

MEMORANDUM

TO: COLORADO TRANSPORTATION INVESTMENT OFFICE BOARD OF DIRECTORS
FROM: KELLY BROWN, TOLLING OPERATIONS MANAGER
SUBJECT: BLISSWAY MULTI-AGENCY PILOT (MAP) PHASE 1
DATE: May 18, 2022

Purpose and Requested Action

At the April 20, 2022 Board meeting, CTIO staff, and Blissway CEO Francisco Torrealba introduced a Multi-Agency Pilot (MAP), which would take place on the I-70 Mountain Express Lane and where CTIO would act as the lead agency in the pilot. Staff presents the Blissway MAP Phase 1 Statement of Work for Board approval.

Background

revenue through a superior toll capture rate, eliminating capital expenditures, and long-term operational cost savings. To provide a comprehensive evaluation, leading toll agencies have been asked to support the pilot project led by CTIO. Additionally, BLISSWAY will provide a team of seasoned and trusted staff to support the pilot project, significantly reducing the CTIO staff's burden for the pilot project's deployment.

This core set of agencies will meet monthly during the project to provide a more in-depth review. A larger stakeholder set of agencies will participate in the kickoff and review pilot results. All agencies will have the opportunity to visit the pilot site and witness the operations and testing of BLISSWAY's roadside technologies. In addition to CTIO, participating agencies include:

- Transportation Corridor Agencies (TCA)
- North Carolina Turnpike Authority (NCTA)
- Washington State Department of Transportation (WSDOT)
- Tampa Hillsborough Expressway Authority (THEA)
- Riverside County Transportation Commission (RCTC)

Phase 1 will analyze BLISSWAY's roadside technology as a standalone system and a comparative analysis against the existing express toll lane system to prove vehicle capture and trip formation. WAL-E devices will be installed throughout the westbound direction of to the I-70 Mountain Express Lane corridor to the existing toll points. The following system performances will be validated:

- Vehicle detection $\geq 99.95\%$
- Vehicle identification $\geq 99\%$
- Trip building $\geq 99.9\%$
- Rate assignment $\geq 99.9\%$
- System availability $\geq 99.9\%$
- Identification of improper vehicles
- Real-time traffic data
- Sending fully formed transactions to CSC

To validate the above, a combination of scripted and unscripted test scenarios will be used. In addition to physical tolling infrastructure, BLISSWAY will also provide real-time operational dashboards for tolling and traffic-related performance data, optical character recognition results, vehicle demographics, detailed analytics, and reporting capabilities. Attachment A, Blissway Info Packet, describes the MAP Phase 1 scope of work in more detail.

Board Options and Recommendations

1. Staff recommends that the Board approves the Blissway Multi-Agency Pilot Phase 1 Statement of Work.
2. Deny the request for CTIO to participate as the lead agency in the Blissway Multi-Agency Pilot and deny Blissway permission to conduct the Blissway Multi-Agency Pilot on CTIO Express Lanes.

Attachments

Attachment A: Blissway Multi-Agency Pilot Phase 1 Statement of Work

Attachment B: Blissway Beta Testing Agreement

Attachment C: Resolution #389



COLORADO
**Transportation
Investment Office**

ATTACHMENT A

Blissway Multi-Agency Pilot Phase 1 Statement of Work

BLISSWAY

Multi-Agency Pilot (MAP)

PURPOSE

BLISSWAY is deploying a multi-agency pilot project on existing Colorado Transportation Investment Office (CTIO) express lanes to prove its leading-edge tolling solution. BLISSWAY will demonstrate how agencies can realize reduced toll operating costs and increased revenue, through a superior toll capture rate, the elimination of capital expenditures, and long-term operational cost savings.

