



COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE

REQUEST FOR QUALIFICATIONS – UNDERWRITER SERVICES SUBMISSION DEADLINE: AUGUST 5, 2019 @ 4:00 PM (Mountain)

Proposals submitted to: HPTE; 2829 W. Howard Place, Denver, CO 80204

NOTE: Vendors delivering their qualifications in person must deliver responses to the front desk at the CDOT Headquarters Building: Attention Piper Darlington, HPTE. HPTE reserves the right to reject any and all qualifications or parts thereof, and to waive informalities or irregularities.

Underwriting Services

The Colorado High Performance Transportation Enterprise (HPTE), a division of the Colorado Department of Transportation (CDOT), is seeking qualifications from banking institutions to create a pre-qualified pool of lenders for any future financing needs. This procurement will be conducted as a solicitation under HPTE's Project Proposal Guidelines, with the selection of the winning bidders based on proposals determined to be the most advantageous to the State of Colorado ("State") and HPTE.

Because of the time required to develop a proposal in response to a Request for Proposal, the HPTE feels it is more efficient to prequalify vendors with an RFQ first. HPTE intends to make RFPs for future project financings available to financial institutions that have submitted a SOQ and have been included in the qualified underwriter pool.

Read this Request for Qualifications (RFQ) thoroughly before responding. Telegraphic or electronic bids (Fax, Western Union, Telex, electronic mail, etc.) cannot be accepted as a sealed bid. Illegible responses may be rejected as non-responsive.

HPTE reserves the right to reject any and all RFQs or parts thereof, and to waive informalities or irregularities.

NOTE: Results will be posted on the HPTE web site and/or sent via postal system but will not be discussed by phone except as noted in the RFQ document.

REQUEST FOR QUALIFICATIONS COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE

SECTION 1 ADMINISTRATIVE INFORMATION

1.1 ISSUING OFFICE:

This RFQ is issued by the High Performance Transportation Enterprise pursuant to its [Procurement Guidelines](#). All contact regarding this Request for Qualifications (RFQ) is to be directed to:

Mrs. Piper Darlington, Budget & Special Projects Manager
High Performance Transportation Enterprise
2829 W. Howard Place
Denver, CO 80204
(303) 757-9032
piper.darlington@state.co.us

1.2 PURPOSE:

HPTE is seeking qualifications from banking institutions to create a pre-qualified pool of lenders for any future financing needs. This procurement will be conducted as a solicitation under HPTE's Project Proposal Guidelines, with the selection of the winning bidders based on proposals determined to be the most advantageous to the State of Colorado ("State") and HPTE.

1.3

SCHEDULE OF ACTIVITIES:	DATE	TIME (MST)
A. RFQ Published on HPTE Website	July 23	2PM
B. Prospective Proposers' Inquiry Deadline	July 29	4PM
C. Response to Proposer Questions	July 31	4PM
D. RFQ SUBMISSION DEADLINE	August 5	4PM
E. Evaluation of Qualifications	August 9	N/A
F. Selection of Preferred Lenders	August 12	12PM

1.4 RFQ SUBMISSION:

All qualifications must be received by the HPTE, 2829 W. Howard Place, Denver, CO 80204, no later than the date and time shown in the Schedule of Activities, RFQ Submission Deadline for receipt of SOQs. Each submission shall consist **five (5) copies** of the proposer's *complete* SOQ. It is the responsibility of the proposer to ensure that their SOQ is received by the HPTE prior to the deadline. Proposers mailing their documents should allow ample mail delivery time to ensure timely receipt of their SOQs. SOQs RECEIVED AFTER THE ABOVE DATE AND TIME WILL NOT BE CONSIDERED. Proposals must be clearly identified as a proposal for the **HPTE Underwriter Services RFQ** and shall show such information on the **outside** of the proposal packet. Proposals will not be accepted by facsimile or electronic mail transmittal.

Proposals shall not be longer than seven (7) pages, not including the covers, index, tab sheets, required forms or certifications, resumes and appropriate appendices.

Proposers are advised that HPTE desires that proposals prepared in response to this RFQ be submitted on recycled paper, and that all copies be printed on both sides of paper. While the appearance of proposals is important, and professionalism in proposal presentation should not be neglected, non-recyclable, non-recycled glossy materials and clear plastic covers shall not be used. **In addition, proposals should be in flat bound form to facilitate filing.**

PLEASE NOTE: Proposals submitted in loose-leaf binders or 3-ring binders will not be accepted.

1.5 INQUIRIES:

Proposers may make written inquiries concerning this RFQ to obtain clarification of requirements. No inquiries will be accepted after the date(s) and time(s) specified in the Schedule of Activities, Section 1.3. Questions must be submitted in writing on the proposer's letterhead to:

Mrs. Piper Darlington, Budget & Special Projects Manager
High Performance Transportation Enterprise
2829 W. Howard Place
Denver, CO 80204
(303) 757-9032
piper.darlington@state.co.us

All envelopes containing questions must be clearly labeled "**Inquiry for HPTE Underwriter Services RFQ**" to facilitate handling and distribution. Inquiries sent by fax will be accepted (fax number (303) 757-9656). Email inquiries must be clearly identified and marked "**Inquiry for HPTE Underwriter Services RFQ**" in the Subject Line. An addendum will be published onto the HPTE website, at <https://www.codot.gov/programs/high-performance-transportation-enterprise-hpte>, responding to questions submitted regarding this RFQ.

1.6 AMENDMENTS TO RFQ:

In the event it should be necessary to revise any portion of this RFQ, addenda will be published on the HPTE website. It is the prospective proposer's sole responsibility to monitor the internet site, at <https://www.codot.gov/programs/high-performance-transportation-enterprise-hpte>, and to acknowledge and/or comply with all addenda to this RFQ.

1.7 RESPONSE MATERIAL OWNERSHIP:

All material submitted pursuant to this RFQ becomes the property of the State of Colorado. Proposals may be reviewed by any person after the "Notice of Intent to Make an Award" letter has been issued, subject to the terms of Section 24-72-201 et. seq., C.R.S., as amended, Public (open) Records.

1.8 PROPRIETARY INFORMATION:

All material submitted in response to this RFQ will become public record and will be subject to inspection after the HPTE executes a contract with the preferred proposer. Any material requested for treatment as proprietary and/or confidential must be clearly identified and easily separable from the rest of the proposal. Such request must include justification for the request. The request will be reviewed and either approved or denied by the HPTE Director. If denied, the proposer will have the opportunity to withdraw its entire SOQ, or to remove the proprietary restrictions. Refer to Section 1.12 of this RFQ for submission of Confidential/Proprietary information.

1.9 EVALUATION CRITERIA:

An evaluation will be made by a committee to determine the merit of the SOQs received in accordance with the evaluation criteria defined herein. The recommendations of this group will be forwarded to the HPTE Director for approval.

