



Date: May 19, 2021

To: High-Performance Transportation Enterprise Board / Colorado Transportation Commission

From: Nick Farber, Director, HPTE

Subject: Burnham Yard CDOT / HPTE Intra-Agency Agreement

Purpose

The purpose of this memo is to describe the CDOT/HPTE Intra-Agency Agreement (IAA) in regards to the acquisition of the Union Pacific Railroad (UPRR) Burnham Yard Property.

Action

The Transportation Commission (TC) and the HPTE Board is asked to adopt a resolution that supports the staff recommendation to approve the IAA.

Background:

For close to 150 years, Burnham Yard was a central agent of economic activity for the Denver Metro region. The land was acquired in 1871, five years before Colorado became a state. Throughout the latter part of the 19th century and for most of the 20th century, the Yard was a driving force of economic activity, vitality, and commerce. It served as a repair, refueling, maintenance, manufacturing, and storage facility for Denver and Rio Grande Western Railroad (DRG&W), Southern Pacific (SP), and then UPRR activities over the past century and a half and employed hundreds of individuals in the Denver Metro area. With the turn of the 21st century, Burnham Yard's importance as an economic engine became less pronounced and other modes of freight and individual transportation rose to primacy.

Burnham Yard is located in central Denver between four of Denver's main road arteries: I-25, Colfax Ave., Speer Blvd., and 6th Ave, and is less than a mile from Mile High Stadium, the Denver Art Museum, and Denver's Central Business District. It is a centrally located area that is currently not being utilized by UPRR. The site sits across from the Denver Housing Authority's Mariposa District redevelopment and the Santa Fe Arts District to the east, with RTD's 10th & Osage light rail station located near the center of the site. The banana-shaped property is approximately 1.05 miles long and extends from 13th Avenue at its northern extent to 4th Avenue at the south. Reaching its maximum width of approximately 0.20 miles between 8th and 9th Avenues, the site is bounded by the RTD's central light rail line and UPRR historical right-of-way to the east, and a mixture of commercial and industrial properties to the west.

UPRR decommissioned Burnham Yard in 2016, leaving it mostly unused for the past four years. Since late 2019, the HPTE has been working with the UPRR towards the purchase of the Burnham Yard property, which culminated in an Intra-Agency Agreement with CDOT in September 2019 that requested qualified developers to submit proposals that would add value to UPRR's RFQ. Despite the developers' best efforts and UPRR's willingness to negotiate, CDOT and HPTE found little value added based on the proposals received. As a result, UPRR and HPTE agreed to negotiate in good faith with one another for a fee simple transaction with no third party developer.

Originally, CDOT and HPTE envisioned using \$50 million of SB 267 highway funds to acquire the property, but when CDOT revenue declined in March and early April of 2020 because of the COVID-19 pandemic, HPTE and the UPRR decided to pause the procurement of the project. In June 2020, HPTE approached the UPRR with a plan to acquire the property with a FRA Consolidated Rail Infrastructure and Safety Improvements (CRISI) grant and a USDOT Railroad Rehabilitation and Improvement Financing (RRIF) loan.



In September HPTE found out that it was unsuccessful in obtaining the CRISI grant, and notified the UPRR that it would pursue a 100 percent RRIF loan. Over the next two months, HPTE worked closely with the RRIF loan program, which ultimately came to the conclusion that the property acquisition was not eligible for RRIF loan financing in late December.

To acquire the property now, HPTE will borrow \$40 million (because of the potential for a higher set aside for environmental and land use-related costs) through a revenue note/bridge loan. CDOT will contribute \$7.5 million from SB 267 transit funds and the Office of Economic Development and International Trade (OEDIT) will also contribute \$7.5 million. HPTE will set aside approximately \$5 million to cover environmental, land use planning, and/or other costs to be spent during the next three to five years on improvements to the property, which would be expected to increase property value and facilitate a disposition to a developer. CDOT and HPTE anticipate retaining around 17 acres for future transportation use and will be working with the City and County of Denver and stakeholders on a two to three-year study to determine specific mobility needs and a purpose and need for other potential projects.

Overview of the IAA

IAAs between CDOT and HPTE document the substantive terms of how CDOT and HPTE work together and allocate rights and responsibilities on shared projects. Under the Burnham Yard IAA, HPTE is responsible for acquiring the Burnham Yard Property (Property), which includes negotiating the Purchase and Sale Agreement with the UPRR, reviewing title and survey, and undertaking short-term financing to cover the remainder of the purchase price. In exchange for this, CDOT will reimburse HPTE for the financing related costs. At closing, CDOT will enter into a 30-year lease with HPTE for the entire sixty acres. The lease will provide for:

- Prior to closing CDOT will pre-pay all lease payments in the amount of \$15 million¹. HPTE will use \$10 million towards the land acquisition and retain \$5 million for planning, environmental, and other expenses towards the property.
- Once CDOT has determined the boundaries for the transportation related parcels, it will notify HPTE, and HPTE will start the process to dispose of the remnant or non-transportation related parcels.
- Once all remnant parcels are disposed of, the lease will terminate, and CDOT will no longer be obligated to make payments under the lease. The lease will not terminate while HPTE's bank loan is outstanding.
- HPTE will transfer the transportation related parcels to CDOT in fee simple. The pre-paid lease payment (\$15 million) will constitute fair market value of the parcels being conveyed from HPTE to CDOT, subject to certain adjustments or top-off commitments at the time of sale as described in the IAA.

While the lessee of the Property, CDOT agrees to:

- Undertake the necessary environmental studies to determine the location and quantity of the transportation related parcels.
- Coordinate with RTD regarding the preservation of a part of the transportation related parcels for transit use.
- Coordinate with other state agencies, such as OEDIT, the Department of Local Affairs (DOLA),

¹ The \$15 million is the \$7.5M from SB 267 Year 1 Transit Funds, and the \$7.5M OEDIT contribution.

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and other state agencies
risk on non-transportation related parcels.

regarding the mitigation of CDOT's

While the lessor of the Property, HPTE agrees to use the \$5 million towards:

- Negotiating and enter into a Memorandum of Understanding with the City and County of Denver for the development of a Small Area Plan by the Denver Department of Community Planning and Development (CPD), which will include engagement with community members, stakeholders, the Partnering Agencies, and development of an Infrastructure Master Plan for the Burnham Yard, in accordance with the standard CPD Large Development Review process.
- Engaging an owner's representative with planning expertise to represent CDOT and HPTE's interests during CPD's planning process.
- Continuously evaluating the cost implications of planning decisions on the impacts of the value of the non-transportation related parcels.
- Coordinating with CDOT to possibly advance conceptual land use and infrastructure planning either through the use of a consultant or through a possible developer, and engage with the Colorado Department of Public Health and Environment regarding environmental remediation of the Property through enrollment in the Voluntary Cleanup Program (VCUP).
- Zoning and other possible entitlements.
- Engaging the Denver Urban Renewal Authority (DURA) on blight studies and/or the establishment of an urban renewal area, in order to make available tax increment financing revenues to support the cost of public infrastructure and environmental remediation for development of the Remnant Property.
- Any other action deemed necessary or appropriate by HPTE and CDOT in order to either increase the disposition value of the Remnant Property and/or to further other important policy goals of CDOT and the partnering agencies, i.e. OEDIT, DOLA, and/or DPA.

Determination of the Transportation Related Parcels

Once HPTE closes on the Property, CDOT will have 3-1/2 years to determine the final boundaries for the transportation related parcels. CDOT acknowledges that a delay in the determination of the transportation related parcels will affect the HPTE's disposition the non-transportation related parcels or the refinancing of the financing agreement. If it takes CDOT five years or longer to determine the transportation related parcels, then CDOT is obligated to make lease payments to the HPTE, and HPTE will be entitled to request a backup loan from CDOT to cover increases in financing related costs.

CDOT has indicated to the HPTE that the transportation related parcels will likely be between 15 and 17 acres. If CDOT determines that they need additional acreage for the transportation related parcels then the proceeds available to HPTE to repay its bank loan may be insufficient. Further, if CDOT or one

of the partnering agencies desire to impose restrictions on the non-transportation related parcels, then, as well, proceeds from the non-transportation related parcels might be insufficient to repay HPTE's bank loan obligation. If either of these situations take place, CDOT is required to pay the difference between the actual disposition proceeds and the HPTE's bank loan obligations through a top-off payment.

Insufficient Disposition Proceeds - Top Off Payments

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There are three different scenarios where CDOT could be required to contribute a top-off payment to the HPTE for the difference in the actual sale amount and the HPTE bank loan obligation. They are:

1. During the process, both HPTE and CDOT have relied on their own separate appraisals of the Property's value. If at the sale these assumptions prove incorrect and the value of the Property is less than the HPTE's bank loan obligation, then CDOT must contribute a top-off payment to the HPTE for the difference in the actual disposition amount and the HPTE's bank loan obligation.
2. If CDOT or other partnering agency desires to impose restrictions on any of the non-transportation related parcels for other uses, other than its highest and best use, the value of the Property may be less than HPTE's bank loan obligation requiring CDOT to contribute a top-off payment to the HPTE for the difference in the actual disposition amount and the HPTE's bank loan obligation.
3. In discussions with HPTE, CDOT has indicated they expect to retain between 15 and 17 acres of the Property for the transportation related parcels. If CDOT's planning process determines they need more retained property, CDOT will be required to contribute a top-off payment to the HPTE for the difference in the actual disposition amount and the HPTE's bank loan obligation. If CDOT determines they need 19 or more acres, at the time CDOT notifies HPTE of this, CDOT must first allocate the funds for the top off payment, which has to be based on a commercially reasonable estimate of the sale proceeds available from the remaining non-transportation related parcels.