To provide a comprehensive evaluation, leading toll agencies have been asked to support the pilot project led by CTIO. A core set of agencies will meet monthly during the project to provide more in-depth review. A larger stakeholder set of agencies will participate in the kickoff and review pilot results. All agencies will have the opportunity to visit the pilot site and witness the operations and testing of BLISSWAY's roadside technologies. Participating agencies include:

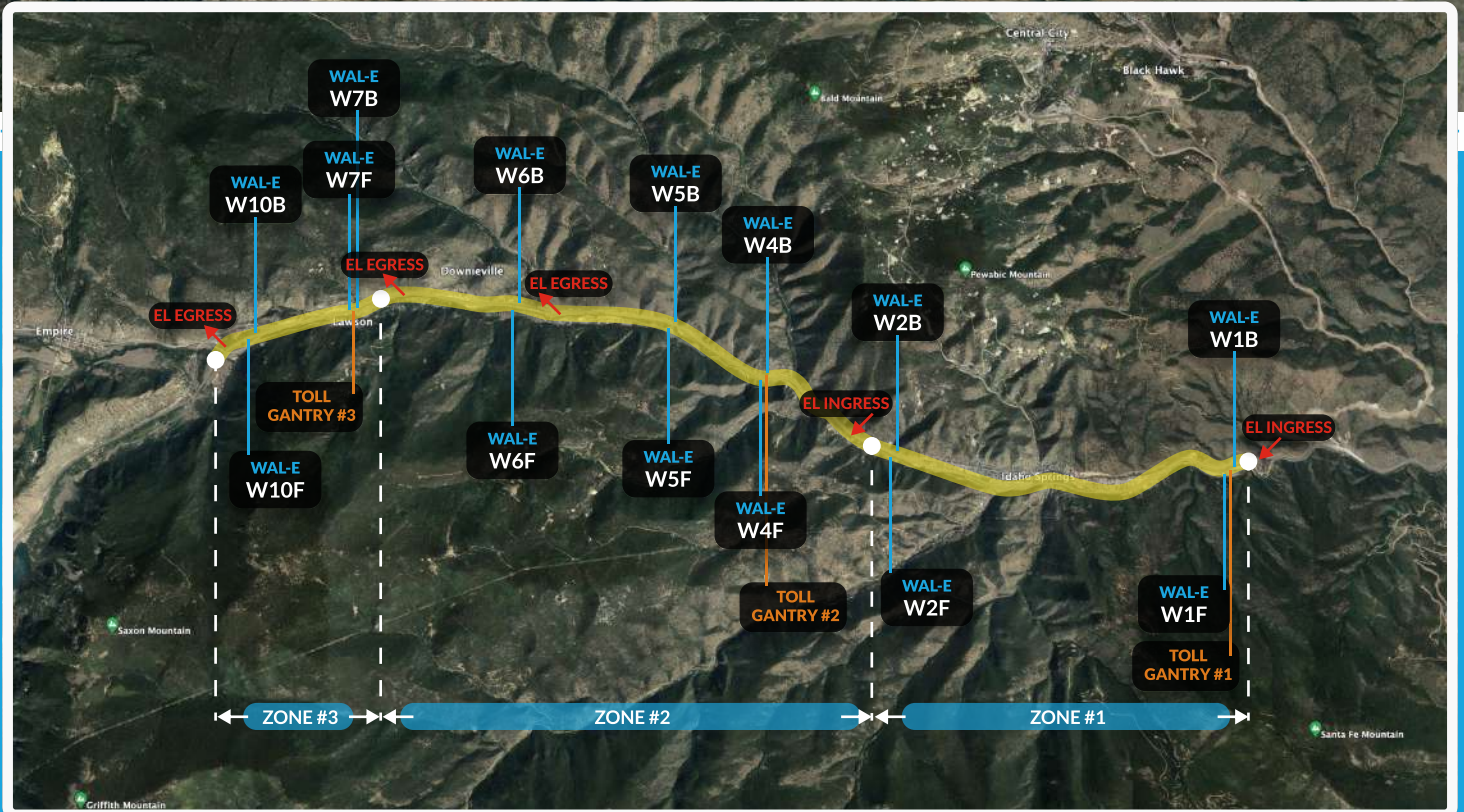
PARTICIPATING AGENCIES (PRELIMINARY)

- Colorado Transportation Investment Office (CTIO)
- Transportation Corridor Agencies (TCA)
- North Carolina Turnpike Authority (NCTA)
- Washington State Department of Transportation (WSDOT)
- Tampa Hillsborough Expressway Authority (THEA)
- Riverside County Transportation Commission (RCTC)

Additionally, BLISSWAY will provide a team of seasoned and trusted staff to support the pilot project, significantly reducing the burden to participating staff for the deployment of the pilot project.