1.9.1 Failure of the proposer to provide in their proposal any information requested in this RFQ may result in disqualification of the proposal and shall be the responsibility of the proposing individual or firm.

1.9.2 Specific evaluation criteria are outlined in Section 3 entitled Evaluation Criteria.

1.10 CONFLICT OF INTEREST:

By submission of a proposal, proposer agrees that, at the time of contracting, the proposer has no interest, direct or indirect, that would conflict in any manner or degree with the performance of the required services. The proposer shall further covenant that, in the performance of the contract, it shall not employ any person having any such known interest. If there is any question of a known potential conflict of interest—for example, in respect of one or more of the projects HPTE or CDOT is known to be pursuing in the future—please identify it in your proposal. Any firm affiliated or related to an employee of the Transportation Commission, CDOT, the HPTE Board, or HPTE shall be ineligible to submit a proposal for the required services.

1.11 INCURRED COSTS:

The HPTE is not liable for any cost incurred by proposers prior to issuance of a legally executed Bond Purchase Agreement (or equivalent) or other form of engagement agreement.

1.12 SUBMISSION OF CONFIDENTIAL/PROPRIETARY INFORMATION:

The State neither requests nor encourages the submission of confidential/proprietary information in response to this RFQ. Information submitted will be open for public inspection. However, written requests for confidentiality can be submitted to the HPTE Director, provided that the submission must be in STRICT accordance with the following procedures. Adherence to these procedures remains the SOLE RESPONSIBILITY of the proposer.

PROCEDURES FOR SUBMISSION OF CONFIDENTIAL/PROPRIETARY INFORMATION:

- A. Written request for confidentiality shall be submitted, by the proposer, with the proposal documents.
- B. The written request will be enclosed in an envelope marked "REQUEST FOR CONFIDENTIALITY", and attached to the cover of the ORIGINAL copy of the proposer's proposal that contains the HPTE invitation for proposal page with the proposer's ORIGINAL autographic signature.
- C. The written request must state SPECIFICALLY AND IDENTIFY BY PAGE NUMBER, what elements of the proposal are to remain confidential. The request must also IDENTIFY THE BASIS for the claim of confidentiality, OTHER than a recitation of a SPECIFIC State or Federal statute.
- D. Confidential/Proprietary information MUST be readily IDENTIFIED, MARKED and SEPARATED /PACKAGED from the rest of the proposal. Co-mingling of confidential/propriety information and other information is NOT acceptable.
- E. The HPTE Director will make a written determination as to the apparent validity of any request for confidentiality. The written determination of the Director will be sent to the proposer.
- F. Proposals that are determined to be at variance with this procedure may be declared non-responsive by the Director, and not given further consideration.

1.13 OVERVIEW AND RESPONSIBILITIES:

1) Overview

In March 2009, Governor Bill Ritter signed into law S.B. 09-108, Funding Advancements for Surface Transportation and Economic Recovery, otherwise known as FASTER, which established, in part, the High-Performance Transportation Enterprise (HPTE). The HPTE operates as a government-owned business within the Colorado Department of Transportation (CDOT) and was formed 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.

Under the FASTER legislation such innovative means of financing projects include, but are not limited to, public-private partnerships (P3's), operating concession agreements, user fee-based project financing, and availability payment and design-build contracting.

The ability to toll existing highway/road capacity is another tool of the HPTE and revenues of the HPTE are derived from user fees, primarily tolls collected from Express Lane drivers. Revenues collected by the Enterprise may be expended only for the project (or Express Lanes corridor) where they were collected or for a new project that is integrated into an existing project. The HPTE has the ability to request loans from the Transportation Commission, issue revenue bonds, secure federally backed- TIFIA loans, or other short term construction loans as needed.

Since the creation of the Enterprise, nine out of ten HPTE projects have used some form of innovative financing. Innovative financing enabled by HPTE, through Express Lanes, has helped deliver more than \$3 billion in projects in the last five years. HPTE has:

- Helped secure \$130 million in federal grant dollars (e.g: INFRA),
- Directly attracted \$125 million in private investment through P3's, and
- Leveraged more than \$1 billion of bond proceeds and other loans to contribute to projects in the state's most congested regions.

Without the use of Express Lanes as a financing tool, the state of Colorado would have had to find an additional \$1.27 billion in funds to deliver these projects. Otherwise, the projects would have been significantly delayed, scope would have been reduced substantially, or money would have been reallocated from other projects around the state to fill the funding gaps. Without the use of Express Lanes as a financing tool, HPTE and CDOT would not have been able to deliver nine projects in five years, totaling more than \$3 billion in project value. Instead, without tolled Express Lanes, CDOT would have been able to deliver one, or possibly two, of the projects, with a value well under \$1 billion.

Existing, Under Construction and Planned Tolling Facilities

Since 2015, HPTE has been building its network of Express Lanes and currently has 68 lane miles of Express Lanes in operation and 142 lane miles of Express Lanes under construction or in development. For comparison, CDOT reports that it maintains 23,000 total lane miles of highway in Colorado.

As the operator of the Express Lane Network, HPTE oversees day-to-day tolling operations, routine maintenance (e.g.: snow and ice removal), capital maintenance (e.g.: replacement of tolling equipment) and overall performance (e.g.: are the lanes providing a reliable travel time). A team of traffic operations managers and technicians, maintenance crews, and data analysts partner with HPTE to monitor and improve travel time reliability in congested corridors. Tasks include, but are not limited to, developing traffic and revenue analyses, monitoring Express Lane traffic, working with ExpressToll to waive and/or void tolls, and coordinating with CDOT on maintenance issues.

HPTE operates and maintains the I-70 Mountain Express Lane (eastbound), as well as the Express Lanes on I-25 North from US36 to 120th. Plenary Roads Denver (PRD) operates and maintains US 36 and I-25 Central Express Lanes through a concession agreement and HPTE provides oversight of those activities. In addition, there are five Express Lane projects currently under construction and one in development, totaling 142 miles. Those projects are:

1. Central 70 Project – Brighton Boulevard to Chambers Road
2. I-25 North Express Lanes— 120th Avenue to Northwest Parkway/E-470
3. I-25 North Express Lanes—Johnstown to Fort Collins
4. I-25 South—Monument to Castle Rock
5. C-470 Express Lanes—I-25 to Wadsworth Boulevard
6. I-70 Mountain Express Lane (westbound) Project (In Development)

Future Tolled Facilities: Express Lanes Master Plan (“ELMP”)

As Colorado continues to grow and develop, the proven success of Express Lanes and the use of toll revenue-backed project financing, which supports accelerated transportation infrastructure development, has created a need to develop a statewide strategic Express Lane Master Plan to proactively prepare for Colorado's future needs. The ELMP will serve as a comprehensive, long-term, strategic road map for the prioritization, planning, and development of future Express Lane projects to deliver an efficient, connected statewide Express Lanes program.

