

**MEMORANDUM OF UNDERSTANDING (MOU)
AMONG THE
FHWA COLORADO DIVISION OFFICE (Division),
THE COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE
(HPTE) AND
THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT)**

WHEREAS, HPTE (a government owned business housed within CDOT) in partnership with CDOT desires to construct improvements on the I-70 Floyd Hill to Veterans Memorial Tunnels Project, a 8-mile stretch of I-70 between the Veterans Memorial Tunnel and Jefferson County Road 65. The project will improve an 8 mile section of the I-70 Mountain Corridor that is prone to traffic delays by adding a new full time tolled lane on westbound I-70 (totaling 8 miles) connecting at the western limit to the existing part time tolled Mountain Express Lane, adding an auxiliary lane for slower moving truck eastbound from the US6 interchange, improving design speed and sight distances, and implementing wildlife connectivity, air and water quality, stream conditions, and recreation. (collectively "Toll Facility"); and

WHEREAS, under Section 1512 of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. No. 112-141, Congress modified 23 U.S.C. 129(a) to, among other things, eliminate the requirement for a toll agreement to be executed between CDOT and the FHWA as a prerequisite to toll authority for a Federal-aid highway project; and

WHEREAS, the Division, CDOT, and HPTE desire to execute this MOU in order to reflect the mutual understanding that 23 U.S.C. 129(a), as amended by MAP-21, applies to the Toll Facility; and

WHEREAS, this project to construct the Toll Facility meets the following toll eligibility requirement in 23 U.S.C. 129(a)(1):

- C. initial construction of one (1) or more lanes or other improvements that increase the capacity of a highway, bridge, or tunnel on the Interstate System and conversion of that highway, bridge, or tunnel to a tolled facility, if the number of toll-free non-HOV lanes, excluding auxiliary lanes, after such construction is not less than the number of toll-free non-HOV lanes, excluding auxiliary lanes, before such construction;

NOW THEREFORE, the Division, CDOT, and HPTE hereby agree as follows:

1. HPTE shall comply with 23 U.S.C. 129(a) as amended by MAP-21, with respect to project and the operation of the Toll Facility.
2. As provided at 23 U.S.C. 129(a)(3), as amended by Section 1512 of MAP-21, HPTE shall use the toll revenues collected from the operation of the Toll Facility only for:
 - i. debt service with respect to the projects on or for which the tolls are authorized, including funding of reasonable reserves and debt service on refinancing; and

- ii. a reasonable return on investment of any private person financing the project, as determined by CDOT or interstate compact of States concerned; and
 - iii. any costs necessary for the improvement and proper operation and maintenance of the Toll Facility, including reconstruction, resurfacing, restoration, and rehabilitation; and
 - iv. if the Toll Facility is subject to a public-private partnership agreement, payments that the party holding the right to toll revenues owes to the other party under the public-private partnership agreement; and
 - v. if HPTE certifies annually that the Toll Facility is being adequately maintained, any other purpose for which Federal funds may be obligated by a State under title 23, United States Code.
3. As provided under 23 U.S.C. 129(a)(3)(B), as amended by Section 1512 of MAP-21, HPTE shall, upon reasonable notice, make all its records pertaining to the toll facility subject to audit by the FHWA. Also, HPTE agrees to annually audit the records of the Toll Facility for compliance with the toll revenue use restrictions of 23 U.S.C. 129(a)(3), as amended by MAP-21, and report the results thereof to the Division. In lieu of the HPTE performing said audit, a report of an independent auditor furnished to the Division may satisfy the requirements of this section.
4. HPTE will submit the annual maintenance certification and audit report to the Division by the end of each fiscal year.

IN WITNESS THEREOF, the parties hereto have caused this MOU to be duly executed, on the date of the last signature below.

STATE OF COLORADO
HIGH PERFORMANCE TRANSPORTATION ENTERPRISE

BY: _____
Nicholas J. Farber, Director

DATE: _____

STATE OF COLORADO
COLORADO DEPARTMENT OF TRANSPORTATION

BY: _____
Shoshana M. Lew, Executive Director

DATE: _____

FEDERAL HIGHWAY ADMINISTRATION
COLORADO DIVISION

BY: _____
John M. Cater, Division Administrator

DATE: _____