PILOT LOCATION

BLISSWAY will install 14 WAL-E devices in 7 different locations along the I-70W Mountain Express Lane corridor in relation to 3 existing toll gantries. This 12-mile corridor includes one express lane adjacent to two general purpose lanes separated by a painted buffer.



PILOT PHASE 1

Roadside System Accuracy

Phase 1 will be an analysis of BLISSWAY's roadside technology as a standalone system and a comparative analysis against the existing I-70W express toll lane system to prove vehicle capture and trip formation. WAL-E devices will be installed throughout the I-70W corridor in relation to the existing toll points. Phase 1 will validate the following system performances:

SYSTEM PERFORMANCES

- ✓ **Vehicle detection ≥99.95%**
 - Vehicles that pass a roadway segment
- ✓ **Vehicle identification ≥99%**
 - License plate capture (front/back)
 - Human-readable plates
- ✓ **Trip building ≥99.9%**
 - Segment based tolling
- ✓ **Rate assignment ≥99.9%**
 - Flat rate based on existing toll system prices
- ✓ **System availability ≥99.9%**
 - Roadside WAL-E units
 - Roadside cloud host
- ✓ **Identification of improper vehicles**
 - Vehicles during non-tolling hours
 - Trucks and vehicles with trailers
 - Vehicles weaving around existing toll system gantries
- ✓ **Real-time traffic data**
 - Express lane and general purpose lanes speed and volume
- ✓ **Sending fully formed transactions to CSC**
 - Conformance to ICD
 - Reconciliation and reporting

In order to validate the above, a combination of testing approaches will be used:

Scripted Test Scenarios

Transaction creation and trip building will be verified through scripted scenarios using hired drivers to specifically target business rules and edge conditions that may be difficult to achieve in a live-traffic environment.

Unscripted Test Scenarios

Unscripted test cases will utilize live traffic in order to achieve sufficient volume for transaction creation and trip building to increase confidence in the results. BLISSWAY's system will be evaluated against the existing toll system on I-70W to prove BLISSWAY's solution is comparable to a traditional toll system.

In addition to physical tolling infrastructure, BLISSWAY will also provide real-time operational dashboards for tolling and traffic related performance data, optical character recognition results, vehicle demographics, detailed analytics, and reporting capabilities.

Beta Testing Agreement COVER PAGE

State Agency High-Performance Transportation Enterprise (HPTE)	Agreement Number Insert CMS Number or Other Agreement Number SAP Encumbrance Number Insert SAP Encumbrance Number		
Company Blissway Inc.	Agreement Performance Beginning Date The Effective Date		
Agreement Authority CRS §43-1-106	Initial Agreement Expiration Date N/A		
Agreement Purpose The Parties desire to implement Phase 2 of a pilot program. This Phase 2 shall consist of [insert description] (collectively, the "Work").			
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Agreement: <ol style="list-style-type: none"> 1. Exhibit A – Statement of Work <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. Colorado Special Provisions in §12 of the main body of this Agreement. 2. The provisions of the other sections of the main body of this Agreement. 3. Exhibit A, Statement of Work. 			
Principal Representatives <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> For HPTE: Kelly Brown HPTE 2829 Howard Place, 5th Floor Denver, CO 80204 Kelly.brown@state.co.us (303) 512-4062 </td> <td style="width: 50%; vertical-align: top;"> For Company: Francisco Torrealba Fuenzalida Blissway Inc. 1817 Clark Ln. Redondo Beach, California 90278 francisco@blissway.com (424) 391-9602 </td> </tr> </table>		For HPTE: Kelly Brown HPTE 2829 Howard Place, 5 th Floor Denver, CO 80204 Kelly.brown@state.co.us (303) 512-4062	For Company: Francisco Torrealba Fuenzalida Blissway Inc. 1817 Clark Ln. Redondo Beach, California 90278 francisco@blissway.com (424) 391-9602
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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 bind the Party authorizing such signature.