CDOT Backup Loan Obligation

If HPTE determines that it has insufficient revenue either through disposition proceeds or refinancing proceeds to pay its bank loan obligations in any fiscal year, the IAA will allow HPTE to request a backup loan from the Transportation Commission. As a part of its annual allocation process, CDOT will present the loan request to the Transportation Commission, which will, in its sole discretion, either approve or deny the loan request.

Options / Decision Matrix

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

Attachment

Attachment A: CDOT HPTE Burnham Yard Intra-Agency Agreement.

Attachment B: Resolution #357

**BURNHAM YARD ACQUISITION
INTRA-AGENCY AGREEMENT**

THIS INTRA-AGENCY AGREEMENT (this “Agreement”) is made this ___ day of May, 2021 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.” Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the hereinafter defined Bank Loan Agreements.

RECITALS

A. CDOT is an agency of the State authorized pursuant to Colorado Revised Statutes (“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. The Transportation Commission of Colorado (the “Transportation Commission”) is the budgetary and policy making body for CDOT with all powers and duties granted by the Colorado General Assembly pursuant to C.R.S. § 43-1-106.

C. HPTE was created pursuant to C.R.S. § 43-4-806(1) as a government-owned business within CDOT and a division of CDOT to aggressively pursue innovative means of completing important surface transportation projects that will improve the safety, capacity, and accessibility of the surface transportation system, can feasibly be commenced in a reasonable amount of time, and will allow more efficient movement of people, goods, and information throughout Colorado.

D. C.R.S. § 43-4-806(1) further provides that the general assembly’s intent in creating HPTE was that HPTE’s powers be broadly construed to allow HPTE sufficient flexibility, consistent with the requirements of the Colorado constitution, to pursue any available means of financing such surface transportation infrastructure projects that will allow the efficient completion of such projects.

E. As a means of pursuing its statutory charge, HPTE is specifically authorized pursuant to C.R.S. § 43-4-806(6) to acquire any and all rights-of-way, lands, and buildings necessary or convenient for its authorized purposes; to enter into agreements with CDOT pursuant to which HPTE provides, on behalf of CDOT, services or property in connection with a surface transportation project; and to sell, lease, lease with an option to purchase, or dispose of real or personal property without restriction or limitation.

F. In July 2019, the Union Pacific Railroad (“UPRR”) released a Request for Qualifications (“RFQ”) for the Burnham Yard Redevelopment, the purpose of which was to identify qualified teams and solicit interest in an approximately 60-acre parcel of land beginning at 13th Avenue at its northernmost point to roughly 4th Avenue at its southernmost point (referred to

herein as the “Burnham Yard” or the “Property”), in the City and County of Denver, Colorado (“Denver”).

G. At the same time, CDOT was conducting the I-25 Central Planning and Environmental Linkage Study (the “PEL”), which sought to identify causes of congestion and consider options to improve safety, travel time reliability, decrease congestion, and provide improved cross-connectivity on Interstate 25 between Santa Fe Drive and 20th Street in Denver, and which included alternatives contemplating the realignment of the Consolidated Mainline (the “CML”) freight tracks from their current alignment adjacent to I-25 to a new alignment through the Burnham Yard.

H. On August 7, 2019, CDOT submitted a proposal to the UPRR to purchase the Burnham Yard, which proposal was subsequently accepted by the UPRR.

I. Following its determination to purchase the Burnham Yard, CDOT revenues declined as a result of the COVID-19 pandemic and, as a result, the SB 267 highway funds initially identified by CDOT for the purchase were no longer available.

J. Subsequently, CDOT requested that HPTE pursue alternative means to acquire the Burnham Yard from UPRR on CDOT’s behalf, including seeking out opportunities for innovative and efficient means of financing the purchase that are otherwise unavailable to CDOT.

K. With the completion of the PEL, CDOT now plans to initiate an Environmental Impact Study for the I-25 Central corridor, which will study the right-of-way needed for potential improvements to I-25, enhanced mobility options through expanded transit, and potential Front Range Passenger Rail, including identification of the right-of-way needed for surface transportation purposes on the Burnham Yard.

L. The Southwest Chief & Front Range Passenger Rail Commission, which is charged with facilitating the development of passenger rail that serves Front Range communities from Pueblo to Fort Collins (“Front Range Passenger Rail”), in partnership with CDOT, is also conducting an alternatives analysis, which includes alternatives that would utilize an alignment for Front Range Passenger Rail through the Burnham Yard.

M. Each of the proposed potential projects, including improvements to I-25, relocation of the CML, implementation of Front Range Passenger Rail, future expansion of the Regional Transportation District (“RTD”) light rail lines that also traverse the Burnham Yard, and other related mobility and transit improvements (together, the “Transportation Projects”) are expected to benefit CDOT and the State by, among other things, improving the safety, capacity, and accessibility of the surface transportation system and allowing more efficient movement of people and goods throughout Colorado.

N. Pursuant to C.R.S. § 43-4-806(2)(c)(III), HPTE may contract with any governmental or nongovernmental source of funding for loans to be used to support HPTE’s functions.

O. HPTE intends to enter into two loan agreements (as amended, modified, supplemented or restated, collectively, the “Bank Loan Agreements”) with Bank of America, N.A. (“BANA”) and JP Morgan Chase Bank, N.A. (“JP Morgan” and, with BANA, collectively, the “Lenders”) each dated as of May 25, 2021, pursuant to which the Lenders loaned to HPTE a total of [\$ •] (the “Purchase Loans”), the proceeds of which HPTE will use to fund a portion of the cost of the Acquisition (as hereinafter defined).

P. CDOT intends to concurrently enter into a lease with HPTE, under which CDOT will have access to the Burnham Yard for a period of 30 years, in exchange for lease payments to be made by CDOT to HPTE, the first five years of which will be pre-paid by CDOT, on a non-refundable basis, to HPTE (such five period, the “Hold Period”).

Q. CDOT’s pre-paid lease payments, totaling \$10 million, will be used by HPTE to fund a portion of the cost of the Acquisition.

R. CDOT will additionally pre-fund \$5 million to pay for additional expenditures to be made by HPTE during the Hold Period to undertake its responsibilities under Section II.2 of this Agreement (the “Additional Property Expenditures”).

S. Under the Bank Loan Agreements, and the Indenture of Trust (the “Indenture”) established therewith,, HPTE has agreed to pledge to the Trustee, for the benefit of the Lenders, for payment of the principal of and interest on and any other amounts due and owing to the Lenders from time to time under the Bank Loan Agreements, all amounts received by HPTE, except the amount received for Additional Property Expenditures, under the Lease (the “Lease Payments”) and other elements of the Trust Estate under the Indenture, except to the extent otherwise provided for in the Bank Loan Agreements, and certain funds and accounts established pursuant to the Indenture.

T. Following the Acquisition, CDOT intends to advance environmental studies related to the Transportation Projects to determine the exact quantity and location of the right-of-way that is to be retained by CDOT on the Burnham Yard for the Transportation Projects.

U. Concurrently, HPTE intends to advance a Small Area Planning process, in partnership with Denver, to determine specific mobility needs, as well as to advance land use planning, visioning for the future of the Burnham Yard, entitlements, environmental, and other property-related diligence, in contemplation of disposition to one or more developers or partnering state agencies of the portions of the Burnham Yard finally determined by CDOT not to be needed for the Transportation Projects (the “Remnant Property”).

V. HPTE intends to apply the proceeds of the disposition of the Remnant Property (the “Disposition Proceeds”), in addition to any additional amounts payable to HPTE by CDOT upon a disposition of the property in accordance with this Agreement (the “Top-Off Payments”) as further described in Sections III.3 and IV.1 of this Agreement, to repay the amounts owed to the Lenders under the Bank Loan Agreements, in accordance with the terms thereof.

W. Pursuant to C.R.S. § 43-4-806(4), the Transportation Commission may authorize the transfer of money from the state highway fund to HPTE to defray expenses of HPTE and, notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, such a transfer shall constitute a loan from the Transportation Commission to HPTE and shall not be considered a grant for purposes of Section 20(2)(d) of Article X of the State Constitution.

X. In consideration of the various terms, covenants, and conditions set forth herein, including the benefits that CDOT will receive as a result of the Acquisition of the Burnham Yard, CDOT and HPTE have agreed to enter into this Agreement pursuant to which HPTE can request financial support from the Transportation Commission to assist HPTE in fulfilling its Bank Loan Obligations (as hereinafter defined) in the event a disposition of the Remnant Property has not occurred (for any reason whatsoever, including, but not limited to, a failure by CDOT to timely identify the Retained Property, as hereinafter defined) within the timeframe contemplated by this Agreement, or if the Disposition Proceeds are insufficient, or projected to be insufficient, to satisfy HPTE's Bank Loan Obligations in full.