The goals of the ELMP are to:

- Identify and prioritize which corridors have the potential to benefit from Express Lanes in the future;
- Identify potential revenue-generating capacity of those corridors;
- Identify whether the corridor could benefit from emerging technologies, i.e., Connected and Autonomous Vehicle (CAV) infrastructure; and
- Identify if HOV travel should be a component on the corridor.

Two workshops—designed to gather stakeholder feedback and inform goals, objectives, potential corridors, and evaluation criteria—took place in August and December 2018. The ELMP is due to be completed by Fall 2019. With the completion of the ELMP, HPTE anticipates that it will have a new pipeline of projects to start planning for. Specifically, exploring what innovative financing options would be available to HPTE in order to accelerate the delivery of those projects.

2) Responsibilities

The following are illustrative:

The selected underwriter will work closely with HPTE's finance team to provide the necessary services and assistance in effectively exploring and implementing the respective transactions. The firm will provide advice and assistance on the financing(s) including, but not limited to:

1. Assist in all aspects related to the plan and structure of the proposed financing, including, but not limited to, making recommendations on the timing and sale of bonds or other debt instruments, call provisions, interest rate mode, marketing, credit enhancement and evaluation of future opportunities for refunding or restructuring;
2. Assist in the development of a strategy for interacting with rating agencies for the purpose of maintaining or securing credit ratings;
3. Participate in the review of the official statement and other financing documents;
4. Recommend a marketing strategy to underwrite financial obligations, including identification of prospective investors, preparation of presentation materials, investor meetings and conference calls, and other related activities;
5. Obtain bids for credit enhancement and other services as necessary;
6. Assist in the identification of any financing risks and other issues that need to be brought to the HPTE's attention;
7. Providing timely advice regarding developments in the securities market;
8. Providing current information on innovative project financing techniques and their application to the HPTE's current or future financial obligations;
9. Purchase bonds upon terms and conditions to be set forth in a bond purchase agreement; and
10. Provide such other services as may be reasonably requested by HPTE.

SECTION 2.0
INFORMATION REQUIRED FROM PROPOSERS
General Proposer Response Format

2.1 RESPONSE FORMAT

To be considered responsive, proposers must adhere to, and include, the following when preparing their SOQ (alternate proposals shall be clearly labeled as alternate and follow the same criteria):

- Reference by RFQ subsections the information responding to and ***adherence to the established page limitation.***
- ***The basic response may not exceed seven (7) pages. One page shall equal one side of an 8 ½ X 11 inch sheet of paper, one column, single spaced in 12-point font (prefer Arial, Courier, or Verdana).*** Describe in full the subject item. The description may be in narrative or outline format, while remaining as brief and concise as possible.
- The proposer may provide additional material in appendices and refer to material contained in the appendices in the basic proposal but the basic response itself must contain the essential elements of the response as a “stand alone” document.
- Reference to, and attachment of, any supporting documentation assisting in the description of, or contribution to, any identified and addressed item. Additional materials must be referred to in the basic response proposal and Appendices appropriately labeled.

This format must be used to respond to the RFQ. Please include in the proposal the roles your firm feels itself qualified to fill and include the requested information for each such role.

2.2 PROPOSAL RESPONSE CRITERIA

1. Name and contact information of primary firm contact person. (Maximum Response: 1 page)
2. Briefly describe the firm’s transportation finance experience, the firm’s experience with CDOT/HPTE and/or tolling sector in particular. (Maximum Response: 1 page)
3. Provide feedback on the following topics for your firm (Maximum Response: 1 page per topic):
 - a. HPTE has completed financings for its I25 North Express Lanes and the I70 Mountain Express Lanes, both of which were executed with an intra-agency agreement (“IAA”) with CDOT. HPTE intends to use the same IAA for its future project financings and has provided a copy of the IAA as an appendix for the bidders’ review. Based on the terms identified in the IAA provided, what is the maximum capacity that your financial institution is able to lend to HPTE?
 - b. Will the Facility be made directly by the proposing financial institution? If the proposing financial institution will seek to place the facility with another financial institution, what, if any, disclosure will CDOT/HPTE be required to prepare? Describe your firm’s needs with respect to credit ratings (if any), documentation and ongoing financial reporting.
4. Please provide your firm’s facility/commitment preferred structure(s) (i.e. funding commitment preference – Letter of Credit/Commercial Paper/other funding facilities) and pricing based on the terms and conditions described above (as of January 18th, 2017). If preferred, please include both a drawn and undrawn facility cost/rate. Include any relevant pricing spreads used to calculate the proposed interest rate for the facility/commitment. (No Maximum Response Length)
5. Please include any additional information unique to your firm or your proposed approach to this financing that you believe is relevant to evaluating your firm’s qualifications. (Maximum Response: 1 page)
6. Compliance Information. Please note that this section has no page limit. Clearly indicate / state / disclose each of the following:
 - a. Compliance with MSRB Rule G-37. Any regulatory inquiry relating to the proposing firm’s compliance with MSRB Rule G-37.
 - b. Any delinquent State or local tax or outstanding fee that has occurred in the previous three years.
 - c. The firm should summarize any pending or completed regulatory or judicial action from its SEC Form ADV that would directly affect the services requested in this RFP.

An evaluation committee appointed by the Director of HPTE will, on the basis of the proposal responses determined to be the most advantageous to the State and HPTE. The evaluation committee will select the lenders that provide the best overall value to HPTE and the State. The evaluation committee's selection is not subject to challenge or protest.

2.3 PROPOSAL TERMS AND CONDITIONS

1. CDOT/HPTE is aware of the Municipal Advisor (MA) Rule and has provided an IRMA letter on its website.¹
2. CDOT/HPTE will not reimburse any firm for costs associated with responding to this RFP.
3. CDOT/HPTE reserves the right to reject any or all proposals, to conduct interviews, and to negotiate final terms with proposers.
4. Nothing in this RFP, the responses, or in the acceptance of any responses, in whole or in part, shall oblige CDOT/HPTE to complete negotiations with the selected financial institution.
5. CDOT/HPTE reserves the right to end, in its sole discretion, negotiations with a financial institution at any time up to the consummation of the transaction arising from this RFP.
6. CDOT/HPTE will not indemnify banks for any reason.

2.4 PROPOSAL QUESTIONS

On or prior to July 29, 2018 at 12:00pm Mountain; all Proposer questions should be directed to Piper Darlington, HPTE; responses will be circulated to all Proposers. Proposers are disallowed from contacting others at the State, CDOT, HPTE, and/or Stifel during this evaluation period.

2.5 PROPOSAL DUE DATE

Proposals are due no later than August 5, 2019 at 4:00 PM (Mountain). Late proposals will not be accepted. All proposals must be signed by an officer authorized to commit and negotiate on behalf of the financial institution.

