

MEMORANDUM

TO: CTIO BOARD OF DIRECTORS
FROM: NICHOLAS FARBER, CTIO DIRECTOR
PIPER DARLINGTON, CTIO BUDGET AND SPECIAL PROJECTS MANAGER
SUBJECT: APPROVAL OF THE FISCAL YEAR 2022-23 FEE FOR SERVICE INTRA-AGENCY AGREEMENT
BETWEEN CTIO AND CDOT
DATE: MARCH 16, 2022

Purpose:

To present the Fiscal Year (FY) 2022-23 Fee for Service Intra-Agency Agreement (IAA), including a \$4.0 M payment and the FY 2022-23 Statement of Work (SOW), between the High Performance Transportation Enterprise (HPTE) dba ¹ Colorado Transportation Investment Office (CTIO) and the Colorado Department of Transportation (CDOT).

Requested Action:

Staff is seeking approval of Resolution #382 authorizing the IAA, \$4.0 M payment, and proposed SOW between CTIO and CDOT for FY 2022-23.

Background:

In recognition of the specialized nature of the expertise and services CTIO provides to CDOT, CDOT pays CTIO through a Fee for Service IAA. This IAA documents the terms of the overall business relationship between CDOT and CTIO. It includes the annual SOW CDOT wishes CTIO to provide in FY 2022-23, the hours provided by CTIO staff to deliver the work, and the process by which CTIO charges CDOT for the fair market value of the services provided.

Current Details:

For FY 2022-23, the value of services corresponds to the \$4.0 M CTIO fee for service allocation that the Transportation Commission (TC) is asked to approve as part of the annual budget adoption in March. The payment amount for FY 2022-23 has not increased over the current FY 2021-22 fee for service payment. In addition to hours that will be provided by CTIO consultants and subject matter experts, CTIO estimates that internal staff will dedicate 10,800 hours to delivering the tasks outlined in the SOW. Several key initiatives that CTIO will undertake in the Fiscal Year 2022-23 SOW include:

- Implement and oversee contract compliance and monitoring framework for the operating period of the Central 70 Project Agreement. Independent monitoring ensures that the contractor achieves levels of service established for the corridor under the contract and that non-compliance points are accurately assessed to determine if they are not met. This will ensure that CDOT is accurately paying for operations and maintenance expenses

¹The High Performance Transportation Enterprise (HPTE) is now doing business as the Colorado Transportation Investment Office (CTIO). CTIO is how the enterprise refers to itself now and in the future. However, the HPTE name will be used for all legislative, legal, and contractual documents.

- Lead the process of complying with all Federal Highway Administration (FHWA) reporting requirements for TIGER, BUILD, and INFRA grants received for Managed Lane corridor projects. Tasks include collecting and reporting on safety data for all lanes in Managed Lane corridors including I-70 Eastbound Mountain Express Lane (MEXL) and I-25 North U.S. 36 to 120th (Segment 2). Ongoing reporting and monitoring of safety metrics ensure a safe environment for all drivers, not just those who choose to use the Express Lanes.
- Implement dynamic tolling (also called congestion pricing) across the Managed Lane system. This sophisticated tolling strategy will provide optimal congestion management over the current time-of-day tolling strategy on all Managed Lane corridors and will be critical for all lanes of the interstate as overall traffic increases with projected population growth

See Exhibit A under Attachment A: Fiscal Year 2022-23 Fee for Service Intra-Agency Agreement for a complete description of all activities to be performed by CTIO.

Key Policy Considerations

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

Options/Decision Matrix:

1. Review and approve the IAA, \$4.0 M payment, and SOW for FY 2022-23. **Staff Recommendation.**
2. Review the IAA, \$4.0 M payment and SOW, but with instructions to add to the SOW for particular projects or programs. Staff would make the necessary revisions and return with a revised SOW and increased budget supplement at the beginning of the next fiscal year.
3. Review the IAA, \$4.0 M payment and SOW, but with instructions to eliminate or reduce the SOW for particular projects or programs. Staff would make the necessary revisions and return with a revised SOW and budget at the beginning of the next fiscal year.