Y. HPTE recognizes and acknowledges that any financial support provided by the Transportation Commission pursuant to C.R.S. § 43-4-806(4), except as otherwise specifically provided for in this Agreement, shall be in the form of a CDOT Backup Loan (as defined and further described in Section V hereof). The Transportation Commission may, in its sole and absolute discretion, but shall not be obligated to, make a CDOT Backup Loan. If the Transportation Commission elects not to make a CDOT Backup Loan, such election shall not, in and of itself, result in a default of HPTE under the Bank Loan Agreements.

Z. This Agreement is executed by HPTE under the authority of C.R.S. §§ 29-1-203 and 43-4-806(6)(h), and by CDOT under the authority of C.R.S. §§ 43-1-110, 43-1-116 and 43-4-806(4).

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES TO THIS AGREEMENT HEREBY AGREE AS FOLLOWS:

SECTION I. ACQUISITION OF THE BURNHAM YARD; LEASE TO CDOT

1. Acquisition of the Burnham Yard by HPTE. HPTE will undertake all actions necessary to acquire the Burnham Yard from UPRR on CDOT's behalf for a purchase price of \$50 million, including, but not limited to, negotiating and entering into a purchase and sale agreement, reviewing and negotiating title and survey, reviewing and assessing environmental diligence, and entering into the Purchase Loans to cover the remainder of the purchase price (the "Acquisition").

2. Financing. In exchange for HPTE undertaking a financing to complete the Acquisition, CDOT will separately reimburse HPTE the costs of issuance, including fees for legal and other advisor costs of HPTE and its Lenders associated with entering into the Bank Loan Agreements, which costs are not anticipated to be financed by HPTE. The Parties hereby agree

and acknowledge that the reimbursement of such costs shall represent a payment in exchange for services rendered by HPTE to CDOT and shall not be construed as a grant for purposes of Section 20(2)(d) of Article X of the State Constitution.

3. Lease to CDOT. At closing of the Acquisition, CDOT will enter into a lease with HPTE in substantially the form attached to this Agreement as **Exhibit A**, which lease will provide, among other things, for a 30-year term (as amended, modified, supplemented or restated, the “Lease”). The Lease will further provide that upon a notice from CDOT that it has determined the final boundaries of the Retained Property, as further described in Section II of this Agreement, the following shall occur.

a. HPTE will proceed to dispose of the Remnant Property as further described in Section III of this Agreement.

b. Upon the disposition of any Remnant Property by HPTE, the Lease will terminate as to the portion of the Remnant Property sold, and be of no further force and effect.

c. Upon the disposition of all Remnant Property by HPTE, the Lease will terminate and CDOT will not be obligated to make any further payments under the Lease except as otherwise provided for in this Agreement. At termination of the Lease, the Retained Property will be conveyed in fee simple by deed from HPTE to CDOT.

d. The Pre-Paid Lease Payments paid by CDOT will constitute a credit toward the fair market value of the Retained Property being conveyed by HPTE to CDOT.

e. The Lease shall not terminate while any of HPTE’s Bank Loan Obligations remain outstanding.

4. Lease and Purchase a Market Transaction. The Parties acknowledge that, for accounting purposes, the Lease for CDOT’s leasehold interest in the Burnham Yard represents an exchange transaction at the market value of CDOT’s interest in the Burnham Yard. Furthermore, the value of the portion of the Burnham Yard anticipated to be retained by CDOT for transportation purposes, and the total contributions to be made by CDOT under this Agreement (including, but not limited to, the Pre-Paid Lease Payments paid by CDOT, which will constitute a credit toward the fair market value of the Retained Property being conveyed by HPTE to CDOT) represent an exchange transaction at the expected market value of the fee interest to be retained by CDOT.

5. Pre-Payment of Lease Payments by CDOT. At or before closing on the Acquisition, CDOT will pre-pay, on a non-refundable basis, all lease payments due to HPTE under the Lease during the Hold Period, totaling \$10 million (the “Pre-Paid Lease Payments”), which will be used by HPTE to fund a portion of the purchase price of the Acquisition.

SECTION II. UNDERTAKINGS OF EACH PARTY DURING THE HOLD PERIOD

1. CDOT Responsibilities. During the Hold Period, CDOT agrees to undertake the following activities.

a. Undertake all necessary NEPA and planning activities to determine the location and quantity of the portions of the Burnham Yard that CDOT wishes to retain, for itself or for others, for use in connection with one or more of the Transportation Projects or for any other public purpose (the “Retained Property”).

b. Coordinate with RTD regarding the preservation of any portion of the Burnham Yard for future transit uses, which shall be taken into account in CDOT’s final determination of the Retained Property.

c. Coordinate with other state agencies including, but not limited to, the Colorado Office of Economic Development and International Trade (“OEDIT”) and the Colorado Department of Local Affairs (“DOLA”) (the “Partnering Agencies”) regarding any prospective purchases of any portion of the Burnham Yard by such agencies. Any such property identified shall be taken into account in CDOT’s final determination of the Retained Property, which shall include information regarding the prospective uses, densities, and other key commercial parameters proposed by the Partnering Agencies. CDOT shall serve as liaison with the Partnering Agencies to ensure appropriate coordination with HPTE’s fulfillment of its responsibilities under this Section II.1.c including, in particular, land use planning and visioning for the future of the Burnham Yard in partnership with Denver and in contemplation of HPTE’s disposition of the Remnant Property.

d. Reasonably cooperate with HPTE, and provide any information requested by HPTE, that is necessary for HPTE’s fulfillment of its responsibilities under this Section II.1.d.

2. HPTE Responsibilities. During the Hold Period, HPTE agrees to utilize the monies available for the Additional Property Expenditures to undertake the following activities:

a. Negotiate and enter into an MOU with Denver for the preparation of a Small Area Plan by the Denver Department of Community Planning and Development (“CPD”), which will include engagement with community members, stakeholders, the Partnering Agencies, and development of an Infrastructure Master Plan (“IMP”) for the Burnham Yard, in accordance with the standard CPD Large Development Review (“LDR”) process.

b. Engage an owner’s representative with planning expertise to represent HPTE’s and CDOT’s interests during the planning processes being undertaken by Denver for the Burnham Yard.

c. HPTE (or a consultant engaged by HPTE) shall serve as liaison with Denver to ensure appropriate coordination with CDOT’s planning efforts and with the goals of the Partnering Agencies.

d. HPTE will continuously evaluate the cost implications of planning determinations made as part of the Denver and related State planning efforts in order to determine the likely impacts on the value of the Remnant Property resulting from such decisions.

e. HPTE will consider (but will not be required to undertake), in close coordination with and on behalf of CDOT, the potential cost/benefit and value in undertaking additional activities to advance, including without limitation, the following:

i. conceptual land use and infrastructure planning and cost estimating, either through engagement of a land use planning consultant or in partnership with a potential developer;

ii. engagement with the Colorado Department of Public Health and Environment (“CDPHE”) regarding potential remediation of the Burnham Yard and its enrollment in the Voluntary Cleanup and Redevelopment (“VCUP”) Program;

iii. zoning and/or other entitlements;

iv. engagement with the Denver Urban Renewal Authority (“DURA”) on blight studies and/or the establishment of an urban renewal area, in order to make available tax increment financing revenues to support the cost of public infrastructure and environmental remediation for development of the Remnant Property; and/or

v. any other action deemed necessary or appropriate by HPTE and CDOT in order to either increase the disposition value of the Remnant Property and/or to further other important policy goals of CDOT and the Partnering Agencies.

(together, the “Eligible Additional Property Expenditure Activities”)

3. Pre-Funding of Additional Property Expenditures by CDOT. At or before closing on the Acquisition, CDOT will pre-fund, on a non-refundable basis, \$5 million for the Additional Property Expenditures, which may include any of the HPTE responsibilities during the Hold Period set forth in Section II.2 of this Agreement.

4. Increases in Additional Property Expenditures. HPTE shall not be obligated to undertake any activities identified in Section II.2.e above to the extent the cost of such activities exceeds the \$5 million in Additional Property Expenditures allotted for such activities. To the extent HPTE and CDOT mutually agree that HPTE should undertake activities costing in excess of the amount of in Additional Property Expenditures allotted, including in particular the activities identified in Section II.2.i of this Agreement, CDOT may allocate additional amounts to HPTE for such purposes.

5. Additional Property Expenditures Not a Grant. The Parties hereby agree and acknowledge that all amounts made available by CDOT to HPTE pursuant to Sections II.3 and II.4 are being paid in exchange for services rendered by HPTE to CDOT and shall not be construed as a grant for purposes of Section 20(2)(d) of Article X of the State Constitution.

SECTION III. DISPOSITION OF THE PROPERTY

1. Final Determination of Retained Property. No earlier than the date that is two years after the closing date of the Acquisition, and no later than eighteen months prior to the end of the Hold Period, CDOT shall provide HPTE a legal description and accompanying map depicting the Retained Property.

