COLORADO HIGH-PERFORMANCE TRANSPORTATION ENTERPRISE

ARTICLES OF ORGANIZATION

PREAMBLE

The General Assembly of the State of Colorado (the "State") found and declared in section 43-4-806 (1), C.R.S., that:

(a) It is necessary, appropriate, and in the best interests of the state for the state to aggressively pursue innovative means of more efficiently financing important surface transportation infrastructure projects that will improve the safety, capacity, and accessibility of the surface transportation system, can feasibly be commenced in a reasonable amount of time, will allow more efficient movement of people, goods, and information throughout the state, and will accelerate the economic recovery of the state;

(b) Such innovative means of financing projects include, but are not limited to, public-private partnerships, operating concession agreements, user fee-based project financing, and availability payment and design-build contracting; and

(c) It is the intent of the general assembly that the high-performance transportation enterprise created in this section actively seek out opportunities for public-private partnerships for the purpose of completing surface transportation infrastructure projects and that this section be broadly construed to allow the transportation enterprise sufficient flexibility, consistent with the requirements of the state constitution, to pursue any available means of financing such surface transportation infrastructure projects that will allow the efficient completion of the projects.

The General Assembly thereupon created in CRS 43-4-806(2) (a) (I), C.R.S., a statewide high-performance transportation enterprise as a government-owned business within the Colorado Department of Transportation ("CDOT"), operating as a division of CDOT.

Article I. Name

The statewide high-performance transportation enterprise created in CDR 43-4-806(2) (a) (I) shall be known as the COLORADO TRANSPORTATION ENTERPRISE ("Transportation Enterprise").

Article II. Authority

The Colorado Legislature approved the creation of the Transportation Enterprise during its regularly scheduled session in 2009, and was signed into law by the Governor of the State of Colorado on March 1, 2009. The Transportation Enterprise shall function

pursuant to these articles of Organization until such time as it may be abolished by a specific action under applicable Colorado state law.

Article III. Purpose

The business purpose of the Transportation Enterprise is to pursue public-private partnerships and other innovative and efficient means of completing surface transportation infrastructure projects.

Article IV. TABOR Exemption

As provided in Section 43-4-806(2)(d), C.R.S., the Colorado Transportation Enterprise shall constitute an "enterprise" for purposes of section 20 of article X of the state constitution so long as it retains the authority to issue revenue bonds and receives less than ten percent of its total revenues in grants from all Colorado state and local governments combined. So long as it constitutes an enterprise pursuant to Section 43-4-806(2) (d), C.R.S., the Transportation Enterprise shall not me subject to any provision of section 20 of article X of the state constitution.

Article V. Enterprise Board and Enterprise Director

The Transportation Enterprise Board shall, with the consent of the Executive Director of the Colorado Department of Transportation, appoint a director of the Transportation Enterprise (the "Transportation Enterprise Director") who shall possess such qualifications as may be established by the Transportation Enterprise Board and the State Personnel Board.

The Transportation Enterprise Director shall oversee the discharge of all responsibilities of the Transportation Enterprise and shall serve at the pleasure of the Transportation Enterprise Board.

The Transportation Enterprise and the Transportation Enterprise Director shall exercise their powers and perform their duties as if the same were transferred to the Colorado Department of Transportation by a **type 1** transfer, as defined in section 24-1-105, C.R.S.

Article VI. Officers

The Board of the Transportation Enterprise shall consist of the seven members. Four members appointed by the governor and three members of the Colorado Transportation Commission ("Commission") appointed by resolution of the Commission.

Article VII. Powers

The Transportation Enterprise may:

(1) Subject to the limitations specified in section 43-4-808 (3), C.R.S., impose user fees for the privilege of using surface transportation infrastructure;

(2) Issue or reissue revenue bonds payable from the revenues and other available moneys of the transportation enterprise pledged for payment as authorized in section 43-4-807, C.R.S.;

(3) Contract with any other governmental or nongovernmental source of funding for loans or grants to be used to support transportation enterprise functions; and

(4) Seek out and enter into public-private partnerships.