Next Steps:

- CTIO budget staff will coordinate with the Office of Financial Management and Budget (OFMB) to ensure that the approved \$4.0 M FY 2022-23 fee for service amount is distributed appropriately and available for use at the beginning of the fiscal year.
- CTIO program staff will provide a mid-year update to the CTIO Board, CDOT, and the Transportation Commission on the progress being made to complete the activities outlined in the approved FY 2022-23 SOW.

Attachment:

Attachment A: Fiscal Year 2022-23 Fee for Service Intra-Agency Agreement

Attachment B: CTIO Resolution #382 Approving the Fiscal Year 2022-23 Fee for Service Intra-Agency Agreement between the High Performance Transportation Enterprise and the Colorado Department of Transportation

STATE OF COLORADO INTERAGENCY AGREEMENT

COVER PAGE

Paying State Agency Department of Transportation	Agreement Numbers Insert CMS Number or Other Agreement Number Encumbrance Number or Financial System Designation
Performing State Agency High Performance Transportation Enterprise (HPTE)	Agreement Performance Beginning Date The Effective Date
Agreement Maximum Amount Term <div style="text-align: right; margin-right: 50px;"> State Fiscal Year 2022 \$4,000,000 </div>	Agreement Expiration Date June 30, 2023
Total for All State Fiscal Years \$4,000,000	Agreement Authority §§43-1-110 and 43-4-806(6)(g) and (h), C.R.S.
Agreement Purpose The purpose of this Agreement is for CDOT to compensate HPTE for the fair market value of certain services to be provided to CDOT during Fiscal Year 2022-23	
Exhibits and Order of Precedence The following Exhibit(s) and attachment(s) are included with this Agreement: <ol style="list-style-type: none"> 1. Exhibit A – Statement of Work and Budget. <p>In the event of a conflict or inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:</p> <ol style="list-style-type: none"> 1. The provisions of the main body of this Agreement. 2. Exhibit A, Statement of Work and Budget. 	
Principal Representatives	
For the Paying State Agency: Stephen Harelson, Chief Engineer Colorado Department of Transportation 2829 W. Howard Place Denver, CO 80222 Email: Stephen.Harelson@state.co.us	For the Performing State Agency: Nicholas Farber, Director HPTE 2829 W. Howard Place Denver, CO 80222 Email: Nicholas.Farber@state.co.us

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Each person signing this Agreement represents and warrants that the signer is duly authorized to execute this Agreement and to bind the Party authorizing such signature.

STATE OF COLORADO Jared S. Polis, Governor	
PERFORMING STATE ENTITY High-Performance Transportation Enterprise	PAYING STATE ENTITY Shoshana M. Lew, Executive Director
_____ By: Nicholas J. Farber, Director	_____ By: Stephen Harleson, P.E., Chief Engineer
Date: _____	Date: _____
In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.	
STATE CONTROLLER Robert Jaros, CPA, MBA, JD	
By: _____	
Effective Date: _____	

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1. PARTIES

This Interagency Agreement (this “Agreement”) is entered into by and between the Paying Agency, (the “Paying Agency”), and the Performing Agency, (the “Performing Agency”) who are named on the Cover Page of this Agreement. The Paying Agency and the Performing Agency may each individually be referred to as a “Party” and collectively as the “Parties.” Each Party is an agency of the STATE OF COLORADO, hereinafter called the “State.”

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date.

B. Term

The Parties’ respective performances under this Agreement shall commence on the Agreement Performance Beginning Date shown on the Cover Page for this Agreement and shall terminate on the Agreement Expiration Date shown on the Cover Page for this Agreement unless sooner terminated or further extended in accordance with the terms of this Agreement.

C. Termination for Convenience

Either Party may terminate this Agreement for convenience by giving the other Party 90 days prior written notice setting forth the date of termination.