COMPANY Blissway Inc.	STATE OF COLORADO Jared S. Polis, Governor Department of Transportation High Performance Transportation Enterprise
_____ By: Francisco Torrealba Fuenzalida, CEO Date: _____	_____ By: Nicholas J. Farber, Director Date: _____

1. **Parties**

This Beta Testing Agreement ("**Agreement**") is entered into by and between the Company named on the Cover Page for this Agreement (the "**Company**") and the STATE OF COLORADO acting by and through the High-Performance Transportation Enterprise ("**Enterprise**"). Company and Enterprise agree to the terms and conditions in this Agreement (individually "**Party**" or jointly as "**Parties**").

2. **Term and Effective Date**

A. **Effective Date**

This Agreement shall not be valid or enforceable until the date of execution by the Director of HPTE or designee ("**Effective Date**"). Any provision of this Agreement shall not bind Enterprise before the Effective Date or after the expiration or sooner termination of this Agreement.

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 continue until terminated by either Party upon ninety (90) days written notice to the other Party ("**Term**").

C. **Early Termination in the Public Interest**

Enterprise is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State of Colorado, Enterprise, in its discretion, may terminate this Agreement in whole or in part immediately.

i. **Method and Content**

Enterprise shall notify Company of such termination per §8. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement and may include, to the extent practicable, the public interest justification for the termination.

ii. **Obligations and Rights**

Upon receipt of a termination notice for a termination in the public interest, Company shall be subject to the obligations outlined in §10 below.

3. **Statement of Work**

The Parties shall complete the Work as described in this Agreement and per the provisions of **Exhibit A**. Upon presentment and approval from Enterprise's Board of Directors, the Parties agree that the Parties may add additional Statements of Work to **Exhibit A** of this Agreement without the need for formal amendment of this Agreement. The Parties shall acknowledge additional Statements of Work in writing.

4. **License Grants**

Subject to the terms and conditions herein, Enterprise grants to Company, for the Term, a limited, non-exclusive, non-transferable, non-assignable, revocable license ("**License**") to install and test Company equipment and software product(s) as identified in **Exhibit A**, attached hereto and incorporated herein by reference, on Enterprise controlled property, for the purpose the Parties joint evaluation of the viability and applicability of such equipment and/or software in commercial, public infrastructure projects. As compensation for such license, Company agrees to provide Enterprise with a twenty-five per cent (25%) discount on equipment and/or software product(s) tested hereunder ("**Enterprise Discount**"). Additionally, Company shall provide Enterprise with a one per cent (1%) perpetual, worldwide royalty payment on the net profit of all sales, licensing, or other commercial transactions of equipment and/or software product(s) tested hereunder per calendar year ("**Royalty Payment**"). Such Royalty Payment shall be made in quarterly installments, on or

before the fifteenth day (15th) day of the first month in the successive quarter after the period covering the payment.

5. **Termination of License**

The License granted hereunder will terminate upon the termination of the Term. The Parties agree the Enterprise Discount and Royalty Payment shall survive termination of License and/or this Agreement.

6. **Delivery and Installation**

Company shall provide and/or install all equipment and software products authorized hereunder at its sole cost and expense. Enterprise acknowledges and agrees: (a) the equipment and software products installed and provided are not official products and have not been commercially released for sale; (b) equipment and software products installed and provided may not operate properly, be in final form, or fully functional; (c) equipment and software products may contain errors, design flaws, or other problems; (d) it may not be possible to make the equipment or software products fully functional; (e) the information obtained using the equipment and software products may not be accurate and may not accurately correspond to information extracted from any database or other source; (f) Company is under no obligation to release a commercial version of the equipment and/or software products; and (h) Company has the right unilaterally to abandon development of equipment or software products, at any time and without any obligation or liability to Enterprise.