2. Delay in Determination of Retained Property. CDOT acknowledges and is aware that any delay in the determination of the Retained Property that hinders HPTE to effect a timely disposition of the Remnant Property or refinancing of its Bank Loan Obligations prior to the conclusion of the Hold Period will result in an increase in the Bank Loan Obligations payable by HPTE. During such period, CDOT will continue to make lease payments under the Lease as provided for therein. Furthermore, HPTE will be entitled to request a CDOT Backup Loan, as provided for in Section V of this Agreement, to cover such increases in its Bank Loan Obligations until such time that HPTE is able to effect a timely disposition of the Remnant Property or refinancing of the Bank Loan Obligations.

3. Increases and Restrictions to the Retained Property.

a. In seeking the Purchase Loans to finance the Acquisition on CDOT's behalf, HPTE has relied upon representations made by CDOT that it expects to retain no more than 12-15 acres of the Burnham Yard Property for the Transportation Projects. In the event the Retained Property comprises more of the Burnham Yard than contemplated as of the date of this Agreement, the proceeds available to HPTE from the disposition of the Remnant Property may be insufficient for HPTE to fully repay its Bank Loan Obligations. Furthermore, if CDOT, or the Partnering Agencies acting through CDOT, desire to impose restrictions on any portion of the Remnant Parcels, or to purchase any portion of the Burnham Yard (comprising a portion of the Retained Property) for uses other than the highest and best use, the proceeds available to HPTE from the disposition of the Remnant Property may be insufficient for HPTE to fully repay its Bank Loan Obligations.

b. If, as a result of the occurrence of any of the circumstances contemplated in this Section III.3, the Disposition Proceeds available to HPTE through the sale or long-term lease of all of the Remnant Property are less than the amount needed to discharge HPTE's outstanding Bank Loan Obligations, then, upon HPTE's disposition of all of the Remnant Property, CDOT shall pay to HPTE the amount representing the difference between the actual Disposition Proceeds and the amount needed to discharge HPTE's outstanding Bank Loan Obligations (such payment, a Top-Off Payment). The Parties hereby agree and acknowledge that any such Top-Off Payment shall represent a payment in exchange for goods provided by HPTE to CDOT in the form of property rights in the

Remnant Property and shall not be construed as a grant for purposes of Section 20(2)(d) of Article X of the State Constitution.

c. The parties agree that a greater likelihood exists that the Disposition Proceeds available to HPTE from the disposition of the Remnant Property may be insufficient for HPTE to fully repay its Bank Loan Obligations if CDOT retains more than 19 acres in total of the Burnham Yard Property. Accordingly, CDOT shall not be entitled to make a final determination to retain in excess of 19 acres unless, at the time notice is given to HPTE of such determination, CDOT shall have first allocated funds sufficient to make the projected Top-Off Payment payable to HPTE under Section III.3.b of this Agreement. The amount allocated for such Top-Off Payment shall be based on a commercially reasonable estimate of the projected Disposition Proceeds available from the remaining Remnant Property (which may, but shall not be required to be, supported by an appraisal). The requirement for CDOT to allocate funds under this Section III.3.c shall be deemed satisfied if other equivalent funds (including, but not limited to, federal funds, funds made available by any Partnering Agency, funds made available by RTD, or any other legally available funds of HPTE) are available and allocated by HPTE for such purpose.

4. Disposition of the Remnant Property. Following the final determination by CDOT of the Retained Property in accordance with Section II.1, HPTE shall promptly commence planning for the disposition of the Remnant Property, including, but not limited to, through solicitation of a real estate developer, which process shall be concluded no later than the conclusion of the Hold Period. Alternatively, HPTE may determine, with the prior consent of CDOT, to undertake a refinancing of its Bank Loan Obligations in full, in which case CDOT will continue to be obligated to make payments under the Lease, unless such Lease is amended and/or terminated in conjunction with such refinancing.

5. Mutual Agreement to Delay Disposition of the Remnant Property. HPTE and CDOT may mutually agree to delay disposition of the Remnant Property for any reason. During such period of delay following the Hold Period, CDOT will continue to make lease payments under the Lease as provided for therein. Furthermore, HPTE will be entitled to request a CDOT Backup Loan, as provided for in Section V of this Agreement, to cover such increases in its Bank Loan Obligations until such time that HPTE and CDOT determine to proceed with the disposition of the Remnant Property or refinancing of the Bank Loan Obligations.

SECTION IV. DISPOSITION PROCEEDS

1. Insufficiency of Disposition Proceeds. In seeking the Purchase Loans to finance the Acquisition on CDOT's behalf, HPTE has relied upon (i) an appraisal of the fair market value of the Burnham Yard as of the date of the Acquisition and (ii) certain other estimates and representations made by CDOT regarding the estimated fair market value of the Retained Property. Furthermore, in undertaking the Acquisition on CDOT's behalf, HPTE has assumed that (x) the total payments to be made by CDOT during the Lease term represent the approximate equivalent fair market introductory ground rent value of the Property, and (y) the \$10 million in Pre-Paid Lease Payments to be paid by CDOT during the Hold Period represent the approximate prospective

fair market value of the Retained Property. Based on these assumptions, HPTE reasonably expects that the value of the Disposition Proceeds will equal or exceed the amount needed to discharge HPTE's outstanding Bank Loan Obligations at the conclusion of the Hold Period. If, at the conclusion of the Hold Period, the fair market value assumed by CDOT and HPTE at the outset of the Acquisition was inaccurate, and as a result, the Disposition Proceeds are less than the amount needed to discharge HPTE's outstanding Bank Loan Obligations, then, upon HPTE's disposition of all of the Remnant Property, CDOT shall pay to HPTE the amount representing the difference between the actual Disposition Proceeds and the amount needed to discharge HPTE's outstanding Bank Loan Obligations (such payment, a Top-Off Payment). The Parties hereby agree and acknowledge that any such Top-Off Payment shall represent a payment in exchange for goods and services provided by HPTE to CDOT and shall not be construed as a grant for purposes of Section 20(2)(d) of Article X of the State Constitution.

2. Sharing of Excess Disposition Proceeds.

a. The Parties acknowledge that pursuant to the terms of its purchase and sale agreement with the UPRR, if HPTE sells to one or more third parties any portion of the Property (a "Third-Party Sale"), HPTE shall pay to UPRR 40% of the "Cumulative Gross Sale Proceeds" of such Third-Party Sale(s) in excess of the sum of (A) the Purchase Price and (B) CDOT's "Remediation Costs," subject to a total cap of \$11,000,000 payable to UPRR. "Cumulative Gross Sale Proceeds" means the sum of all amounts paid to HPTE in respect of Third-Party Sales, net only of standard closing costs payable in conjunction with the closing of such Third-Party Sale. "Remediation Costs" means Buyer's actual out-of-pocket costs to remediate the Property for any use other than transportation-related uses.

b. HPTE shall pay all outstanding Bank Loan Obligations prior to making any payments to the UPRR pursuant to this Section IV.2. In the event HPTE's outstanding Bank Loan Obligations at any time exceed the sum of (A) the Purchase Price and (B) CDOT's Remediation Costs, the portion of Cumulative Gross Sale Proceeds payable to UPRR shall be included in the calculation of the Top-Off Payment and be payable by CDOT in accordance with Section IV.1 of this Agreement.

c. The Parties further agree that HPTE shall pay to CDOT 40% of Cumulative Gross Sale Proceeds from Third-Party Sale(s) in excess of the sum of (A) the Purchase Price, (B) amounts payable to UPRR, and (C) any amounts owed by HPTE on any Bank Loan Obligations and on any CDOT Backup Loan.

SECTION V. CDOT BACKUP LOAN OBLIGATIONS

1. The Bank Loan Agreements, attached hereto as Exhibit C, including the notes attached thereto, contain the obligation of HPTE to pay to the Lenders the principal of and interest on the Purchase Loans and certain other amounts with respect to the Purchase Loans made by each Lender pursuant to the applicable Bank Loan Agreement (collectively, the "Bank Loan Obligations").

2. The Transportation Commission has reviewed the Bank Loan Agreements and is aware of the Bank Loan Obligations. On or before September 15 of the immediately preceding fiscal year, HPTE shall estimate whether and in what maximum amount it may be necessary for HPTE to request that CDOT provide financial support to fulfill a Bank Loan Obligation in any fiscal year, it being understood that any such financial support shall be in the form of a loan from CDOT to HPTE pursuant to C.R.S. § 43-4-806(4) (a “CDOT Backup Loan”). HPTE shall notify the CDOT Executive Director in writing as to the estimated maximum amount, if any, that is expected to be payable in the succeeding fiscal year in the event HPTE does not reasonably expect Disposition Proceeds or Refinancing Proceeds sufficient to satisfy the Bank Loan Obligations due in such fiscal year, and such maximum amount (the “CDOT Backup Loan Set Aside”) shall be included in the budget request to the Transportation Commission for an allocation of moneys in the state highway fund for such purpose.

3. HPTE may also, at any time during any fiscal year, notify the Executive Director in writing that HPTE desires that CDOT make CDOT Backup Loans for any Bank Loan Obligations in an amount that exceeds any CDOT Backup Loan Set Aside that the Transportation Commission has previously allocated for such fiscal year. In such event, the Executive Director shall submit a supplemental budget request to the Transportation Commission at its next regularly scheduled meeting for an allocation or supplemental allocation of moneys in the state highway fund for the purpose of making additional CDOT Backup Loans to HPTE in such fiscal year in an amount equal to the amount set forth in the notice delivered by HPTE to the Executive Director pursuant to this Section.