3. STATEMENT OF WORK AND BUDGET

A. Work

The Performing Agency shall complete the Work as described in this Agreement and in accordance with the provisions of Exhibit A. The Paying Agency shall have no liability to compensate the Performing Agency for the delivery of any goods or the performance of any services that are not specifically set forth in this Agreement.

B. Goods and Services

The Performing Agency shall procure goods and services necessary to complete its obligations using Agreement funds and shall not increase the maximum amount payable hereunder by the Paying Agency.

4. PAYMENTS TO THE PERFORMING AGENCY

A. Maximum Amount

Payments to the Performing Agency are limited to the unpaid, obligated balance of the Agreement funds. The Paying Agency shall not pay the Performing Agency any amount under this Agreement that exceeds the Agreement Maximum Amount for that State Fiscal Year shown on the Cover Page for this Agreement.

B. Payment Procedures

- i. The Performing Agency shall initiate payment requests by invoice to the Paying Agency, in a form and manner approved by the Paying Agency. To facilitate Fiscal Year End closing, final invoices for each Fiscal Year should be submitted to the Paying Agency by July 15th of the following Fiscal Year.
- ii. The Paying Agency shall pay each invoice within 30 days following the Paying Agency's receipt of that invoice, so long as the amount invoiced correctly represents work completed by the Performing Agency and previously accepted by the Paying Agency during the term that the invoice covers.
- iii. In accordance with the Fiscal Procedures Manual, each Agency shall report the outstanding balance of this Agreement on Exhibit AR_AP at Fiscal Year end.

5. RECORDS, MAINTENANCE AND INSPECTION

A. Maintenance

During the term of this Agreement and for a period terminating upon the later of (i) the six year anniversary of the final payment under this Agreement or (ii) the resolution of any pending Agreement matters (the "Record Retention Period"), each Party shall maintain, and allow inspection and monitoring by the other Party, and any other duly authorized agent of a governmental agency, of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the work or the delivery of services or goods hereunder.

B. Inspection

The Paying Agency shall have the right to inspect the Performing Agency's performance at all reasonable times and places during the term of this Agreement. The Performing Agency shall permit the Paying Agency, and any other duly authorized agent of a governmental agency having jurisdiction to monitor all activities conducted pursuant to this Agreement, to audit, inspect, examine, excerpt, copy and/or transcribe the Performing Agency's records related to this Agreement during the Record Retention Period to assure compliance with the terms hereof or to evaluate performance hereunder. Monitoring activities controlled by the Paying Agency shall not unduly interfere with the Performing Agency's performance hereunder.

6. CONFIDENTIAL INFORMATION

Each Party shall treat the confidential information of the other Party with the same degree of care and protection it affords to its own confidential information, unless a different standard is set forth in this Agreement. Each Party shall notify the other Party immediately if it receives a request or demand from a third party for records or information of the other Party.

7. DISPUTE RESOLUTION

The failure of a Party to perform its respective obligations in accordance with the provisions of this Agreement is a breach of this Agreement. In the event of disputes concerning performance hereunder or otherwise related to this Agreement, the Parties shall attempt to resolve them at the divisional level. If this fails, disputes shall be referred to senior departmental management staff designated by each Party. If this fails, the executive director of each Party shall meet and attempt resolution. If this fails, the matter shall be submitted in writing by both Parties to the State Controller, whose decision shall be final.

8. NOTICES AND REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Agreement shall be the Principal Representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered **(A)** by hand with receipt required, **(B)** by certified or registered mail to such Party's Principal Representative at the address set forth on the Cover Page or **(C)** as an email with read receipt requested to the Principal Representative at the email address, if any, set forth on the Cover Page for this Agreement. Either Party may change its Principal Representative by notice submitted in accordance with this section without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

9. GENERAL PROVISIONS

A. Assignment

The Performing Agency's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the Paying Agency. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of the Performing Agency's rights and obligations approved by the Paying Agency shall be subject to the provisions of this Agreement.

B. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

C. Digital Signatures

If any signatory signs this Agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

D. Third Party Beneficiaries

Except for the Parties' respective successors and assigns, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

EXHIBIT A, STATEMENT OF WORK AND BUDGET

1. Background

- A. CDOT is an agency of the State of Colorado authorized pursuant to § 43-1-105, C.R.S. to plan, develop, construct, coordinate, and promote an integrated transportation system in cooperation with federal, regional, local and other state agencies.
- B. Pursuant to § 43-1-110, C.R.S., the executive director of CDOT is authorized to execute certain agreements on behalf of CDOT.
- C. HPTE was created pursuant to § 43-4-806(2), C.R.S. and operates as a government-owned business within CDOT.
- D. Pursuant to § 43-4-806(6)(g), C.R.S., HPTE is empowered to enter into contracts or agreements with any public entity to facilitate a public-private partnership, including, but not limited to, an agreement in which the Enterprise, on behalf of CDOT, provides services in connection with a surface transportation infrastructure project.
- E. HPTE is further empowered, pursuant to § 43-4-806(6)(h), C.R.S., to make and enter into all other contracts and agreements, including intergovernmental agreements under § 29-1-103, C.R.S., that are necessary or incidental to the exercise of its powers and performance of its duties.
- F. The business purpose of HPTE, as provided for in § 43-4-806(2)(c), C.R.S. is to pursue public- private partnerships and other innovative and efficient means of completing surface transportation infrastructure projects, which HPTE may agree to complete for CDOT under agreements entered into with the Department in accordance with § 43-4-806(6)(f), C.R.S.
- G. On September 30, 2013 and as amended and restated on February 8, 2022 CDOT and HPTE entered into a Memorandum of Understanding, which set forth each Party's operating roles and responsibilities as they relate to their respective missions and provided, in relevant part, that HPTE is to be reimbursed by CDOT for personal goods or services procured by HPTE.
- H. CDOT acknowledges that HPTE possesses expertise and legal powers unavailable to CDOT, which enable it to accelerate the development and delivery of critical surface transportation infrastructure projects; and
- I. CDOT and HPTE previously entered into Fee for Service Intra-Agency Agreements, in Fiscal Years 2015-16, 2016-17, 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22 in which CDOT agreed to compensate HPTE for the fair market value of certain services to be provided to CDOT during those fiscal years.
- J. The Parties agree and acknowledge that the Services to be provided by HPTE to CDOT (as such term was defined in the FY 2016-17 Agreement and subsequently modified by mutual agreement of the Parties over the course of the fiscal year) are anticipated to be provided in their entirety prior to the conclusion of the fiscal year, with such satisfactory completion to be documented in the final progress report to be submitted no later than July 15, 2023.
- K. HPTE has prepared a new statement of work describing the Services CDOT has requested HPTE to provide CDOT during the 2022-23 fiscal year in this Exhibit A.
- L. In order to further the efficient completion of surface transportation infrastructure projects necessary to CDOT's development of an integrated transportation system, CDOT desires that