Proposals should be delivered electronically (only) to the following:

Piper Darlington
HPTE
piper.darlington@state.co.us
(720) 248-8544

Jeff Sudmeier, CFO
CDOT
jeffrey.sudmeier@state.co.us
(303) 757-9063

Bryan Stelmack, Director
Stifel
stelmackb@stifel.com
(303) 291-5288

¹ HPTE's IRMA Disclosure Letter is publicly available at <https://www.codot.gov/programs/high-performance-transportation-enterprise-hpte/procurement/assets/hpte-irma-letter>

SECTION 3 EVALUATION CRITERIA

EVALUATION CRITERIA:

The complete proposal package will include, *but not be limited to*, evaluation using the factors listed below. These factors are designed to incorporate specific evaluation of the items presented in Section 1.35 and Section 2 of this RFQ.

As stated in Section 2.2, proposals should not simply repeat what is written in Section 1.35 of this RFQ – the Statement of Work, but rather evidence the proposer's understanding of the State's requirements and its ability to provide the services needed within a clearly defined and cost-effective budget. (Refer to Section 2 of this RFQ).

Responses to this RFQ will be evaluated according to the criteria listed below:

- Specialized experience and technical competence of the firm, record of performance, strength of key personnel identified in the proposal;
- Past experience and results with financing on transportation projects;
- Organization, presentation and content of the Qualifications Submittal.

I-25 NORTH EXPRESS LANES PROJECT (SEGMENT 3)

INTRA-AGENCY AGREEMENT

THIS INTRA-AGENCY AGREEMENT (this "Agreement") is made this 24th day of February, 2016 by and between the STATE OF COLORADO for the use and benefit of the COLORADO DEPARTMENT OF TRANSPORTATION ("CDOT") and the COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE, a government-owned business and a division of CDOT ("HPTE"). CDOT and HPTE are hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

A. CDOT is an agency of the State of Colorado authorized pursuant to Section 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. The Transportation Commission of Colorado (the "Transportation Commission") is the budgetary and policy making body for CDOT with all powers and duties granted by the Colorado General Assembly pursuant to Section 43-1-106, C.R.S.

C. HPTE was created pursuant to Section 43-4-806(2), C.R.S. as a government-owned business within CDOT to pursue innovative means of completing important surface transportation projects that will improve the safety, capacity, and accessibility of the surface transportation system, can feasibly be commenced in a reasonable amount of time, and will allow more efficient movement of people, goods, and information throughout Colorado.

D. CDOT and HPTE are currently working in cooperation on the planning, implementation and operation of a transportation infrastructure project generally consisting of the completion of one new tolled express lane in each direction on I-25 from 120th Avenue to E-470 (the "I-25 North Express Lanes Project (Segment 3)" or the "Segment 3 Project").

E. CDOT has requested HPTE's involvement in the Segment 3 Project for the variety of benefits CDOT will receive from implementing tolling on the I-25 North Express Lanes Project (Segment 3), including, but not limited to, allowing CDOT to better manage congestion over the long term on the portion of the Interstate 25 where the Segment 3 Project is located ("I-25 Segment 3") and providing the traveling public with the choice of a new travel lane with more reliable and efficient travel times.

F. HPTE is authorized pursuant to Section 43-4-806(2)(c)(I), C.R.S. to impose user fees on the traveling public for the privilege of using surface transportation infrastructure, and is further authorized pursuant to Section 43-4-806(2)(c)(III), C.R.S. to contract with any governmental or non-governmental source of funding for loans to be used in support of HPTE's functions.

G. Consistent with HPTE's statutory purpose as a government-owned business and enterprise for purposes of Article X, Section 20 of the State Constitution, which provides services to CDOT in exchange for reasonable compensation, and in order to support CDOT's efforts to finance the Segment 3 Project, HPTE has entered into a Loan Agreement (the "Bank Loan Agreement") with Bank of America, N.A., (the "Bank") dated as of the date hereof and attached hereto as **Exhibit B**, pursuant to which HPTE will borrow money to fund the payment of certain lawful expenses and costs of planning, designing, engineering, acquisition, installation or construction of the Segment 3 Project, and other lawful expenses and costs related thereto.

H. Under the Bank Loan Agreement, HPTE agrees to pledge to the Bank, for repayment of the amounts financed under the Bank Loan Agreement and any other amounts that are owing to the Bank from time to time thereunder, all amounts received by HPTE from tolls, rates and other user fees imposed by HPTE pursuant to Section 43-4-806(2)(C)(I), C.R.S., for the privilege of traveling on the Segment 3 Project (the "Gross Revenues"), except to the extent otherwise provided for in the Bank Loan Agreement.

I. Pursuant to Section 43-4-806(4), C.R.S., the Transportation Commission may authorize the transfer of money from the state highway fund to HPTE to defray expenses of HPTE 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 Transportation Commission to HPTE and shall not be considered a grant for purposes of Section 20(2)(d) of Article X of the State Constitution.

J. In consideration of the various terms, covenants, and conditions set forth herein, including the benefits that CDOT will receive as a result of the Segment 3 Project, CDOT and HPTE have agreed to enter into this Agreement pursuant to which HPTE can request financial support from the Transportation Commission to assist HPTE in fulfilling its obligations with respect to HPTE Bank Loan Obligations or HPTE O&M Obligations (as such terms are hereinafter defined) in the event the Gross Revenues are insufficient, or projected to be insufficient, to satisfy HPTE's obligations.

K. HPTE recognizes and acknowledges that any such financial support shall be in the form of a CDOT Backup Loan (as defined and further described in Section III below) from the Transportation Commission to HPTE pursuant to Section 43-4-806(4), C.R.S. The Transportation Commission may, in its sole and absolute discretion, but is not obligated to, make a CDOT Backup Loan. If the Transportation Commission elects not to make a CDOT Backup Loan, such an election will not, by itself, result in a default of HPTE under the Bank Loan Agreement.

L. CDOT and HPTE further desire to enter into this Agreement to define their respective roles and responsibilities with respect to cooperation on the operation and maintenance of the Segment 3 Project and the adjacent I-25 general purpose lanes, and to allocate the costs related thereto.