4. Moneys allocated by the Transportation Commission to make CDOT Backup Loans shall be transferred to HPTE (or, subject to the terms of the Bank Loan Agreements, at HPTE’s direction) and shall be used by HPTE to satisfy the Bank Loan Obligations, as they become due.

5. Notwithstanding any other provision hereof:

a. CDOT and HPTE agree and acknowledge that the Transportation Commission has no obligation to allocate funds to make CDOT Backup Loans in any fiscal year and the decision whether or not to allocate funds, and the amount, if any, of funds allocated, to make CDOT Backup Loans in any fiscal year shall be made at the sole and absolute discretion of the Transportation Commission;

b. CDOT and HPTE further agree and acknowledge that notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, any CDOT Backup Loan made hereunder shall, in accordance with C.R.S. § 43-4-806(4), constitute a loan and shall not be considered a grant for purposes of Section 20(2)(d) of Article X of the State Constitution or as defined in C.R.S. § 24-77-102;

c. Prior to allocating any funds to make CDOT Backup Loans in any fiscal year, CDOT shall determine that a sufficient unencumbered balance remains available

from any funds legally available for use for CDOT Backup Loans in an amount equal to the amount of funds so allocated;

d. If an allocation by the Transportation Commission shall have been made, CDOT Backup Loans shall be made up to the amounts requested by HPTE as set forth above; and

e. No CDOT Backup Loan shall be repaid earlier than the date on which all Bank Loan Obligations are satisfied.

6. Any CDOT Backup Loans made to HPTE in support of Bank Loan Obligations shall be authorized by and subject to a separate Transportation Commission Resolution and shall be evidenced by one or more loan agreements and promissory notes in substantially the form attached hereto as **Exhibit B** (a “CDOT Backup Loan Agreement”), with terms consistent with the terms contained herein. In particular, having regard to the requirement that the CDOT Backup Loans shall not be repaid prior to satisfaction of the Bank Loan Obligations and any similar obligations incurred by HPTE under any future refinancing of the Bank Loan Agreements, the Parties agree to cooperate in good faith to determine a reasonable repayment schedule for each CDOT Backup Loan.

SECTION VI. DEFAULTS, TERMINATION AND REMEDIES

1. Default; Cure. The failure of either Party to fulfill its obligations to perform in accordance with the terms of this Agreement shall constitute a breach of this Agreement. The non-breaching Party shall thereupon have the right to terminate this Agreement for cause by giving written notice to the other Party of its intent to terminate, and at least thirty (30) days’ opportunity to cure the default or show cause why termination is not otherwise appropriate; provided, however, that such breaching Party 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 Paragraph shall be referred for dispute resolution as provided for in Section VI.3 hereof prior to any termination becoming effective. Notwithstanding the foregoing or any other provision of this Agreement to the contrary, no Party shall terminate, or agree to terminate, this Agreement while any of HPTE’s Bank Loan Obligations remain outstanding.

2. Default for Non-Payment. If HPTE fails to repay any CDOT Backup Loan in accordance with the applicable CDOT Backup Loan Agreement, and upon notice to HPTE and failure by HPTE to cure within thirty (30) days thereof, CDOT may, at its option: (i) terminate its commitment to consider making future CDOT Backup Loans hereunder; (ii) declare the entire principal amount of all CDOT Backup Loans then outstanding immediately due and payable; or (iii) take any other appropriate action available at law or in equity; provided, however, that no CDOT Backup Loan, or interest thereon, shall be repaid at any time there are amounts outstanding under the Bank Loan Agreements. Notwithstanding the exercise of any of the remedies above, HPTE shall not be relieved of liability to CDOT for any damages sustained by CDOT by virtue of any breach of this Agreement by HPTE.

3. Dispute Resolution. Any dispute concerning the performance of this Agreement shall be resolved at the lowest staff level possible and shall first be referred to the CDOT CFO and the HPTE Director (or the HPTE Director's designee). Failing resolution by such officers, the escalation process shall be to the (i) CDOT Chief Engineer and HPTE Director; (ii) CDOT Executive Director and HPTE Director; and (iii) the Transportation Commission and HPTE Board of Directors.

SECTION VII. PROCESS GOVERNANCE

1. Participation in Planning Processes. HPTE shall undertake commercially reasonable efforts to ensure that CDOT, and any Partnering Agency identified by CDOT, will be adequately represented in the planning processes led by Denver and coordinated through HPTE.

2. Project Management Team. HPTE shall undertake commercially reasonable efforts to establish, together with Denver and other stakeholder agencies (which shall include CDOT and any Partnering Agency) a project management team (the "PMT") for periodic updates on each agency's ongoing activities and decision-making during the Hold Period. The PMT may include consultants and other advisors of HPTE and Denver who are involved in planning processes for the Burnham Yard, and shall specifically include discussions and updates regarding HPTE's planning for eventual disposition of the Property. The PMT will meet at least bi-monthly during the Hold Period.

3. Executive Oversight Committee. HPTE shall undertake commercially reasonable efforts to establish, together with Denver and other stakeholder agencies (which shall include CDOT and any Partnering Agency) an executive oversight committee (the "EOC") for periodic updates, issue resolution, and decision-making during the Hold Period. The EOC will meet at least quarterly during the Hold Period.

SECTION VIII. GENERAL PROVISIONS

1. Effective Date; Term. This Agreement shall be effective as of the date it is approved and signed by the Colorado State Controller or its designee (the "Effective Date") and shall continue until the earlier of (i) the disposition by HPTE of all Remnant Property and (ii) the date on which the Parties mutually agree to terminate this Agreement.

2. 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.

3. Severability. The terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.

4. Record Keeping Requirements. Each Party shall maintain all books, documents, papers, accounting records and other evidence pertaining to this Agreement and make such materials available to the other Party upon reasonable request.

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. 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 with respect to the performance of this Agreement shall be addressed to the individuals identified below. Communications shall be in writing and, if transmitted by U.S. Mail shall be delivered by certified mail, return receipt requested, and deemed delivered three days after deposit with the U.S. Post Office, and if delivered by hand or overnight courier, on the date of delivery, and if by electronic means, on the date shown in a conformation of receipt. Any Party may, from time to time, designate in writing new or substitute representatives or addresses for delivery.

If to CDOT:

Jeffrey Sudmeier
Chief Financial Officer
2829 W. Howard Place
Denver, CO 80204
Email: jeffrey.sudmeier@state.co.us

If to HPTE:

Nicholas J. Farber
HPTE Director
2829 W. Howard Place
Denver, CO 80204
Email: nicholas.farber@state.co.us

7. Successors and Assigns. Except as otherwise provided herein, this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

8. No Third-Party Beneficiaries. 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 the Parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by the Lenders under the Bank Loan Agreements or by any other third person.

9. Governmental Immunity. Notwithstanding any other provision of this Agreement to the contrary, 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, protection, 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. 2671, *et seq.*, as applicable, as now or hereafter amended.

10. Adherence to Laws. At all times during the performance of this Agreement, the Parties shall adhere to and comply with all applicable federal and State laws, rules, and regulations

that have been or may hereafter be duly adopted, promulgated or otherwise established, including, but not limited to applicable State and federal laws respecting discrimination and unfair employment practices.

11. 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.

12. Subject to Annual Allocation. All obligations of CDOT under this Agreement are subject to allocation of moneys therefor by the Transportation Commission in the applicable fiscal year in its sole discretion, and shall not be deemed or construed as creating an indebtedness of CDOT within the meaning of any provision of the Colorado Constitution or the laws of the State concerning or limiting the creation of indebtedness of CDOT, and shall not constitute a multiple fiscal year direct or indirect debt or other financial obligation of CDOT within the meaning Section 20(4) of Article X of the Colorado Constitution.

13. Choice of Law. The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision of this Agreement, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Agreement to the extent that the Agreement is capable of execution.

14. Titles and Headings. The titles and headings of the Sections of this Agreement have been inserted for convenience of reference only, are not to be considered a part hereof, shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

15. Employee Financial Interest. Each of the Parties avers, to the best of its knowledge, no employee of HPTE or CDOT, as the case may be, has any personal or beneficial interest whatsoever in the service or property described herein.