- HPTE utilize its expertise and legal powers to provide the Services, in exchange for which CDOT agrees to compensate HPTE in the amounts set forth in the Statement of Work.
- M. HPTE shall continue to be an enterprise for purposes of Section 20 of Article X of the Colorado Constitution ("TABOR"), so long as it receives less than ten percent (10%) of its total revenues in grants from all Colorado state and local governments combined.
 - N. Pursuant to §§ 24-77-102(7)(b) and 43-4-803(13)(b), C.R.S., grants do not include revenues or income derived from any authorized rate, fee, assessment, or other charge imposed by an enterprise for the provision of goods or services by such enterprise.
 - O. On March 11, 1997, in Opinion No. 97-01, the Colorado Attorney General also concluded, inter alia, that a designated enterprise may continue to qualify as an enterprise under TABOR, even though it receives a direct appropriation of monies, so long as the appropriation constitutes revenues resulting from the provision of goods or services pursuant to § 24-77-102(7)(b)(II), C.R.S.
 - P. Citing *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859 (Colo. 1995), the Colorado Attorney General further noted that the very concept of an enterprise under TABOR envisions an entity that is owned by a government institution, but is financially distinct from it, and also, that the financial affairs of the enterprise must be those of a self-supporting business-like activity that provides goods and services for a fee.
 - Q. On February 29, 2016, in Opinion 16-01, the Colorado Attorney General also concluded, inter alia, that an enterprise must charge a fee in exchange for a government service, and a fee for service arrangement - broadly construed - is nearly synonymous with enterprise status;
 - R. HPTE engaged Stifel, Nicolaus & Company, Incorporated to prepare an analysis of the market value of the services HPTE could provide to CDOT, based on a review of costs incurred by comparable agencies for similar services (the "Stifel Report");
 - S. The Stifel Report concluded that HPTE provides the necessary benefit to CDOT for CDOT to support compensation for the Services as contemplated in this Agreement;
 - T. Based on the findings of the Stifel Report and their own examinations of the benefit CDOT receives for HPTE's services, the Parties find and agree that the amounts CDOT intends to compensate HPTE for fiscal year 2022-23, as set forth in the Statement of Work, are reasonable and represent the fair market value of the specific Services to be provided; and
 - U. CDOT and HPTE each hereby affirm that, consistent with Colorado law, moneys paid by CDOT to HPTE under this Agreement are not grants of money from CDOT to HPTE, but rather, payment for the Services to be provided by HPTE to CDOT as more particularly set forth in the Statement of Work.

2. Responsibilities

- A. HPTE shall provide the Services set forth in this Exhibit A over a one-year period, commencing on July 1, 2022, and ending on June 30, 2023, which comprises the 2022-23 fiscal year.
- B. No later than January 15th and July 15th of the fiscal year, HPTE shall submit to CDOT a progress report. The progress report is to include a narrative summary of HPTE's activities during the previous six months, as well as a detailed report on the progress being made in the performance of the Services. The submissions of the semi-annual reports will be used by

HPTE and CDOT to recognize revenue and expenses, respectively, and are to be tied to the specific tasks, and categories of work within each task, described in the Statement of Work.

- C. The Parties may agree to modify the specific tasks set forth in the Statement of Work to be undertaken by HPTE during the term of this Agreement, provided that such modifications do not result in an increase or decrease in the overall estimated value of the Services to be provided under this Agreement. Any such modifications shall be specifically identified, and their estimated values reconciled, in the progress report submitted by HPTE on July 15th following the close of the prior fiscal year. Any modifications to the Statement of Work resulting in an increase or decrease in the overall estimated value of the Services shall not be undertaken unless agreed to in writing by the Parties in an amendment to this Agreement.

3. Payment Process

- A. HPTE intends to record the full Agreement Funds as deferred revenue, and recognize revenue on a pro-rata basis as Services are performed during the course of the fiscal year. HPTE will conduct a “true-up” of balances at both mid-year and at the end of the fiscal year, to coincide with the Services actually provided, in conjunction with the preparation and submittal of the progress reports described in Section 2.
- B. The Services to be provided, and the Agreement Funds therefor, are for the full fiscal-year covered by this Agreement, as may be amended from time to time. Milestone deadlines contained in the Statement of Work are for informational and work progress tracking purposes only and are not binding on HPTE. Services provided by HPTE within the fiscal year shall be compensated as part of the Agreement Funds provided for herein. No deductions shall be made for Services completed outside the timeframes set forth in the Statement of Work, provided such Services are completed within the current fiscal year.
- C. Any Services not completed within the term of this Agreement shall be reflected in the progress report submitted by HPTE on July 15th following the close of the prior fiscal year. In the event the value of the Services actually completed during the fiscal year is less than was estimated in the Statement of Work, HPTE may be required to reimburse CDOT for the value of Services not completed. The value of the uncompleted portion of the Services, if any, shall reflect the fair market value of the same, and shall be mutually agreed upon and set forth in writing by the Parties in an amendment to this Agreement.