M. This Agreement is executed by HPTE under the authority of Sections 29-1-203 and 43-4-806(6)(h), C.R.S., and by CDOT under the authority of Sections 43-1-110 and 43-1-116, C.R.S.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS, AND THE VARIOUS TERMS, COVENANTS, AND CONDITIONS SET FORTH HEREIN, AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES TO THIS AGREEMENT HEREBY AGREE AS FOLLOWS:

TERMS AND CONDITIONS

I. CONSTRUCTION OF THE PROJECT

1. Project Budget. CDOT is primarily responsible for the capital costs of the Segment 3 Project. Notwithstanding the foregoing, in consideration of the various benefits HPTE receives by implementing a user fee system on the I-25 North Express Lanes Project (Segment 3), HPTE has agreed to contribute a portion of the amounts deposited into the I-25 North Express Lanes Project Account (Segment 3) under the Bank Loan Agreement toward the construction of the Segment 3 Project, in full satisfaction of any obligations HPTE might have with respect to such construction. CDOT represents that such contribution, equal to the loan proceeds initially deposited into the I-25 North Express Lanes Project Account (Segment 3) under the Bank Loan Agreement, less working capital fees and other reasonable costs and expenses of HPTE, together with available CDOT moneys, is sufficient to complete the I-25 North Express Lanes Project (Segment 3) on or before August 30, 2018. HPTE's contributions to the Segment 3 Project may be applied to any lawful cost or expense related to the implementation of the Segment 3 Project, including reimbursement to HPTE for overhead and administration costs incurred in conjunction with the implementation of the Segment 3 Project.

2. CDOT Responsibilities. Except as otherwise specifically identified as a responsibility of HPTE in Paragraph 3 of this Section, CDOT shall be responsible for the construction of the Segment 3 Project, including, but not limited to, the following:

a. CDOT will contract for the design and construction of the Segment 3 Project as generally described and approved in the Record of Decision dated December 2011 issued by the Federal Highway Administration as required for the I-25 North Express Lanes Project (Segment 3) pursuant to 42 U.S.C. § 4321, *et seq.*

b. CDOT will coordinate with HPTE, when necessary, on the underlying procurement process of the Segment 3 Project and will be responsible for ensuring compliance with Federal Disadvantaged Business Enterprise requirement in contracts for the Segment 3 Project.

c. CDOT will provide design and construction management for the Segment 3 Project and will oversee the contractor who shall perform the construction in accordance with the approved design plans and/or administer the construction all in

accordance with the construction contract. Such administration shall include, but not be limited to, inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing contractor claims; construction supervision; and meeting requirements of the FHWA/CDOT Stewardship Agreement and applicable federal and State laws and regulations.

d. CDOT will be responsible for acquiring all rights of way, if any, necessary for the Segment 3 Project and for compliance with the Uniform Federal Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. § 4601, *et seq.*) requirements.

e. If necessary, CDOT will be responsible for obtaining the proper clearance or approval from any utility company, which may become involved in the Segment 3 Project.

f. CDOT shall ensure that all work in connection with the Segment 3 Project is done in accordance with the requirements of the current federal and State environmental regulations including the National Environmental Policy Act of 1969 (42 U.S.C. § 4321, *et seq.*), as applicable.

g. In the event the Segment 3 Project involves modifications of a railroad company's facilities whereby the related work is to be accomplished by railroad company forces, CDOT shall make timely application to the Public Utilities Commission requesting its order providing for the installation of the proposed improvements and not proceed with that work without compliance. CDOT shall also establish contact with the railroad company involved for the purposes of complying with applicable provisions of 23 CFR 646, subpart B, concerning federal aid projects involving railroad facilities.

h. CDOT will maintain all documents related to the construction of the Segment 3 Project and make them available for inspection and review by HPTE and all federal agencies with an interest in the Segment 3 Project for a period of not less than three years after the completion of the work.

i. CDOT will be responsible for the costs associated with any transponders (other than the single occupancy vehicle transponders) that are necessary to allow high occupancy vehicles to use the I-25 North Express Lanes Project (Segment 3) free of charge.

j. CDOT may be responsible for all other items in the Memorandum of Understanding by and between CDOT and HPTE, dated September 30, 2013, as may be amended from time to time (the "MOU") identified as the responsibility of CDOT's Office of Major Project Development.

3. HPTE Responsibilities. HPTE shall be specifically responsible for the following with respect to the construction of the Segment 3 Project:

a. HPTE will be responsible for the contracting necessary to implement a user fee system, including paying for the costs of single occupancy vehicle transponders and all tolling equipment, software and related installation, including, but not limited to, any obligations to the E-470 Public Highway Authority (“E-470”) related to the implementation of a new user fee system for the Segment 3 Project under the Managed Lanes Tolling Services Agreement between HPTE and E-470, dated May 7, 2015, as may be amended from time to time (the “TSA”).

b. HPTE may be responsible for other items identified in the MOU as a responsibility of HPTE.

II. OPERATIONS AND MAINTENANCE OF THE PROJECT

1. Overview and Costs. The I-25 North Express Lanes Project (Segment 3) is being constructed adjacent to the I-25 general purpose lanes (within I-25 Segment 3, referred to herein as the “I-25 General Purpose Lanes”), and the Parties recognize the need to cooperate in carrying out the related operations and maintenance for the Segment 3 Project and adjacent general purpose lanes. To that end, the Parties agree to cooperate in ensuring that the operations and maintenance are performed and agree to the division of costs as set forth in this Agreement. As a general matter, HPTE shall be responsible for operating and maintaining the I-25 North Express Lanes Project (Segment 3) (including contracting for tolling services and tolling enforcement), and CDOT shall be responsible for operating and maintaining the I-25 General Purpose Lanes. It is the intent of the Parties that, except as specifically provided otherwise herein, CDOT shall perform such operations and maintenance of both the I-25 North Express Lanes (Segment 3) and the I-25 General Purpose Lanes, subject to reimbursement from HPTE for HPTE’s proportionate share of the overall operations and maintenance expenses, as further described herein.

2. HPTE License. In consideration of the various benefits CDOT will receive as a result of the Segment 3 Project, CDOT hereby provides to HPTE a perpetual, non-exclusive, non-terminable license over, under, upon and in the site of the Segment 3 Project (the “License”) for HPTE to operate the I-25 North Express Project (Segment 3). CDOT acknowledges and agrees that HPTE may sublicense the License as needed to fulfill its obligations hereunder. Subject to the License, CDOT reserves the right of use, occupancy and ownership over, under, upon and in the lands comprised of the I-25 North Express Lanes Project (Segment 3).

3. Cost Allocation. Except as otherwise provided herein, the Parties agree to allocate costs based on a proportion of the total number of vehicles using all lanes within I-25 Segment 3, with HPTE’s portion being calculated to include all vehicles obligated to pay a user fee within the Segment 3 Project, whether or not such user fee is actually collected, and CDOT’s portion being calculated to include all other vehicles within I-25 Segment 3, including, for certainty, high-occupancy vehicles (the “Pro-Rata O&M Cost Calculation”). For illustrative purposes only, if the total cost of operating and maintaining the portion of I-25 constituting Segment 3 is \$100,000 per month, and 20% of the total vehicle count consisted of vehicles

obligated to pay a user fee, HPTE would be responsible for \$20,000 of such operations and maintenance costs. The Pro-Rata O&M Cost Calculation shall apply to CDOT's costs incurred with respect to: (i) snow and ice removal services; (ii) courtesy patrol; (iii) pavement resurfacing, life-cycle and capital maintenance, to the extent such activities reasonably include both the Segment 3 Project and the I-25 General Purpose Lanes; (iv) lane striping and lane sweeping/cleaning; and (v) any other operations and maintenance expense CDOT and HPTE agree in good faith is most fairly allocated utilizing the Pro-Rata O&M Cost Calculation method.