7. **Feedback**

Enterprise agrees to provide reasonable feedback to Company concerning the features, functionality, and commercial viability of any equipment and software products tested hereunder. Where Enterprise provides feedback to Company, all such feedback will be the sole and exclusive property of Company. Enterprise hereby irrevocably transfers and assigns to Company and agrees to irrevocably assign and transfer to Company all of Enterprise's right, title, and interest in and to all feedback, including intellectual property rights therein. Except as stated in Section 4 above, Enterprise shall not earn or acquire any rights or license in the equipment or software products or any Company intellectual property rights on account of this Agreement or Company's performance under this Agreement, even if Company incorporates any feedback into the equipment or software products tested hereunder.

8. **Statement of Costs, Risks and Liability**

Each Party shall bear all costs, risks, liabilities, and insurance incurred by either Party arising out of its obligations and performance under this Agreement. Neither Party shall have any right to reimbursement, payment, or other compensation of any kind from the other Party under this Agreement for those costs, risks, liabilities, or insurance.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY UNDER ANY CIRCUMSTANCES FOR ANY ANTICIPATORY OR LOST PROFITS, LOST REVENUE, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES OF ANY KIND (COLLECTIVELY, "**NON-DIRECT DAMAGES**") RESULTING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT EVEN IF THOSE NON-DIRECT DAMAGES ARE ATTRIBUTED TO BREACH OF THIS AGREEMENT, TORT, NEGLIGENCE, OR OTHER CAUSE; AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF NON-DIRECT DAMAGES; AND EVEN IF, UNDER APPLICABLE LAW, NON-DIRECT DAMAGES ARE CONSIDERED DIRECT DAMAGES.

Notwithstanding anything contained herein to the contrary, nothing in the Agreement is intended to negate or address any liability of Company that may arise under the terms and conditions of any permit required to be obtained by Company in installing, operating, maintaining or removing any equipment, goods, and/or software relating to the Work. The Parties agree this Agreement is not intended to waive or otherwise augment any immunity from liability stated under **§16** below.

9. **Breach of Contract**

If either Party shall fail to fulfill, in a timely and proper manner, its material obligations under this Agreement, or if either Party shall violate any of the material covenants, agreements, or stipulations of this Agreement (a "**Breach of Contract**"), the aggrieved Party shall provide written notice to the other Party. If the notified Party does not cure the Breach of Contract, at its sole expense, within ten (10) days after the delivery of the written notice, the aggrieved Party shall provide written notice to the breaching Party of such failure and in its discretion initiate the dispute resolution process in §11 or terminate the Agreement for convenience under §2.

10. **Remedies**

A. **Enterprise's Remedies**

If Company is in breach under any provision of this Agreement and fails to cure such breach, Enterprise, following the notice and cure period outlined in §9, shall have all the remedies listed in this section in addition to all other remedies outlined in this Agreement or at law. Enterprise may exercise any or all the remedies available to it, in its discretion, concurrently or consecutively.

i. **Termination for Breach of Contract**

In the event of Company's uncured breach, Enterprise may terminate this entire Agreement or any part of this Agreement. Company shall continue performance of this Agreement to the extent not terminated if any.

a. **Obligations and Rights**

To the extent specified in any termination notice, Company shall not render further performance past the effective date of such notice. Upon termination, Company shall take timely, reasonable, and necessary action to protect and preserve property in possession of Company but in which Enterprise has an interest. At Enterprise's request, Company shall return materials owned by Enterprise in Company's possession at the time of any termination.

ii. **Remedies Not Involving Termination**

Enterprise, in its discretion, may exercise one or more of the following additional remedies:

a. **Suspend Performance**

Suspend Company's performance concerning all or any portion of the Work pending corrective action as specified by Enterprise. Company shall promptly cease performing Work per Enterprise's directive.

b. **Removal**

Demand immediate removal of any of Company's employees, agents, or subcontractors from the Work who Enterprise deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by Enterprise to be contrary to the public interest or Enterprise's best interest.

B. **Company's Remedies**

If Enterprise is in breach of any provision of this Agreement and does not cure such breach, Company, following the notice and cure period in §9 and the dispute resolution process in §11, shall have all remedies available at law and equity.