4. Renewal

- A. It is expressly contemplated that the Parties intend to extend this Agreement for additional one-year terms for services to be provided by HPTE to CDOT in future fiscal years. Such extensions shall be documented by formal written amendment, and shall include an updated Statement of the Work to be provided in the subsequent fiscal years.
- B. HPTE agrees to provide CDOT a proposed draft Statement of Work for the following fiscal year no later than November 2022.
- C. If the Statement of Work and payment amount for the following fiscal year are deemed acceptable by CDOT, the same shall be set forth in a written amendment executed and approved by the Parties.
- D. If during its budget approval process for the following fiscal year, the Transportation Commission allocates funds for HPTE in the full amount included in the proposed Statement of Work submitted by HPTE, such proposed Statement of Work shall be deemed approved

by CDOT, notwithstanding any failure of the Parties to execute a written amendment prior to the July 1 start of the subsequent fiscal year. The Parties shall thereafter execute a written amendment for such subsequent fiscal year, the terms and conditions of which shall not be inconsistent with the budget action taken by the Transportation Commission.

- E. If the Statement of Work and payment amount to be provided by HPTE are approved by CDOT as provided for in this Section, CDOT agrees that it shall pay HPTE the agreed upon payment amount for the following fiscal year on July 1, which date represents the first day of the fiscal year in which the proposed services are anticipated to be provided.
- F. If the Parties are unable to agree upon a Statement of Work and payment amount for the following fiscal year prior to June 30 of any year, this Agreement shall terminate and be of no further force and effect for the subsequent fiscal year.

5. 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.

6. Statement of Work

6.1 Organizational Overview

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

6.2 Fiscal Year Services to be Provided

For the 2022-23 fiscal year, CDOT has tasked HPTE to oversee work in five core areas:

- 1) Manage the network of Express Lane corridors that contain both express lanes and general-purpose (GP) lanes both in operation and under construction.
- 2) Use its statutory authority to manage current public private partnerships (P3) and explore other future surface transportation related P3 opportunities.
- 3) Serve as a think tank for CDOT by exploring the possibility of using innovative finance to accelerate other needed projects and deliver maximum project scope.
- 4) Manage public outreach and communications work for all corridors that have express lanes and general-purpose lanes.
- 5) Represent the Department (defined as all divisions and entities under the Department of Transportation, including the Enterprises) at industry events such as conferences to promote the Colorado P3 market and attract interest and investment in future surface transportation projects that will benefit the statewide transportation system.

6.2.1 Express Lane Corridors: Ongoing Management and Implementation

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

- Support the new Tolling Operations and Maintenance (TOMs) Intra Agency Agreement between CDOT and HPTE. Tasks will include monitoring the work approved for the fiscal year 2022-23 to ensure that HPTE is paying CDOT for activities that are being accurately performed and reported on. HPTE will also work with CDOT on drafting a new scope of services slated to take effect for the 2023-24 fiscal year and will review the methodology for cost sharing and the payment process to ensure that CDOT is being fairly compensated for the work it is performing on behalf of HPTE.
- Provide toll rate sensitivity analysis and recommendations to provide a more reliable travel time across general purpose and express lanes. HPTE will provide active monitoring of these corridor's operations to ensure optimal congestion management across all lanes.
- Implement dynamic tolling (also referred to as congestion pricing) across the Express Lanes network. This sophisticated tolling strategy will provide optimal congestion management over the current time-of-day tolling strategy on all Express Lane corridors. Optimizing congestion management on all current and future Express Lane corridors will be critical for all lanes of the interstate as overall traffic increases with projected population growth.
- Lead the process of complying with all Federal Highway Administration (FHWA) reporting requirements for TIGER, BUILD, and INFRA grants received by CDOT for Express Lane Corridor projects. Tasks include collecting and reporting on safety data for all lanes in Express Lane corridors including I-70 Eastbound Mountain Express Lane (MEXL) and I-25 North U.S. 36 to 120th (Segment 2). Ongoing reporting and monitoring of safety metrics ensure a safe environment for all drivers, not just those who choose to use the Express Lanes.