16. Execution in Counterparts; Electronic Signatures. This Agreement may be executed in several counterparts, including counterparts that are manually executed and counterparts that are in the form of electronic records and are electronically executed, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument. An electronic signature means a signature that is executed by symbol attached to or logically associated with a record and adopted by a party with the intent to sign such record, including facsimile or email signatures. The Parties hereby acknowledge and agree that electronic

records and electronic signatures, as well as facsimile signatures, may be used in connection with the execution of this Agreement and electronic signatures, facsimile signatures or signatures transmitted by electronic mail in so-called PDF format shall be legal and binding and shall have the same full force and effect as if a paper original of this Agreement had been delivered that had been signed using a handwritten signature. All Parties to this Agreement (i) agree that an electronic signature, whether digital or encrypted, of a party to this Agreement is intended to authenticate this writing and to have the same force and effect as a manual signature; (ii) intend to be bound by the signatures (whether original, faxed, or electronic) on any document sent or delivered by facsimile or electronic mail or other electronic means; (iii) are aware that the other Party(ies) will rely on such signatures; and, (iv) hereby waive any defenses to the enforcement of the terms of this Agreement based on the foregoing forms of signature. If this Agreement has been executed by electronic signature, all parties executing this Agreement are expressly consenting, under the United States Federal Electronic Signatures in Global and National Commerce Act of 2000 (“E-SIGN”), the Colorado Uniform Electronic Transactions Act (“CUETA”) (C.R.S. Section 24-71.3-101 et seq.), or any other similar state laws based on CUETA, that a signature by fax, e-mail, or other electronic means shall constitute an Electronic Signature to an Electronic Record under E-SIGN and CUETA with respect to this specific transaction.

[Remainder of page left intentionally blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have made and entered into this Agreement as of the date it is approved and signed by the Colorado State Controller or its designee below.

FOR THE COLORADO DEPARTMENT OF TRANSPORTATION:

STATE OF COLORADO
JARED S. POLIS, Governor

By: _____
Shoshana M. Lew
Executive Director

FOR THE COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE:

By: _____
Nicholas J. Farber
HPTE Director

APPROVED:

PHILIP J. WEISER
Attorney General

By: _____
Andrew J. Gomez
Assistant Attorney General

[Signature page 1 of 2 to the Burnham Yard Acquisition Intra-Agency Agreement]

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

Section 24-30-202, C.R.S. requires that the State Controller to approve all agreements. This Agreement is not valid until the State Controller, or such assistant as he may delegate, has signed it.

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

By: _____

Date: _____

[Signature page 2 of 2 to the Burnham Yard Acquisition Intra-Agency Agreement]

EXHIBIT A

Form of Lease Agreement (Burnham Yard Property)

INTERAGENCY LEASE AGREEMENT

THIS INTERAGENCY LEASE AGREEMENT ("Lease") made this 25th, day of May, 2021 by and between the COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE, a government-owned business and a division of the Colorado Department of Transportation ("CDOT") whose address is 2829 W. Howard Place, Denver, CO 80204 hereinafter called the "Lessor", and the STATE OF COLORADO, acting by and through CDOT whose address is 2829 W. Howard Place, Denver, CO 80204 hereinafter called "Lessee".

RECITALS:

WHEREAS, as to Lessee, authority exists in the law and funds have been budgeted, appropriated, and otherwise made available, and a sufficient unencumbered balance thereof remains available for payment.

WHEREAS, Lessor and Lessee have contemporaneously entered into that certain Burnham Yard Acquisition Intra-Agency Agreement, dated May 25, 2021, (the "IAA").

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

1. **PREMISES, TERM, RENT.** (a) Lessor hereby leases and demises unto Lessee the premises, hereinafter referred to as "Premises." The Premises, known and described as Burnham Yard includes approximately **58.62 acres** of property, including land, improvements and other rights appurtenant thereto. The Premises is more specifically described on Exhibit A attached hereto and made a part hereof.

(b) To have and to hold the same, together with all appurtenances, unto Lessee for the term beginning **May 26, 2021**, and ending **30 YEARS THEREAFTER**, subject to earlier termination as provided herein, at and for a rental for the full term at the annual rate(s) as shown below:

TERM DATE(S)	TERM RENT	ANNUAL RENT
YEARS 1-5 (INTRODUCTORY RENT PERIOD)	\$10,000,0000	\$2,000,000 (PRE-PAID IN FULL BY LESSEE)
YEARS 6-30	N/A	\$3,250,000 (inflated per below)

For year six, the annual rent due shall be equal to \$3,250,000 increased by the greater of (i) 0% and (ii) the total percentage change (if any) in the Denver-Aurora-Lakewood (or its applicable successor index) U.S. Bureau of Labor and Statistics Consumer Price All Items Index ("CPI") since May 26, 2021.

For each subsequent year, the prior year's annual rent increased by greater of (i) 0% and (ii) the percentage change (if any) in the CPI since the prior year.

Rent shall be received by May 26, 2021, in advance of each year during the term hereof, through an interdepartmental transfer approved by Lessee for the benefit of Lessor, subject to the limitations and conditions of sections 15 and 18 herein to the address as noted below:

2. **USE OF PREMISES.**

a) Lessee agrees that the Premises shall be used and occupied in a careful, safe and proper manner, and that it will pay on demand for any damage to the Premises caused by the misuse of same by it, its guests, invitees, agents, or employees.

b) Lessee shall not use or permit the Premises to be used for any purposes prohibited by the laws or regulations of the United States or the State of Colorado, the ordinances of the City and County of Denver, or other governmental entity with jurisdiction.

c) Lessee shall not use or keep any substance or material in or about the Premises which may vitiate or endanger the validity of the insurance on the Premises or increase risks associated with the use or occupancy of the Premises, or which may prove offensive or annoying to persons occupying adjacent premises.

d) Lessee shall not permit any nuisance in the Premises.

e) Lessee shall comply with all requirements of the IAA.

3. **SERVICES BY LESSOR.** Lessor shall provide to Lessee during the occupancy of said Premises, as a part of the rental consideration, the following:

Lessor shall undertake those services set for in Section II.2 of the IAA between Lessor and Lessee, as and when required under the IAA. Lessee shall grant Lessor and its employees, agents, contractors and subcontractors access to the Premises at all reasonable times in order to carry out such services.

4. **WORK REQUIREMENTS.** Within 120 days of the execution date of this Lease, Lessee shall install and thereafter maintain a 6' fence along the western and southern Premises boundaries and along the western boundary of the Union Pacific Railroad ("UPRR") railroad easement on the Premises, with a minimum 14' wide gate installed in such location as to permit the UPRR to access the signboard easement on the Premises by vehicle. The fence and gate must comply with applicable code and be of a design and type satisfactory to the UPRR. Lessee shall submit plans for the fence and gate installation for UPRR's review and approval to: Union Pacific Railroad Company, Attn: Assistant Vice President – Real Estate (Folder No. 2891-27), 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179.

5. **MAINTENANCE OF PREMISES/ENTRY BY LESSOR.**

a) Lessor shall, unless herein specified to the contrary, maintain the Premises in good repair and in tenantable condition during the term of this Lease, except in the event of damage rising from an act or the negligence of Lessee, its agents or employees. Lessee shall not commit or allow any waste or damage to be committed on any portion of the Premises. Lessee shall maintain security on the site as necessary to comply with its obligations under this section. At the termination of this Lease, by lapse of time or otherwise, Lessee shall deliver up the Premises to Lessor in as good condition as at date of possession by Lessee, ordinary wear and tear excepted.

b) Lessor shall have the right to enter the Premises at reasonable times for the purpose of making necessary inspections and repairs or maintenance. Lessor, including agents or designees of the Lessor, shall be permitted to enter upon the Premises at any time for purposes of fulfilling its obligations under Section 3 of this Lease.

6. **ALTERATIONS TO PREMISES.** Lessee shall not make any structural or non-structural changes, alterations, or improvements to the Premises without the prior written approval of Lessor, which approval may be withheld at the sole and absolute discretion of Lessor. This includes, but is not limited to, any change, alteration, or improvement which, in the sole discretion of Lessor, impairs the structural soundness or diminishes the value of the building(s) on the Premises; impacts the exterior appearance of the Premises; changes the interior configuration of the

Premises; or adversely impacts the functioning of the wiring, plumbing, heating, air conditioning, sewer, or other similar systems.

Lessee shall not make any changes to the Premises without the prior written consent of Lessor, which approval may be withheld at the sole and absolute discretion of Lessor. All alterations, additions, improvements, and fixtures that may be made or installed by either of the parties hereto upon the Premises or improvements thereon and which in any manner are attached to the floors, walls or ceilings shall be the property of Lessor and at the termination of this Lease shall remain upon and be surrendered with the Premises as a part thereof.

7. **OWNERSHIP.** The State of Colorado through HPTE is the owner of the Premises. Lessor warrants and represents itself to be the authorized agent of the State of Colorado for the purposes of granting this Lease.

8. **LEASE ASSIGNMENT.** Lessee shall not assign this Lease and shall not sublet the Premises, and will not permit the use of the Premises to anyone, other than Lessee, its servants, agents or employees, without the prior written consent of Lessor, which shall not be unreasonably withheld or delayed. The parties hereby agree that any assignment or transfer shall be limited to another State agency or institution with a similar business use.

9. **APPLICABLE LAW.** The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution and enforcement of this Lease.

10. **LESSEE'S PERSONAL PROPERTY.** All personal property of any kind or description whatsoever in the Premises shall be at the Lessee's sole risk, and Lessor shall not be liable for any damage done to or loss of such personal property. If Lessee shall fail to remove all its effects from the Premises upon the termination of this Lease for any cause whatsoever, Lessor, at its option, may remove the same in any manner that it shall chooses, and store the said effects without liability to the Lessee for loss thereof. Within thirty (30) days after termination of this Lease, Lessor shall provide written notice to Lessee of any personal property items removed. Lessee agrees to pay the Lessor on demand any and all expenses incurred in such removal.