C. **Termination for Convenience**

Either Party may terminate this Agreement for any reason per §2 above.

11. **Dispute Resolution**

A. Initial Resolution

Except as herein expressly provided otherwise, disputes concerning the performance of this Agreement which the designated Agreement representatives cannot resolve shall be referred in writing to a senior departmental management staff member designated by the Enterprise and a senior manager designated by Company for resolution.

B. Resolution of Controversies

If the initial resolution described in §11. A fails to resolve the dispute within ten (10) Business Days, the matter shall be submitted jointly to the Company's and HPTE's Director of Operations or Executive Director for final resolution of the dispute or disagreement. If the Company and HPTE's Director of Operations or Executive Director cannot resolve the dispute within a thirty (30) day period, this Agreement may be terminated by either Party upon written notice to the other Party. The Parties agree that participation in this administrative procedure shall be a condition precedent to the initiation of litigation, except in the case of an emergency or other conditions that entitle either Party to seek injunctive or emergency relief from a court of competent jurisdiction, in which no participation in the preceding alternative dispute resolution process shall be required. "Business Days" means any day other than Saturday, Sunday, or a legal holiday as listed in §24-11-101(1), C.R.S.

12. 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 for this Agreement 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. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Agreement. Either Party may change its principal representative or principal representative contact information or may designate specific other individuals to receive certain types of notices in addition to or instead of a principal representative by notice submitted per 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.

13. Rights in Work Product and Other Information

A. Exclusive Property of the Enterprise

Except to the extent expressly provided elsewhere in this Agreement, all Enterprise Records, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and information provided by or on behalf of Enterprise to Company are the exclusive property of Enterprise (collectively, "**Enterprise Materials**"). Company shall not use, willingly allow, cause, or permit Enterprise Materials to be used for any purpose other than the performance of Company's obligations in this Agreement without the prior written consent of Enterprise. Upon termination of this Agreement for any reason, Company shall provide all Enterprise Materials to Enterprise in a form and manner as directed by Enterprise.

B. Exclusive Property of Company

Company retains the exclusive rights, title, and ownership to all materials owned or licensed to Company including, but not limited to, all software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Company under the Agreement (collectively, "**Company Property**"). If required, Company Property shall be licensed to Enterprise as outlined in this Agreement or an Enterprise approved license agreement: (i) entered into as exhibits to this Agreement; (ii) obtained by Enterprise from the applicable third-party vendor; or (iii) in the case of open-source software, the license terms outlined in the applicable open source license agreement.

C. Proprietary Rights

The Parties understand and acknowledge equipment, software product(s), and/or corresponding data contain confidential information and other trade secrets of Company and/or Enterprise. Enterprise agrees not to: copy (except as strictly necessary to perform its obligations hereunder), distribute, sell, sublicense, or otherwise transfer or make available any equipment, software products, corresponding data, or any portion thereof to any third party; remove from view any copyright legend, trademark, or confidentiality notice appearing on any equipment, software products or software output; modify, adapt, translate, reverse engineer, decompile, or derive the source code for the software products, or authorize a third party to do any of the foregoing. Enterprise agrees to reproduce all Company copyright notices and any other proprietary rights notices on all copies of equipment, software products, and/or corresponding data.

14. Insurance

Company shall obtain, maintain, and ensure each subcontractor (if any) shall obtain and maintain insurance as specified in this section at all times during the Term of this Agreement. All insurance policies required by this Agreement shall be issued by insurance companies as approved by the Enterprise.

A. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Company or subcontractor employees acting within the course and scope of their employment.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any one fire.

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 for each accident combined single limit.

D. Additional Insured

Enterprise and the State of Colorado shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Company and subcontractors.

E. Primacy of Coverage

Coverage required of Company and each subcontractor shall be primary over any insurance or self-insurance program carried by Company or Enterprise.

F. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least thirty (30) days prior notice to Company and Company shall forward such notice to the Enterprise per §14 within seven (7) days of Company's receipt of such notice.