In addition to any other powers and duties specified in section 43-4-806, C.R.S., the Transportation Enterprise Board shall have the following powers and duties:

(1) To supervise and advise the Transportation Enterprise Director;

(2) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(3) To issue revenue bonds, payable solely from the transportation special fund, created in section 43-4-806(3)(a),C.R.S., for the purpose of completing surface transportation infrastructure projects;

(4) To acquire, hold title to, and dispose of real and personal property as necessary in the exercise of its powers and performance of its duties;

(5) To acquire by purchase, gift, or grant, or, subject to the requirements of articles 1 to 7 of title 38, C.R.S., by condemnation, any and all rights-of-way, lands, buildings, moneys, or grounds necessary or convenient for its authorized purposes;

(6) To enter into agreements with the Commission, or CDOT to the extent authorized by the Commission, under which the Transportation Enterprise agrees to complete surface transportation infrastructure projects as specified in the agreements;

(7) To make and enter into contracts or agreements with any private or public entity to facilitate a public-private partnership, including, but not limited to:

(a) An agreement pursuant to which the Transportation Enterprise or the Transportation Enterprise on behalf of CDOT operates, maintains, or provides services or property in connection with a surface transportation infrastructure project; or

(b) An agreement pursuant to which a private entity completes all or any portion of a surface transportation infrastructure project on behalf of the Transportation Enterprise;

(8) To make and enter into all other contracts and agreements, including, but not limited to, design-build contracts, as defined in section 43-1-1402 (3), C.R.S., and intergovernmental agreements pursuant to section 29-1-203, C.R.S., that are necessary or incidental to the exercise of its powers and performance of its duties;

(9) To employ or contract for the services of consulting engineers or other experts as are necessary in its judgment to carry out its powers and duties;

(10) To prepare, or cause to be prepared, detailed plans, specifications, or estimates for any surface transportation infrastructure project within the state;

(11) In connection with any surface transportation infrastructure project, to acquire, finance, repair, reconstruct, replace, operate or maintain any surface transportation infrastructure within the state;

(12) To set and adopt, on an annual basis, a budget for the Transportation Enterprise;

(13) To purchase, trade, exchange, acquire, buy, sell, lease, lease with an option to purchase, dispose, of, or encumber real or personal property or any interest therein, including easements and rights-of-way, without restriction or limitation;

(14) To enter into interest rate exchange agreements for bonds that have been issued in accordance with article 59.3 of title 11, C.R.S.;

(15) Pursuant to section 24-1-107.5, C.R.S., to establish, create, and approve nonprofit entities and bonds issued by or on behalf of such nonprofit entities for the purpose of completing a surface transportation infrastructure project, to accept the assets of any such nonprofit entity, to obtain an option to acquire the assets of any such nonprofit entity by paying its bonds, to appoint or approve the appointment of members of the governing board of any such nonprofit entity, and to remove the members of the governing board of any such nonprofit entity for cause;

(16) To transfer money, property, or other assets of the Transportation Enterprise to CDOT to the extent necessary to implement the financing of any surface transportation infrastructure project of for any other purpose authorized in this part 8;

(17) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers and duties granted in this section.

Article VIII. <u>Revenues and Expenditures</u>

The statewide transportation enterprise special revenue fund, referred to as the "transportation special fund", was created in the state treasury pursuant to section 43-4-806(3)(a), C.R.S. All revenues received by the Transportation Enterprise, including any revenues from user fees collected shall be deposited into the transportation special fund. The

Transportation Enterprise Board may establish separate accounts within the transportation special fund as needed in connection with any specific surface transportation infrastructure project. The Transportation Enterprise may also deposit or permit others to deposit other moneys into the transportation special fund, but in no event may revenues from any tax otherwise available for general purposes be deposited into the transportation special fund. The state treasurer, after consulting with the Transportation Enterprise Board, shall invest any moneys in the transportation special fund, including any surplus or reserves, but excluding any proceeds from the sale of bonds or earnings on such proceeds invested pursuant to section 43-4-807 (2), that are not authorized in sections 24-36-109, 24-36-113, C.R.S.