11. **CONDEMNATION.** If the whole or substantially all of the Premises shall be taken as a result of the exercise of the power of eminent domain, this Lease shall terminate as of the date of vesting of title of the Premises or delivery of possession, whichever event shall first occur, pursuant to such proceeding. Any award granted for either partial or complete taking regarding the Premises shall be the exclusive property of Lessor.

12. **EARLY TERMINATION.** Neither party shall terminate this Lease, or agree to terminate, this Lease while any of HPTE's Bank Loan Obligations remain outstanding, or as provided for in the IAA.

13. **BREACH OF LEASE.** Any failure of either party to perform or comply with any of the terms of this Lease shall constitute a breach of the Lease. The parties agree that no act or omission shall be deemed an event of default and a breach of the Lease unless the non-defaulting party shall have given the defaulting party notice of the alleged default and fourteen (14) days to cure the same. Any dispute concerning the performance of this Lease that cannot be resolved at the divisional level shall be referred to superior departmental management staff designated by each department. Failing resolution at that level, disputes shall be presented to the executive directors of each department for resolution. Failing resolution by the executive directors, the dispute shall be submitted in writing by both parties to the State Controller, whose decision on the dispute shall be final and binding on all parties. The State Controller may at his/her option refer the dispute to the State Attorney General or his/her designee whose decision on the dispute shall be final and binding on all parties. In the event that the dispute is referred to the Attorney General, the parties hereto shall share equally all fees and costs attendant to the Attorney General's resolution of the dispute.

No waiver of any breach of any one or more of the conditions or covenants of this Lease by Lessor shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

14. **FISCAL FUNDING.** Financial obligations of both Lessor and Lessee after the current fiscal year are contingent on funds for that purpose being appropriated, budgeted, and otherwise made available.

15. **COMPLETE AGREEMENT.** This Lease, including all exhibits, supersedes any and all prior written or

oral agreements and there are no covenants, conditions or agreements between the parties except as set forth herein. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written contract executed and approved pursuant to the State of Colorado Fiscal Rules. Notwithstanding the foregoing, to the extent there are any inconsistencies between the terms of this Lease and the IAA, the terms of the IAA shall govern.

16. **SUCCESSORS AND ASSIGNS/SEVERABILITY.** The captions and headings used in this Lease are for identification only, and shall be disregarded in any construction of the Lease provisions. All of the terms of this Lease shall inure to the benefit of and be binding upon the respective heirs, successors, and assigns of both the Lessor and the Lessee. If any portion, clause, paragraph, or section of this Lease shall be determined to be invalid, illegal, or without force by a court of law or rendered so by legislative act, then the remaining portions of this Lease shall remain in full force and effect.

17. **FEDERAL FUNDING.** In the event that any or all funds for payment of this Lease are provided by the federal government, this Lease is subject to and contingent upon the continuing availability of federal funds for the purposes hereof, and if such funds are not made available, this Lease may be unilaterally terminated by the Lessee at the end of any month provided a thirty (30) day advance notice of termination is given to the Lessor in writing.

18. **NOTICE.** Any notice required or permitted by this Lease may be delivered in person or sent by registered or certified mail, return receipt requested, to the party at the address as hereinafter provided, and if sent by mail it shall be effective when posted in a U.S. Mail Depository with sufficient postage attached thereto:

LESSOR:

Colorado Department of Transportation
2829 West Howard Place
Denver, CO 80204
Attn: Nicholas Farber, HPTE Director

LESSEE:

Colorado Department of Transportation
2829 West Howard Place
Denver, CO 80204
Attn: David Fox, Property Management

Notice of change of address shall be treated as any other notice.

19. **CONSENT.** Unless otherwise specifically provided, whenever consent or approval of Lessor or Lessee is required under the terms of this Lease, such consent or approval shall not be unreasonably withheld or delayed and shall be deemed to have been given if no response is received within 30 days of the date request was made. If either party withholds any consent or approval, such party shall on written request deliver to the other party a written statement giving the reasons therefore.

20. **HOLDING OVER.** If Lessee fails to vacate the Premises upon expiration or sooner termination of this Lease, Lessee shall be a month-to-month Lessee and subject to all the laws of the State of Colorado applicable to such tenancy. The rent to be paid by Lessee during such continued occupancy shall be the same being paid by Lessee as of the date of expiration or sooner termination. Nothing in this section shall be construed as relieving either party of its obligation to execute a new or extended lease agreement to cover future lease periods, as required by State of Colorado Fiscal Rules and the provisions of §24-30-202, C.R.S., as amended.

21. **NO BENEFICIAL INTEREST.** The signatories hereto aver that, to their knowledge, no state employee has a personal or beneficial interest whatsoever in the service or property described herein.

22. **NO VIOLATION OF LAW.** The signatories hereto aver that they are familiar with §18-8-101, et seq., C.R.S. (Bribery and Corrupt Influences) and §18-8-401, et seq., C.R.S. (Abuse of Public Office) and that no violation of such provisions is present.

23. **LIABILITY EXPOSURE.** The parties hereto understand and agree that liability for claims for injuries to persons or property arising out of the negligence of the State of Colorado, its departments, institutions, agencies,

boards, officials, and employees is controlled and limited by the provisions of §24-10-101, et seq., C.R.S. and §24-30-1501, et seq., C.R.S. Any provision of this Lease, whether or not incorporated herein by reference, shall be controlled, limited and otherwise modified so as to limit any liability of the Lessor and the Lessee to the above cited laws.

24. **SUBORDINATION.** This Lease is subordinated to any and all existing and future liens of Lessor, including, but not limited to, ground leases, mortgages and deeds of trust.

25. **CONTROLLER'S APPROVAL.** In accordance with the requirements of § 24-30-202(1), C.R.S., as amended, this Lease shall not be deemed valid until it has been approved by the Controller of the State of Colorado, or such assistant as he/she may designate.

26. **ADDITIONAL PROVISIONS.**

a) This Lease shall not be effective until Lessor closes on the purchase of the Premises. The term of this Lease shall commence upon such closing.

b) Lessee intends to identify that portion of the Premises it intends to retain permanently for the Transportation Projects, in accordance with the provisions of the IAA between Lessor and Lessee, within the first three years and six months of the Term of this Lease.

c) Upon determination by Lessee of the Retained Property, Lessor will proceed to dispose of the Remnant Property in accordance with the provisions of the IAA. Upon the disposition of any Remnant Property by the Lessor, this Lease shall terminate as to the portion of the Remnant Property sold, and be of no further force and effect. Upon the disposition of all Remnant Property by the Lessor, this Lease will terminate and Lessee will not be obligated to make any further payments under this Lease, except as otherwise provided for in the IAA.

d) At termination of this Lease, the Retained Property will be conveyed in fee simple by deed from Lessor to Lessee.

e) Lessor and Lessee may jointly determine not to immediately proceed with disposition of the Remnant Property as provided for in the IAA, in which case this Lease, and the Lessee lease payment obligations hereunder, shall remain in full force and effect until such time as the Remnant Property is disposed of by Lessee.

f) Notwithstanding any other provision of this Lease to the contrary, this Lease shall not terminate while the Lessor's obligations under its Bank Loan Agreements with the Lenders remain outstanding.

g) All capitalized terms used in this section and not defined shall have the meaning ascribed to in the IAA.

IN WITNESS WHEREOF, the parties hereto have executed this State of Colorado Interagency Lease Agreement on the day and year first above written.

LESSOR:
HIGH PERFORMANCE TRANSPORTATION
ENTERPRISE

By: _____

Title: Director

Date: _____

LESSEE:
STATE OF COLORADO
Acting by and through
Colorado Department of Transportation

By: _____

Title: Chief Engineer

Date: _____

APPROVALS

ALL CONTRACTS MUST BE APPROVED BY THE
STATE CONTROLLER:

CRS 24-30-202 requires that the State Controller approve all State contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The Lessor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the good and/or services provided.

APPROVED:
DEPARTMENT OF LAW
ATTORNEY GENERAL (or authorized Delegate)

By: _____

Date: _____

APPROVED:
DEPARTMENT OF PERSONNEL &
ADMINISTRATION
REAL ESTATE PROGRAMS
For the Executive Director

By: _____

Date: _____

APPROVED:
STATE OF COLORADO

STATE CONTROLLER'S OFFICE
State Controller (or authorized Delegate)

By: _____

Date: _____

State Lease I.D.#: ____ - ____ - ____ - ____ - ____ - ____

EXHIBIT B

Form of CDOT Backup Loan Agreement (Burnham Yard Acquisition)

THIS CDOT BACKUP LOAN AGREEMENT, made this ___ day of _____, 20___ by and between the State of Colorado for the use and benefit of THE COLORADO DEPARTMENT OF TRANSPORTATION (referred to herein as “CDOT” or the “Lender”) and the COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE (referred to herein as “HPTE” or the “Borrower”) entered into pursuant to the Burnham Yard Acquisition Intra-Agency Agreement, dated as of May 25, 2021, between Lender and Borrower (the “Intra-Agency Agreement”). All capitalized terms not defined herein shall have the meaning ascribed to them pursuant to the Intra-Agency Agreement.