G. Subrogation Waiver

All insurance policies secured or maintained by Company or its subcontractors concerning this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under

subrogation or otherwise against Company, Enterprise, or the State of Colorado, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

H. **Certificates**

Company shall provide to Enterprise certificates evidencing Company's insurance coverage required in this Agreement before the Effective Date. Company shall provide to the Enterprise certificates evidencing subcontractor insurance coverage required under this Agreement before the Effective Date, except that, if Company's subcontract is not in effect as of the Effective Date, Company shall provide to the Enterprise certificates showing subcontractor insurance coverage required under this Agreement within seven (7) Business Days following Company's execution of the subcontract. No later than fifteen (15) days before the expiration date of Company's or any subcontractor's coverage, Company shall deliver to Enterprise certificates of insurance evidencing renewals of coverage. At any other time during the Term of this Agreement, upon request by the Enterprise, Company shall, within seven (7) Business Days following the request by the Enterprise, supply to Enterprise evidence satisfactory to Enterprise of compliance with the provisions of this section.

15. **General Provisions**

A. **Assignment**

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

B. **Binding Effect**

Except as otherwise provided in §15.A, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

C. **Authority**

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

D. **Captions and References**

Captions and headings are for convenience of reference only and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelt out or using the § symbol), subsections, exhibits or other attachments are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof unless otherwise noted.

E. **Counterparts**

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

F. **Entire Understanding**

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever unless embodied herein.

G. **Digital Signatures**

If any signatory signs this Agreement using a digital signature per 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.

H. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved by all Parties.

I. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Agreement to a statute, regulation, fiscal rule, fiscal policy or other authority shall be interpreted to refer to such authority than current, as may have been changed or amended since the Effective Date of this Agreement.

J. External Terms and Conditions

Notwithstanding anything to the contrary herein, Enterprise shall not be subject to any provision included in any terms, conditions, or agreements appearing on Company's website or any provision incorporated into any click-through or online agreements unless that provision is specifically referenced in this Agreement.

K. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement per the intent of this Agreement.

L. Survival of Certain Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other Party.

M. Taxes

Enterprise is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from state and local government sales and use taxes under §§39-26-704(1), et seq., C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). Enterprise shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the State of Colorado imposes such taxes on Company. Company shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Company may wish to have in place in connection with this Agreement.

N. No Third-Party Beneficiary

Except for the Parties' respective successors and assigns described in §15.A, this Agreement 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.

O. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

P. CORA Disclosure

To the extent not prohibited by federal or state law, this Agreement and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

Q. Standard and Manner of Performance

Company shall perform its obligations under this Agreement according to the highest standards of care, skill and diligence in the Company's industry, trade, or profession.

R. Licenses, Permits, and Other Authorizations

- i. Company shall secure, before the Effective Date, and maintain at all times during the Term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations concerning this Agreement.
- ii. Company, if a foreign corporation or other foreign entity transacting business in the State of Colorado, shall obtain before the Effective Date and maintain at all times during the Term of this Agreement at its sole expense, a certificate of authority to transact business in the State of Colorado and designate a registered agent in Colorado to accept service of process.

S. Indemnification

i. General Indemnification

Company shall indemnify, save, and hold harmless the Enterprise, the State of Colorado, their employees, agents and assignees (collectively, the "**Indemnified Parties**"), against all costs, expenses, claims, damages, liabilities, court awards, and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties concerning any act or omission by Company, or its employees, agents, subcontractors, or assignees in connection with this Agreement.

ii. Intellectual Property Indemnification

Company shall indemnify, save, and hold harmless the Indemnified Parties against all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties concerning any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

16. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all agreements except where noted in italics.

A. Fund Availability

Enterprise's financial obligations after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

B. Governmental Immunity

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State of Colorado's risk management statutes, §§24-30-1501, *et seq.* C.R.S. 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 contained in these statutes.