4. CDOT O&M Obligations. The Pro-Rata O&M Cost Calculation shall not apply to those operations and maintenance costs existing and regularly funded by CDOT prior to the implementation of the I-25 North Express Lanes Project (Segment 3), and for which the addition of the I-25 North Express Lanes Project (Segment 3) results in a *de minimus* impact on overall operations and maintenance expenses with I-25 Segment 3. Such costs include, but are not limited to, CDOT's costs incurred with respect to: (i) repair and replacement of guardrail; (ii) repair and replacement of lighting fixtures; (iii) contracts with the State Patrol for safety enforcement within the corridor (but exclusive of additional enforcement contracted by HPTE for toll evasion enforcement); and (iv) pavement maintenance on the general purpose lanes.

5. HPTE O&M Obligations. HPTE shall be solely responsible for costs incurred with respect to: (i) toll processing and collection; (ii) Level I and Level II maintenance of toll equipment; (iii) contracts for toll evasion enforcement with the State Patrol or other law enforcement entity; (iv) pavement maintenance in the I-25 North Express Lanes Project (Segment 3); and (v) HPTE overhead and administrative costs related to the operations and maintenance of the I-25 North Express Lanes Project (Segment 3). Such costs, together with those costs attributable to HPTE under the Pro-Rata O&M Cost Calculation, shall constitute the "HPTE O&M Obligations."

6. Invoicing. To the extent either Party provides services to the other (either through a third party or directly) that results in one Party covering the costs that is agreed to be the responsibility of the other, the Party covering such costs will invoice the other and such invoice shall include a reasonably detailed breakdown of the costs for which the invoicing Party is seeking reimbursement.

7. Reconciliation; O&M Shortfall; Performance. CDOT shall submit to HPTE on or before January 15 and July 15 of each year an invoice describing the HPTE O&M Obligations due to CDOT with respect to the I-25 North Express Lanes Project (Segment 3) for the prior six month period. HPTE will then cause such amounts to be remitted (consistent with the provisions of the Bank Loan Agreement) within 45 days of receipt of CDOT's invoice. To the extent the Gross Revenues (as they are first required to be applied in the Bank Loan Agreement) are inadequate in any fiscal year to cover the HPTE O&M Obligations, HPTE may request a CDOT Backup Loan to fund such shortfall. Notwithstanding such shortfall in the availability of Gross Revenues to cover the HPTE O&M Obligations, CDOT agrees that it shall continue to perform operations and maintenance of both the I-25 North Express Lanes Project (Segment 3) and the I-25 General Purpose Lanes.

III. CDOT BACKUP LOAN OBLIGATIONS

1. HPTE Bank Loan Obligations. The Bank Loan Agreement, attached hereto as **Exhibit B**, contains obligations of HPTE to pay to Bank the principal of and interest on, and certain other amounts with respect to, the loan made by the Bank pursuant to the Bank Loan Agreement (the "HPTE Bank Loan Obligations"). The HPTE Bank Loan Obligations and the HPTE O&M Obligations are referred to collectively herein as the "HPTE Payment Obligations."

2. The Transportation Commission has reviewed the Bank Loan Agreement and is aware of the HPTE Bank Loan Obligations. On or before September 15 of the immediately preceding fiscal year, HPTE shall estimate whether and in what maximum amount it may be necessary for HPTE to request that CDOT provide financial support to fulfill an HPTE Payment Obligation in any fiscal year, it being understood that any such financial support shall be in the form of a loan from CDOT to HPTE pursuant to Section 43-4-806(4), C.R.S. (a "CDOT Backup Loan"). HPTE shall notify the Executive Director in writing as to the estimated maximum amount, if any, that is expected to be payable in the succeeding fiscal year to satisfy the HPTE Payment Obligations in excess of the amount of Gross Revenues anticipated to be generated by the I-25 North Express Lanes Project (Segment 3) in such fiscal year, and such maximum amount (the "CDOT Backup Loan Set Aside") shall be included in the budget request to the Transportation Commission for an allocation of moneys in the state highway fund for such purpose.

3. HPTE may also, at any time during any fiscal year, notify the Executive Director in writing that HPTE desires that CDOT make CDOT Backup Loans for projected HPTE Payment Obligations in an amount that exceeds any CDOT Backup Loan Set Aside that the Transportation Commission has previously allocated for such fiscal year. In such event, the Executive Director shall submit a supplemental budget request to the Transportation Commission at its next regularly scheduled meeting for an allocation or supplemental allocation of moneys in the state highway fund for the purpose of making additional CDOT Backup Loans to HPTE in such fiscal year in an amount equal to the amount set forth in the notice delivered by HPTE to the Executive Director pursuant to this Section.

4. Moneys allocated by the Transportation Commission to make CDOT Backup Loans shall be transferred to HPTE (or, subject to the terms of the Bank Loan Agreement, at HPTE's discretion) and shall be used by HPTE to satisfy the HPTE Payment Obligations, as they become due.

5. Notwithstanding any other provision hereof:

a. CDOT and HPTE agree and acknowledge that the Transportation Commission has no obligation to allocate funds to make CDOT Backup Loans in any fiscal year and the decision whether or not to allocate funds, and the amount, if any, of funds allocated, to make CDOT Backup Loans in any fiscal year shall be made annually at the sole and absolute discretion of the Transportation Commission;

b. CDOT and HPTE further agree and acknowledge that notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, any CDOT Backup Loan made hereunder shall, in accordance with Section 43-4-806(4), C.R.S., constitute a loan and shall not be considered a grant for purposes of Section 20(2)(d) of Article X of the State Constitution or as defined in Section 24-77-102, C.R.S.;

c. Prior to allocating any funds to make CDOT Backup Loans in any fiscal year, CDOT shall determine that such authority exists in the law and that a sufficient unencumbered balance remains available in Fund 400 for CDOT Backup Loans in an amount equal to the amount of funds so allocated; and

d. If an allocation by the Transportation Commission shall have been made, CDOT Backup Loans shall be made up to the amounts requested by HPTE as set forth above.

e. No CDOT Backup Loan shall be repaid earlier than the date on which all HPTE Bank Loan Obligations are satisfied or, if the Bank Loan Agreement has been refinanced, the date on which all HPTE Bank Loan Obligations are satisfied.