RECITALS

A. The Lender, is an agency of the State of Colorado 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. The Borrower was authorized and created pursuant to C.R.S. §§ 43-4-806(1) and (2) as a government-owned business, an enterprise for purposes of Article X, Section 20 of the State Constitution, and a division of CDOT, and is charged with aggressively pursuing innovative means of financing surface transportation projects.

C. The Transportation Commission of Colorado (the “Transportation Commission”) is the budgetary and policy-making body of the Lender and may, pursuant to C.R.S. Section 43-4-806(4), authorize the transfer by the Lender of money from the state highway fund to the Borrower to defray expenses of the Borrower and, notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, such a transfer by the Lender to the Borrower shall, in accordance with § 43-4-806(4), C.R.S. constitute a loan and shall not be considered a grant for purposes of Section 20(2)(d) of Article X of the State Constitution.

D. The Borrower has entered into Loan Agreements (the “Bank Loan Agreements”) with Bank of America, N.A. and JP Morgan Chase Bank, N.A. (each a “Bank” and referred to in its respective Bank Loan Agreement as the Lender) dated as of May 25, 2021, to finance the acquisition of the Burnham Yard property by HPTE.

E. The Bank Loan Agreements contain obligations of HPTE to pay to each Bank the principal of and interest on, and certain other amounts with respect to, the loan made by each Bank pursuant to the notes issued by HPTE to each Bank pursuant to C.R.S. Section 43-4-807 and the Bank Loan Agreements (the “Borrower Payment Obligations”).

F. The Borrower has requested a loan from the Lender in the amount of \$[Requested Amount] for [Borrower Payment Obligations] because [description].

G. The Transportation Commission has approved this loan request and authorized the Lender to make a loan to the Borrower in the amount of \$[Principal Amount], and has allocated funds, in its sole discretion, for such purpose.

H. Authority exists in the law and a sufficient unencumbered balance thereof remains available in [Fund 400] to lend to the Borrower.

I. This Agreement is executed under the authority of § 43-4-806(4), C.R.S. and by resolution of the HPTE Board of Directors.

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

**ARTICLE I
LOAN AND CLOSING**

Section 1.01. Loan and Promissory Note. Pursuant to the terms of the Intra-Agency Agreement and this Agreement, the Lender hereby agrees to loan \$[Principal Amount] (the “Principal Amount”) to the Borrower and the Borrower agrees to pay the Lender the Principal Amount of the loan, plus interest on the terms described herein (collectively, the “Loan”). The Borrower’s obligation to pay the Lender the principal of and interest on the Loan is evidenced by a promissory note (the “Note”) in the form attached hereto as Attachment 1.

Section 1.02. Closing. The Lender shall deliver the principal amount of the Loan to the Borrower, by means of a transfer of immediately available funds to Borrower on a date mutually agreed to by the Borrower and the Lender (such date is referred to as the “Closing Date”).

**ARTICLE II
LOAN OBLIGATIONS**

Section 2.01. Principal and Interest Payments. The Borrower shall pay to the Lender the principal amount of the Loan plus accrued interest in accordance with Section 2.07 hereof, or the Borrower may make prepayments in accordance with Section 2.05 hereof only to the extent permitted under the Bank Loan Agreements.

Section 2.02. Lender Invoice and Reports. The Lender shall deliver to the Borrower an invoice that includes the amount of principal and interest that shall be due with respect to the Loan at least thirty days before the next scheduled payment is due.

Section 2.03. Interest. Interest shall accrue on the principal amount of the Loan from the Closing Date through the day preceding the Maturity Date or Prepayment Date at the Interest Rate (defined in Section 2.04 hereof), computed on the basis of a 360-day year of twelve 30-day months.

Section 2.04. Interest Rate. “Interest Rate” means a rate of interest equal to the rate of interest established and adopted by resolution by the Transportation Commission for loans made

by the Colorado state infrastructure bank pursuant to 2 CCR 605-1, Rule V (2), and in effect as of the date hereof.

Section 2.05. Optional Prepayment. Subject to the requirements of the Bank Loan Agreements, the Borrower, at its option, may prepay the Loan in whole by paying the Lender the outstanding principal amount plus accrued interest, or in part on any date selected by the Borrower (such date of payment, a “Prepayment Date”) plus accrued interest to the Prepayment Date as selected by the Borrower; provided that no such optional prepayment shall be made at any time there are amounts outstanding under the Bank Loan Agreements.

Section 2.06. Resource Pledge for Repayment. The Borrower’s obligation to pay the principal and interest on the Loan and any other amounts payable by the Borrower hereunder (the “Backup Loan Obligations”) are extraordinary limited obligations of the Borrower payable solely from funds of HPTE legally available after accounting for amounts first required to be paid in accordance with the security and priority of payments set forth in the Bank Loan Agreements.

Section 2.07. Repayment Schedule. The Borrower shall make equal installments of \$[Payment Amount] to the Lender each [Payment Period] beginning on the sooner to occur of (i) [December 15] following the date on which all payment obligations under the Bank Loan Agreements are satisfied, the commitment to fund thereunder has been terminated by the bank, or the Bank Loan Agreement has been refinanced or (ii) [First Payment Due Date]; and continuing each [Payment Period] thereafter for [Number of Payments] consecutive [Payment Periods].

Section 2.08. Remittance. All loan payments shall be made payable to the Colorado Department of Transportation, and sent to the Lender’s accounting branch at 2829 W. Howard Place, Denver, CO 80204, or to such other place or person as may be designated by the Lender in writing.

ARTICLE III DEFAULT AND TERMINATION

Section 3.01. Event of Default. Borrower default (“Event of Default”) is governed by Section VI of the Intra-Agency Agreement.

Section 3.02. Remedies. Lender’s remedies upon the occurrence of an Event of Default are governed by Section VI of the Intra-Agency Agreement.

Section 3.03. Remedies Neither Exclusive Nor Waived. No remedy under Section 3.02 hereof is intended to be exclusive, and each such remedy shall be cumulative and in addition to the other remedies. No delay or failure to exercise any remedy shall be construed to be a waiver of an Event of Default.

Section 3.04. Waivers. The Lender may waive any Event of Default and its consequences. No waiver of any Event of Default shall extend to or affect any subsequent or any other then existing Event of Default.

ARTICLE IV TERMINATION

Section 4.01. Termination for Cause. Subject to the terms of the Intra-Agency Agreement, if, through any cause, the Borrower shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if the Borrower shall violate any of the covenants, agreements, or stipulations of this Agreement, the Lender shall thereupon have the right to terminate this Agreement for cause by giving written notice to the Borrower of its intent to terminate and at least thirty (30) days' opportunity to cure the default or show cause why termination is otherwise not appropriate. Notwithstanding above, the Borrower shall not be relieved of liability to the Lender for any damages sustained by the Lender by virtue of any breach of this Agreement by the Borrower.

Section 4.02. Termination for Loss of Funding. The parties hereto expressly recognize that the Loan is made to the Borrower with State funds which are available to the Lender for the purposes of making a loan for the purposes described herein, and therefore, the Borrower expressly understands and agrees that all its rights, demands and claims to a loan arising under this Agreement are contingent upon availability of such funds to the Lender. In the event that such funds or any part thereof are not available to the Lender, the Lender may immediately terminate or amend this Agreement.

[Signature page follows.]

FOR THE COLORADO DEPARTMENT OF TRANSPORTATION:

By: _____
Name: _____
Title: Executive Director

FOR THE COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE:

By: _____
Name: _____
Title: Director

APPROVED:

[ATTORNEY GENERAL]
Attorney General

By: _____
Name: _____
Title: Assistant Attorney General

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

Section 24-30-202, C.R.S. requires that the State Controller to approve all agreements. This Agreement is not valid until the State Controller, or such assistant as he may delegate, has signed it.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____

Date: _____

[Signature page to CDOT Backup Loan Agreement (Burnham Yard Acquisition)].

Attachment 1
NOTE

\$ _____

For VALUE RECEIVED, THE COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE (the "Maker") subject to and in accordance with a CDOT Backup Loan Agreement dated the [Date], by and between the Colorado Department of Transportation, as lender (the "Holder") and the Maker, as borrower, promises to pay to the Holder the principal sum of \$[Principal Amount], with interest from the date set forth below at the rate of [Interest Rate]% per annum on the balance from time to time remaining unpaid. The said principal and interest shall be payable in lawful money of the United States of America to the Holder at 2829 W. Howard Place, Denver, Colorado 80204 or at such place as may hereafter be designated by written notice from the Holder to the Maker hereof, on the date and in the manner following:

The Maker shall make equal installments of \$[Payment Amount] to the Lender each [Payment Period] beginning on the sooner to occur of (i) December 15 following the date on which all HPTE payment obligations under the Bank Loan Agreements are satisfied, the commitments to fund thereunder have been terminated by the Lenders, or the Bank Loan Agreements have been refinanced; or (ii) [First Payment Due Date]; and continuing each [Payment Period] thereafter for [Number of Payments] consecutive [Payment Periods]. [*Or replace by reference to the agreed repayment schedule*].

Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Intra-Agency Agreement.

COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE

By: _____
HPTE Director

Attest: _____

EXHIBIT C

Bank Loan Agreements