- Oversee the installation and testing of tolling equipment on express lane construction projects such as I-25 North Johnstown to Fort Collins and Central 70. Oversight provided by HPTE is critical for coordination with construction contractors to meet CDOT project schedule milestones and to prevent damages charged to CDOT by the contractor for not meeting tolling equipment installation deadlines.
- Oversee the implementation of the Tolling Equity program for the Central 70 project. The National Environmental Policy Act (NEPA) documents identify this as a mitigation strategy for vulnerable populations who have been disproportionately exposed to environmental hazards along these corridors (referred to as environmental justice communities).

These activities will require close and ongoing coordination with the FHWA, E-470 Public Highway Authority, and CDOT regional staff, including traffic safety, incident management and maintenance. To accomplish these tasks, HPTE will provide in-house expertise to CDOT through its Tolling Services Specialist and Major Projects Manager as well outside industry expertise for operation related issues as needed.

6.2.2 Public-Private Partnership (P3): Oversight and Contract Management

As P3 authority and contracting entity within the Department, HPTE will continue to provide necessary corridor development work, including general advising for ongoing and future P3 projects and on-call P3 financial advising as needed. HPTE will also provide oversight and management of the P3 agreements for US.36 and Central 70 Project. To accomplish this, HPTE will:

- Implement and oversee a contract compliance and monitoring framework for the operating period of the Central 70 Project Agreement. This will include tracking tools to monitor routine maintenance, snow and ice removal, and capital renewal and replacement (OMR) work provided for the entire corridor, including general purpose and Express Lanes. Independent monitoring ensures that the contractor is achieving levels of service established under the contract and that non-compliance points are assessed accurately if they are not met. This will ensure that CDOT is accurately paying for OMR expenses.
- Coordinate with CDOT Region 1 staff and CDOT's Communications Office on all stakeholder outreach efforts for the Central 70 project as well as provide transportation demand management services for residents, businesses, and commuters to reduce travel demand along the corridor during construction.
- Work with Region 1 staff and the CDOT Budget team to develop a budget for routine maintenance, snow, and ice removal costs by September 2022 for the general-purpose lanes as required by the U.S. 36 CDOT/HPTE IAA.
- Provide in house expertise through its Major Projects Manager and support CDOT with any operational, service, or contractual issues or questions that arise in or relate to the GP lanes on the corridor.
- Address findings from the U.S. 36 Legislative Audit for better document control on large projects by providing specialized document management services through Aconex.

6.2.3 Innovative Financing

On Express Lane Corridor projects where HPTE has secured or will secure financing to accelerate project delivery; CDOT has tasked HPTE to serve as its ongoing financial manager. To accomplish this, HPTE will:

- Utilize its abilities to issue debt and engage financial advisory consultants to determine the borrowing capacity of HPTE to assist CDOT with funding shortfalls on Floyd Hill, I-270, and other Express Lanes Corridor projects on the CDOT 10 Year Plan. HPTE will also coordinate with the CDOT region staff on the NEPA and 30 percent design projects on these corridors.

6.2.4 Project Development

HPTE will continue to serve as a think-tank within the Department, exploring big picture ideas for innovative projects, general advising on P3 opportunities, and any other areas of work that may fall under HPTE's statutory purview that arise throughout the performance period for this SOW. To accomplish this, HPTE will:

- Coordinate with the Office of Innovative Mobility (OIM) and Division of Transportation Development (DTD) to provide access to transportation data and analytics services. This will assist CDOT in implementing the new Green House Gas (GHG) rule by providing vehicle miles traveled (VMT) analysis, in making data driven decisions about infrastructure investment for bikes, pedestrians and electric vehicle charging as well as help with large scale corridor mobility studies.
- Coordinate closely with CDOT on the procurement process for a new tolling back-office provider. Selecting a tolling back-office provider will be critical for ensuring HPTE can provide optimal congestion management across all Express Lane corridors, provide flexibility to implement changes resulting from policy decisions or new legislation that affects CDOT and HPTE as well as meet construction deadlines on all future projects eliminating potential fines due to construction delays.
- Partner with CDOT, Colorado Bridge and Tunnel Enterprise, the City and County of Denver, Broncos Stadium District, and West Colfax Business District to explore the redevelopment of the Federal and Colfax intersection. In FY 2021-22 the City and County of Denver completed its Interchange Transformation Study, and in FY 2022-23 HPTE will begin exploring how it could receive fair market value for the land and while transferring its asset ownership responsibility through a partnership with a private entity.