C. Independent Contractor

Company shall perform its duties hereunder as an independent contractor and not as an employee. Neither Company nor any agent or employee of Company shall be deemed an agent or employee of Enterprise. Company shall not have the authorization, express or implied, to bind Enterprise to any agreement, liability or understanding, except as expressly set forth herein. Company and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through Enterprise, and Enterprise shall not pay for or otherwise provide such coverage for Company or any of its agents or employees. Company shall pay when due all applicable employment taxes and income taxes, and local head taxes incurred under this Agreement. Company shall (i) provide and keep in force workers' compensation, and unemployment compensation insurance in the amounts required by law, (ii)

provide proof thereof when requested by Enterprise, and (iii) be solely responsible for its acts and those of its employees and agents.

D. **Compliance with Law**

Company shall comply with all applicable federal and state laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

E. **Choice of Law, Jurisdiction and Venue**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement, without regard to conflict of law provisions. Any provision included or incorporated herein by reference that conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado, and exclusive venue shall be in the City and County of Denver.

F. **Prohibited Terms**

Any term included in this Agreement that requires Enterprise to indemnify or hold the Company harmless; requires Enterprise to agree to binding arbitration; limits the Company's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of §24-106-109 C.R.S.

EXHIBIT A – STATEMENT OF WORK

1. **Purpose**
2. **Blissway Responsibilities**
3. **General Blissway Activities**
4. **HPTE Responsibilities**
5. **Decommissioning**
6. **Test Results Analysis**
7. **Schedule**
8. **Documentation**

Resolution – HPTE #389

Approving the Blissway Beta Testing Agreement and Multi-Agency Pilot Scope of Work between the High Performance Transportation Enterprise and Blissway Inc.

WHEREAS, under C.R.S. § 43-4-806, *et seq.*, the General Assembly of the State of Colorado (“State”) created the Colorado High Performance Transportation Enterprise (“HPTE”) 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, under C.R.S. § 43-4-806(6)(h), HPTE is empowered to make and enter into all other contracts and agreements, including intergovernmental agreements under C.R.S. § 29-1-103, that are necessary or incidental to the exercise of its powers and performance of its duties; and

WHEREAS, HPTE and Blissway previously entered into a Phase 1 pilot agreement consisting of testing Blissway’s Wireless Autonomous Lane Enforcement (WAL-E) roadside toll equipment technology, designed to enforce proper Express Lane usage via detection and recognition of license plate information and other vehicle fingerprints such as make or color; and

WHEREAS, based on the success of the Phase 1 pilot program, HPTE and Blissway desire to formalize an ongoing relationship that will allow Blissway, at the request of HPTE and upon the approval of HPTE’s Board, to test Blissway’s technology and equipment on HPTE assets, with HPTE providing feedback to Blissway; and

WHEREAS, in exchange for this ongoing relationship, Blissway has agreed to provide HPTE with a discount on any technology, equipment, or software products tested on HPTE assets through the Agreement; and

WHEREAS, HPTE Staff and Blissway have developed a Beta Testing Agreement (“Agreement”) to govern the ongoing relationship between Blissway and HPTE; and

WHEREAS, the first project proposed by HPTE and Blissway is a Multi-Agency Pilot that will test WAL-E equipment while collecting data and sharing such data with HPTE and other states transportation agencies; and

WHEREAS, the HPTE Board of Directors (“Board”) has reviewed the proposed Statement of Work for the Multi-Agency Pilot and finds the proposed structure and terms and conditions a fair and reasonable exchange in line with HPTE’s mandate to pursue innovative means of more efficiently financing and completing important surface transportation projects that will improve the safety, capacity, and accessibility of the surface transportation system; and

WHEREAS, the HPTE Board has reviewed the Agreement, by this Resolution accepts, and confirms the statements contained therein, and agrees the proposed operating structure and long-term relationship detailed in the Agreement is in the best interest of HPTE; and

WHEREAS, the HPTE Board notes, if there are any substantial changes to the structure or terms of the Agreement, before final execution, the HPTE Board requires the Director to bring the final Agreement back to the HPTE Board for review before execution; and

NOW THEREFORE BE IT RESOLVED, the HPTE Board hereby approves the Agreement in substantially the form presented and authorizes the HPTE Director, or his designee, to execute the Agreement.

Signed as of May 18, 2022

Simon Logan
Secretary, HPTE Board