6. Any CDOT Backup Loans made to HPTE in support of either HPTE Bank Loan Obligations or HPTE O&M Obligations shall be authorized by and subject to a separate Transportation Commission Resolution and shall be evidenced by one or more loan agreements in substantially the form attached hereto as **Exhibit A** (a "CDOT Backup Loan Agreement"), with terms consistent with the terms contained herein. In particular, having regard to the requirement that the CDOT Backup Loans shall not be repaid prior to satisfaction of the HPTE Bank Loan Obligations and any similar obligations incurred by HPTE under any future refinancing of the Bank Loan Agreement, the Parties agree to cooperate in good faith to determine a reasonable repayment schedule for each CDOT Backup Loan.

IV. DEFAULTS, TERMINATION AND REMEDIES

1. Default; Cure. The failure of either Party to fulfill its obligations to perform in accordance with the terms of this Agreement shall constitute a breach of this Agreement. Subject to the requirements of Section V.1., the non-breaching Party shall thereupon have the right to terminate this Agreement for cause by giving written notice to the other Party of its intent to terminate, and at least thirty (30) days' opportunity to cure the default or show cause why termination is not otherwise appropriate; provided, however that such breaching Party shall not be in default under this Agreement if it has promptly commenced a cure of such nonperformance and is diligently pursuing the same. Any finding of nonperformance and failure to cure under this Paragraph shall be referred for dispute resolution as provided for in Paragraph 3 of this Section IV prior to any termination becoming effective.

2. Default for Non-payment. If HPTE fails to repay any CDOT Backup Loan in accordance with the applicable CDOT Backup Loan Agreement, and upon notice to HPTE and failure by HPTE to cure within thirty (30) days thereof, CDOT may, at its option: (i) terminate

its commitment to consider making future CDOT Backup Loans hereunder; (ii) declare the entire principal amount of all CDOT Backup Loans then outstanding immediately due and payable; or (iii) take any other appropriate action available at law or in equity; provided, however, that no CDOT Backup Loan, or interest thereon, shall be repaid at any time there are amounts outstanding under the Bank Loan Agreement. Notwithstanding the exercise of any of the remedies above, HPTE shall not be relieved of liability to CDOT for any damages sustained by CDOT by virtue of any breach of this Agreement by HPTE.

3. Dispute Resolution. Any dispute concerning the performance of this Agreement shall be resolved at the lowest staff level possible, and shall first be referred to the Director of the CDOT Office of Major Project Development and the HPTE Operations Manager. Failing resolution by such officers, the escalation process shall be: (i) CDOT Chief Engineer and HPTE Director; (ii) CDOT Executive Director and HPTE Director; and (iii) Transportation Commission and HPTE Board of Directors.

V. GENERAL PROVISIONS

1. Effective Date; Term. This Agreement shall be effective as of the date of the date first written above and shall continue until the earlier of (i) the useful life of the project; (ii) the date HPTE no longer operates the I-25 North Express Lanes Project (Segment 3); and (iii) the Parties mutually agree to terminate the Agreement. Notwithstanding any other provision of this Agreement to the contrary, the Parties shall not terminate this Agreement while HPTE Bank Loan Obligations remain outstanding pursuant to the Bank Loan Agreement.

2. Modification. This Agreement is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Agreement on the effective date of such change as if fully set forth herein. Except as specifically provided otherwise herein, no modification of this Agreement shall be effective unless agreed to in writing by both parties in an amendment to this Agreement that is properly executed and approved in accordance with applicable law.

3. Severability. The terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.

4. Notices. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of CDOT and HPTE. All communication, notices, and correspondence with respect to the performance of this Agreement shall be addressed to the individuals identified below. Either Party from time to time, designate in writing new or substitute representatives.

If to CDOT:

Brett J. Johnson, Director
CDOT, OMPD
4201 E. Arkansas Ave. Room 158
Denver, CO 80222
Email: brett.j.johnson@state.co.us

If to HPTE:

David I. Spector, Director
HPTE
4201 E. Arkansas Ave. Room 230
Denver, CO 80222
Email: david.spector@state.co.us

5. Maintenance of Records. Each Party shall maintain all books, documents, papers, accounting records and other evidence pertaining to the Segment 3 Project including, but not limited to, any costs incurred during the construction, operation and maintenance of the Segment 3 Project, and make such materials available to the other Party upon reasonable request.

6. Successors and Assigns. Except as otherwise provided herein, this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

7. No Third Party Beneficiaries. No third party beneficiary rights or benefits of any kind are expressly or impliedly provided herein. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by the Bank or any other third person.

8. Governmental Immunity. Notwithstanding any other provision of this Agreement to the contrary, 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, protection, or other provisions of the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S., or the Federal Tort Claims Act, 28 U.S.C. 2671, *et seq.*, as applicable, as now or hereafter amended.

9. Adherence to Laws. At all times during the performance of this Agreement, the Parties shall strictly adhere to all applicable federal and state laws, rules, and regulations that have been or may hereafter be established, including, but not limited to state and federal laws respecting discrimination and unfair employment practices.

10. Availability of Funds. All payments pursuant to this agreement are subject to and contingent upon the continuing availability of funds appropriated for the purposes hereof. If any of said funds become unavailable, as determined by CDOT, either Party may immediately terminate or seek to amend this agreement, subject to the provisions set forth in Section V.1. hereof.


11. Choice of Law. The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision of this Agreement, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in

conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Agreement to the extent that the Agreement is capable of execution.

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

STATE OF COLORADO
JOHN W. HICKENLOOPER, Governor

COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE

By: 
SHAILEN P. BHATT
Executive Director
DEPARTMENT OF TRANSPORTATION

By: 
DAVID I. SPECTOR
HPTE Director

APPROVED:

CYNTHIA H. COFFMAN
Attorney General

By: 
ASSISTANT ATTORNEY GENERAL

[Signature page to I-25 North Express Lanes Project (Segment 3) Intra-agency Agreement.]

EXHIBIT A

Form of CDOT Backup Loan Agreement for Payment of [HPTE Bank Loan Obligations/HPTE O&M Obligations]

THIS LOAN AGREEMENT, made this ___ day of _____, 20__ by and between the State of Colorado for the use and benefit of THE COLORADO DEPARTMENT OF TRANSPORTATION (referred to herein as “CDOT” or the “Lender”) and the COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE (referred to herein as “HPTE” or the “Borrower”) entered into pursuant to the I-25 North Express Lanes Project (Segment 3) Intra-Agency Agreement, dated as of February 24, 2016, between Lender and Borrower (the “Segment 3 Intra-Agency Agreement”).

RECITALS

A. The Lender, is an agency of the State of Colorado authorized pursuant to Section 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. The Borrower was authorized and created pursuant to Sections 43-4-806(1) and (2), C.R.S. as a government-owned business, a TABOR-exempt enterprise, and a division of CDOT, and is charged with aggressively pursuing innovative means of financing surface transportation projects.