All interest and income derived from the deposit and investment of moneys in the transportation special fund shall be credited to the transportation special fund and, if applicable, to the appropriate surface transportation infrastructure project account. Moneys in the transportation special fund shall be continuously appropriated to the Transportation Enterprise for its purposes established by law. All moneys deposited in the transportation special fund shall remain in the fund for Transportation Enterprise purposes, and no part of the fund shall be used for any other purpose.

The Transportation Enterprise shall prepare a separate annual accounting of the user fees collected from any surface transportation infrastructure project upon which any user fee is imposed; except that a partner of the Transportation Enterprise may prepare the annual accounting for a project upon which it imposes a user fee pursuant to the terms of a public-private partnership.

The Transportation Enterprise may expend moneys in the transportation special fund to pay bond obligations, to fund surface transportation infrastructure projects, and for the acquisition of land to the extent required in connection with any surface transportation infrastructure project. The Transportation Enterprise may also expend moneys in the transportation special fund to pay its operating costs and expenses. The Transportation Enterprise Board shall have exclusive authority to budget and approve the expenditure of moneys in the transportation special fund.

The Commission may transfer moneys from the state highway fund created in section 43-1-219, C.R.S., to the Transportation Enterprise for the purpose of defraying expenses incurred by the Transportation Enterprise prior to the receipt of bond proceeds or revenues by the Transportation Enterprise. The Transportation Enterprise may accept and expend any moneys so transferred, and, notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, such a transfer shall constitute a loan from the Commission to the Transportation Enterprise and shall not be considered a grant for the purposes of section 20 (2) (d) of article X of the state constitution. As the Transportation Enterprise receives sufficient revenues in excess of expenditures, the Transportation Enterprise shall reimburse the state highway fund for the principle amount of any loan made by the Commission plus interest at a rate set by the Commission. Any moneys loaned to the Transportation Enterprise shall be deposited into a

fund to be known as the statewide transportation enterprise operating fund, and shall not be deposited into the transportation special fund. Moneys from the transportation special fund may, however, be used to reimburse the state highway fund for the amount of any loan or any interest thereon.

User fee revenues shall be expended only for purposes authorized by section 43-4-806(3), C.R.S., and only for the surface transportation infrastructure project for which they were collected, to address ongoing congestion management needs related to the project, or as a portion of the expenditures made for another surface transportation infrastructure project that is integrated with the project as part of a surface transportation system; except that the Transportation Enterprise Board may use user fee revenues from each surface transportation infrastructure project in proportion to the total amount of such revenues generated by the project to pay overhead of the Transportation Enterprise.

Article IX. Articles of Organization—Amendment

The Transportation Enterprise Board may amend, supplement, or repeal these articles of organization, or adopt new articles of organization. All such changes shall affect and be binding upon the Transportation Enterprise, the Transportation Enterprise Board and its members heretofore, as well as hereafter, authorized. Any amendment, supplement or repeal of the articles of organization or adoption of new articles of organization shall require a majority vote of members of the Transportation Enterprise Board at any regular meeting of the Transportation Enterprise Board.

Article X. Bylaws

The Transportation Enterprise shall adopt a set of bylaws to govern its internal operations and procedures.

(10) No later than February 15, 2010, and no later than February 15 of each year thereafter, the Transportation Enterprise shall present a report to the committees of the house of representatives and the senate that have jurisdiction over transportation. The report shall include a summary of the status of any current surface transportation infrastructure projects, a statement of the Transportation Enterprise's revenues and expenses, and any recommendations for statutory changes that the Transportation Enterprise deems necessary or desirable. The committees shall review the report and may recommend legislation. The report shall be public and shall be available on the web site of CDOT on or before January 15 of the year which the report is presented.