3) projects including U.S.36 and Central 70, and to comply with the U.S.36 Legislative Audit. CDOT tasks HPTe with the following key areas of work:

- Conduct telephone town halls, public meetings and stakeholder outreach as required by the Transparency Policy
- Conduct surveys to gauge public sentiment and attitude towards corridors with Managed Lanes, or future projects that may include Managed Lanes.

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- Maintain current and updated information on project websites regarding project status and public participation activities and events.
- High Occupancy Vehicle (HOV) and motorcycle policies fall under the purview of the CDOT TC. HPTE will coordinate with the CDOT Public Information Office on updating transponder and HOV policy, motorcycle transponder policy, and HOV carpooling technology, so that CDOT can accomplish its policy goals set by the TC.
- Conduct ongoing public and legislative outreach for corridors with express lanes and general purpose lanes
- Conduct training for internal staff and for local stakeholders

3. Terms and Conditions

3.1 Scope of Work Duration

This scope of work outlines services that will be provided by HPTE over a one-year period that will commence on July 1, 2019 and end on June 30, 2020.

3.2 Payment for Services

In exchange for completing the tasks outlined under this scope of work, CDOT will compensate HPTE with an upfront payment for its services. In order to receive pre-payment for services, HPTE will submit an invoice to CDOT at the beginning of each fiscal year on July 1st.

3.3 Progress Reporting

On the 15th of January and July of each fiscal year, HPTE will submit a progress report that includes a summary of its activities for the previous six months as well as a status report on the progress being made to accomplish the tasks outlined in this scope of work. The submission of the semi-annual reports will be used by HPTE and CDOT to recognize revenue and expenses, respectively.

4. Estimate of Hours Dedicated to Fiscal Year 2019-20 Scope of Work Activities:

HPTE Staff Position	Hours per Week	Total Annual Hours
HPTE Director	10	480
Head of Innovative Project Delivery	30	1,440
Major Projects Manager	25	1,200
Tolling Operations Manager	15	720
Budget & Special Projects Manager	20	960
Communications Specialist	5	240
Program Assistant	10	480
Administrative Assistant	5	240
Total	120	5,760

Total Fee for FY 2019-20 of Scope of Work activities: \$5,600,000

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FY 20 HPTE OOST PLAN

Conference	Travel Dates	Location	Person	Source	Cost Estimate	Actual Cost
ARTBA P3 Conference (Annual)	7/17-7/19	DC	Nick	537	\$2,000.00	
IBTTA Comms & Change Mgmt Summit	7/28-7/30	Seattle, WA	Megan	537	\$1,500.00	
US Infrastructure Law Forum	9/15-9/19	Marina Del Ray, CA	Nick or Piper	537	\$1,500.00	
NGA P3 Training	HPTE was asked to present in 2017			537	\$0.00	
AMOTIA Annual Conference	October 2019 (expected)	Sarasota FL	Tony	537	\$1,750.00	
P3 Awards & Conference	10/8-10/9	NY	Board Member	537	\$1,500.00	
P3 Hub West	11/13-11/14	Santa Monica	Tony	537	\$1,000.00	
NCP3P Annual Conference	November 2019 (expected)	Toronto	Nick or Piper	537	\$1,750.00	
TRB Annual Meeting	January 2020		Nick	537	\$1,750.00	
P3C Conference & Expo	March 2020 (expected)	Dallas	Nick or Piper	537	\$1,750.00	
JPM Trans & Utility Investor Forum		NY	Nick or Piper	537	\$0.00	
IBTTA Annual Technology Summit	April 2020 (expected)	Orlando	Kelly	537	\$1,500.00	
Inframation US P3 Forum	June 2020 (expected)	NY	Piper	537	\$2,000.00	
Total (estimated)					\$18,000.00	\$0.00
Past travel: particular FY19 travel will depend on HPTE plan and program, but will not exceed total budget						
Not offered every year						
FY20 APPROVED TRAVEL BUDGET	\$18,000.00					
Budget Balance	\$18,000.00					