6.2.5 Public Outreach and Communications

CDOT has tasked HPTE with overseeing all communications to ensure comprehensive public outreach and education for Express Lane corridors opening, P3 projects including U.S. 36 and Central 70, and to comply with the U.S.36 Legislative Audit. Key tasks will include:

- Conduct public meetings and stakeholder outreach as required by the Transparency Policy
- Maintain current and updated information on project websites regarding project status and public participation activities and events.

- Coordinate with the CDOT Public Information Office on updating transponder and High Occupancy Vehicle (HOV) policy, motorcycle transponder policy, and HOV carpooling technology.
- Conduct public outreach on HPTE's move from time of day tolling to dynamic tolling.
- Conduct public meetings and stakeholder outreach on HPTE's Tolling Equity Program for the Central 70 Project.
- Conduct P3 training for internal staff and for stakeholders

6.2.6 Out of State Travel

Given the loosening of COVID-19 travel restrictions, HPTE is anticipating a slight increase in out of state travel for the 2022-23 fiscal year. To comply with the training requirement from the U.S.36 Legislative Audit and to promote Colorado projects to the infrastructure finance industry, HPTE will strive to participate in some conferences, trainings, and project related meetings virtually, while others, whose organizations follow local safety protocols, will be attended in person.

7. Terms and Conditions

7.1 Statement of Work Duration

This Statement of Work documents the duties and tasks that CDOT directs the HPTE to manage, oversee, and implement for Fiscal Year 2020-21. This Statement of Work outlines services that will be provided by HPTE over a one-year period that will commence on July 1, 2022, and end on June 30, 2023.

7.2 Payment for Services

Associated costs for specific areas of work are outlined below. In exchange for completing the tasks outlined under this Statement of Work, CDOT will compensate HPTE with an upfront payment for its services.

7.3 Progress Reporting

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

8. Estimate of Hours Dedicated to Fiscal Year 2022-23 Statement of Work Activities:

HPTE Staff Position	Hours per Week	Total Monthly Hours	Total Annual Hours
HPTE Director	35	140	1680
Head Project Manager	35	140	1680
Major Projects Manager	20	80	960
Tolling Operations Manager	20	80	960
Tolling Operations Supervisor	20	80	960
HPTE Liaison	35	140	1680
Program Assistant	30	120	1440
Administrative Assistant	30	120	1440
Total	225	900	10,800

Total Fee for FY 2022-23 for Statement of Work activities: \$4,000,000

Attachment B

Resolution – CTIO #382

Approving the Fiscal Year 2022-23 Fee for Service Intra-Agency Agreement between the High Performance Transportation Enterprise and the Colorado Department of Transportation

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

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

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

WHEREAS, for the upcoming fiscal year, HPTE has prepared a new Statement of Work describing the services CDOT has requested HPTE to provide CDOT during the 2022-23 fiscal year (the “Services”), which is attached as Exhibit A (the “Statement of Work”) to the Fiscal Year 2022-23 Fee for Service Intra-Agency Agreement (the “Agreement”); and

WHEREAS, the HPTE Board of Directors (the “Board”) has reviewed the FY 2022-23 Statement of Work and finds the compensation amounts set forth to constitute fair and reasonable compensation for the specific Services to be provided by HPTE to CDOT during the 2022-23 fiscal year as detailed in the Statement of Work; and

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

NOW THEREFORE BE IT RESOLVED, the Board hereby approves the Agreement in substantially the form presented and authorizes the HPTE Director to execute the Agreement with such changes therein and additions thereto, including revisions or modifications to the FY 2022-23 Statement of Work, as the HPTE Director may determine to be necessary or appropriate.

Signed as of March 16, 2022

Simon Logan
Secretary, CTIO Board of Directors