

**CENTRAL 70 GLOBEVILLE & ELYRIA-SWANSEA (GES) TOLLING EQUITY  
PROGRAM INTRA-AGENCY AGREEMENT**

THIS AGREEMENT (“**Agreement**”) is made this \_\_\_\_ day of \_\_\_\_\_, 2022 by and between the STATE OF COLORADO for the use and benefit of the COLORADO DEPARTMENT OF TRANSPORTATION (“**Department**” or “**CDOT**”) and the COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE, a government-owned business and a division of CDOT (“**Enterprise**” or “**HPTE**”) (individually “**Party**” and collectively “**Parties**”).

**RECITALS**

A. CDOT is an agency of the State of Colorado authorized under § 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. Under § 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 under § 43-4-806(2), C.R.S. and operates as a government-owned business within CDOT;

D. Under § 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, under § 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;

G. On or about November 17, 2017, HPTE and the Colorado Bridge and Tunnel Enterprise, a government-owned business within CDOT, on behalf of CDOT, entered into an agreement with Kiewit Meridiam Partners LLC for the Central I-70 Interstate Redevelopment Project (“**Project**”);

H. As part of the Project, HPTE committed to exploring ways to provide discounted access to planned Express Lanes for the low-income residents of the Globeville and Elyria Swansea (GES) neighborhoods;

I. HPTE established a Steering Committee and Stakeholder Advisory Group to guide the process and conducted a literature review and interviews with other tolling agencies across the nation that have or are in the process of implementing a tolling equity program;

J. HPTE held numerous meetings with the Steering Committee, the Stakeholder Advisory Group, GES residents, and City and County of Denver council members. Additionally, HPTE held two public meetings in the GES community and circulated a public survey to GES residents to understand community needs and travel patterns;

K. After the above-referenced feedback, HPTE determined that a program providing the following would make the most impact to the GES community: (1) eligible participants will receive a switchable transponder and promotional credit totaling a monetary value of one hundred dollars (\$100) when they enroll in the program, (2) additional funds will be made available annually for the GES community to decide how to allocate the funds either towards free transit passes or to add credit to the previously enrolled tolling equity Express Lanes accounts after the first year;

L. HPTE also explored a possible contribution to the program from CDOT. After discussion between the Parties, CDOT determined the Projects budget included funds available to cover the costs associated with start-up and program administration services HPTE will provide in the initial years of the program;

M. The Parties identified project start-up and administration costs to include, but are not limited to, management of third-party vendor staff time to register eligible residents of GES, marketing, promotional, and public outreach services, and periodic program evaluation services (“**Services**”);

N. To further the efficient completion of Project and CDOT’s development of an integrated transportation system, CDOT desires to fund HPTE’s start-up and program administration costs in creating a tolling equity program for GES residents affected by the Project;

O. 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;

P. Under §§ 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.

Q. 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 under § 24-77-102(7)(b)(II), C.R.S.

R. 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;

S. 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;

T. CDOT and HPTE each hereby affirm, consistent with Colorado law, amounts of money 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 as more particularly set forth herein;

U. The Parties 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 Services for the GES Tolling Equity Program (“**Program**”) on the Project.

b. No later than January 15th of the fiscal year following the Effective Date, HPTE shall submit to CDOT a progress report on the Program. The progress report shall include a narrative summary of HPTE’s activities during the previous year and a report on HPTE’s progress performance of the Services.

2. Payment Amount and Procedures.

a. The Parties agree CDOT shall provide payment in the amount of One Million Dollars (\$1,000,000) to HPTE for the provision of the Services (“**Payment Amount**”).

b. The Services to be provided and the Payment Amount are for the start-up and administration costs covered by this Agreement, as may be amended from time to time. Services provided by HPTE hereunder shall be compensated as part of the Payment Amount.

3. Term. The term of this Agreement shall be from the date first executed by the HPTE Director below (“**Effective Date**”) until HPTE performs the Services unless the Parties mutually agree in writing to earlier termination (“**Term**”).

4. Availability of Funds. Payment under 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.

5. 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 Services under this Agreement. It shall make such materials available to CDOT upon request for three (3) years.

6. 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 under this Agreement.

7. 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.

8. 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.

9. Default; Termination. Any failure of either Party to perform per 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 in Section 9 before any termination becomes 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.

10. Delegation. Except as identified or otherwise implied herein, the duties and obligations of HPTE concerning 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.

11. Modification. This Agreement is subject to such modifications as may be required by changes in federal law, 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.

12. 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.

13. 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.

14. 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 and all rights of action relating to such enforcement shall be strictly reserved to the Parties. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. The express intention of the Parties is 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.

15. Entire Understanding. This Agreement is intended to integrate all understandings between the Parties completely. Any prior or contemporaneous addition, deletion, or other amendments hereto shall have no force or effect. Except as otherwise provided in this Agreement, no subsequent renewal, addition, deletion, or other amendments hereto shall have any force or effect unless embodied in a writing executed and approved by the Parties.

16. 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.

17. Adherence to Laws. 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.

18. 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 authority to execute this Agreement.

19. 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. From time to time, either Party may designate in writing new or substitute representatives.

If to CDOT:

Steve Harelson, Chief Engineer  
Colorado Department of Transportation  
2829 W. Howard Place, 5<sup>th</sup> Floor  
Denver, CO 80204

If to HPTE:

Nicholas Farber  
HPTE Director  
Colorado Department of Transportation  
2829 W. Howard Place, 5<sup>th</sup> Floor  
Denver, CO 80204

20. Controller's Approval. This Agreement shall not be deemed valid until the State Controller or such assistant has approved it as they may designate.

*[Signature page follows.]*

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

STATE OF COLORADO  
Jared S. Polis, Governor

COLORADO HIGH PERFORMANCE  
TRANSPORTATION ENTERPRISE

By: \_\_\_\_\_  
SHOSHANA LEW  
EXECUTIVE DIRECTOR  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Nicholas Farber  
HPTE DIRECTOR

APPROVED AS TO FORM:

Philip J. Weiser  
ATTORNEY GENERAL

By: \_\_\_\_\_  
ASSISTANT ATTORNEY GENERAL

**ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

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

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

By: \_\_\_\_\_

Date: \_\_\_\_\_