C. The Transportation Commission of Colorado is the budgetary and policy-making body of the Lender and may, pursuant to Section 43-4-806(4), C.R.S. authorize the transfer of money from the state highway fund to the Borrower to defray expenses of the Borrower and, notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, such a transfer by the Lender to the Borrower shall, in accordance with Section 43-4-806(4), C.R.S. constitute a loan and shall not be considered a grant for purposes of Section 20(2)(d) of Article X of the State Constitution.

D. In furtherance of CDOT’s efforts to finance the I-25 North Express Lanes Project (Segment 3) and for the benefit of CDOT, HPTE has entered into a Loan Agreement with Bank of America, N.A. (the “Bank”) dated as of January __, 2016 (the “Bank Loan Agreement”) to finance a portion of the I-25 North Express Lanes Project (Segment 3) (the “Segment 3 Project”).

E. The Bank Loan Agreement contains obligations of HPTE to pay to the Bank the principal of and interest on, and certain other amounts with respect to, the loan made by the Bank pursuant to the Bank Loan Agreement (the “Borrower Payment Obligations”).

G. The Transportation Commission has approved this loan request and authorized the Lender to make a loan to the Borrower in the amount of \$[Principal Amount], and has allocated funds, in its sole discretion, for such purpose.

H. Authority exists in the law and a sufficient unencumbered balance thereof remains available in [Fund 400] to lend to the Borrower.

I. This Agreement is executed under the authority of Section 43-4-806(4), C.R.S. and by resolution of the HPTE Board of Directors.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS, THE PARTIES HEREBY AGREE AS FOLLOWS:

ARTICLE I LOAN AND CLOSING

Section 1.01. Loan and Promissory Note. Pursuant to the terms of the Segment 3 Intra-Agency Agreement and this Agreement, the Lender hereby agrees to loan \$[Principal Amount] (the "Principal Amount") to the Borrower and the Borrower agrees to pay the Lender the Principal Amount of the loan, plus interest on the terms described herein (collectively, the "Loan"). The Borrower's obligation to pay the Lender the principal of and interest on the Loan is evidenced by a promissory note (the "Note") in the form attached hereto as Attachment 1.

Section 1.02. Closing. The Lender shall deliver the principal amount of the Loan to the Borrower, by means of a transfer immediately available funds to Borrower on a date mutually agreed to by the Borrower and the Lender (such date is referred to as the "Closing Date").

ARTICLE II LOAN OBLIGATIONS

Section 2.01. Principal and Interest Payments. The Borrower shall pay to the Lender the principal amount of the Loan plus accrued interest in accordance with Section 2.07 hereof, or the Borrower may make prepayments in accordance with Section 2.05 hereof (a "Prepayment Date") only to the extent permitted under the Bank Loan Agreement.

Section 2.02. Lender Invoice and Reports. The Lender shall forward an invoice that includes the amount of principal and interest that shall be due to the Borrower at least thirty days before the next scheduled payment is due.

Section 2.03. Interest. Interest shall accrue on the principal amount of the Loan from the Closing Date through the day preceding the Maturity Date or Prepayment Date at the Interest

Rate (defined in Section 2.04 hereof), computed on the basis of a 360-day year of twelve 30-day months.

Section 2.04. Interest Rate. “Interest Rate” means a rate of interest equal to the rate of interest established and adopted by resolution by the Colorado Transportation Commission for loans made by the Colorado state infrastructure bank pursuant to 2 CCR 605-1, Rule V (2), and in effect as of the date hereof.

Section 2.05. Optional Prepayment. The Borrower, at its option, may prepay the Loan in whole by paying the Lender the outstanding principal amount or a portion of the Loan, plus accrued interest to the Prepayment Date as selected by the Borrower; provided that no such optional prepayment shall be made at any time there are amounts outstanding under the Bank Loan Agreement.

Section 2.06. Resource Pledge for Repayment. The Borrower’s obligation to pay the principal and interest on the Loan and any other amounts payable by the Borrower hereunder (the “Loan Obligations”) are extraordinary limited obligations of the Borrower payable solely from revenues generated by the Project; provided that any such Loan Obligations shall be repaid no earlier than the date on which all payment obligations under the Bank Loan Agreement are satisfied.

Section 2.07. Repayment Schedule. The Borrower shall make equal installments of \$[Payment Amount] to the Lender each [Payment Period] beginning on the sooner to occur of (i) [December 15] following the date on which all payment obligations under the Bank Loan Agreement are satisfied, the commitment to fund thereunder has been terminated by the bank, or the Bank Loan Agreement has been refinanced or (ii) [First Payment Due Date]; and continuing each [Payment Period] thereafter for [Number of Payments] consecutive [Payment Periods].

Section 2.08. Remittance. All loan payments shall be made payable to the Colorado Department of Transportation, and sent to the Lender’s accounting branch at 4201 East Arkansas Avenue, Room 212, Denver, CO 80222, or to such other place or person as may be designated by the Lender in writing.

ARTICLE III DEFAULT AND TERMINATION

Section 3.01. Event of Default. Borrower default (“Event of Default”) is governed by Section IV of the Segment 3 Intra-Agency Agreement.

Section 3.02. Remedies. Lender’s remedies against a Borrower Event of Default are governed by Section IV of the Segment 3 Intra-Agency Agreement.

Section 3.03. Remedies Neither Exclusive Nor Waived. No remedy under Section 3.02 hereof is intended to be exclusive, and each such remedy shall be cumulative and in

addition to the other remedies. No delay or failure to exercise any remedy shall be construed to be a waiver of an Event of Default.

Section 3.04. Waivers. The Lender may waive any Event of Default and its consequences. No waiver of any Event of Default shall extend to or affect any subsequent or any other then existing Event of Default.

ARTICLE IV TERMINATION

Section 4.01. Subject to the terms of the Segment 3 Intra-Agency Agreement, this Agreement may be terminated as follows:

(a) Termination for Cause. If, through any cause, the Borrower shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if the Borrower shall violate any of the covenants, agreements, or stipulations of this Agreement, the Lender shall thereupon have the right to terminate this Agreement for cause by giving written notice to the Borrower of its intent to terminate and at least thirty (30) days' opportunity to cure the default or show cause why termination is otherwise not appropriate. Notwithstanding above, the Borrower shall not be relieved of liability to the Lender for any damages sustained by the Lender by virtue of any breach of this Agreement by the Borrower.

(b) Termination Due to Loss of Funding. The parties hereto expressly recognize that the Loan is made to the Borrower with State funds which are available to the Lender for the purposes of making a loan for the purposes described herein, and therefore, the Borrower expressly understands and agrees that all its rights, demands and claims to a loan arising under this Agreement are contingent upon availability of such funds to the Lender. In the event that such funds or any part thereof are not available to the Lender, the Lender may immediately terminate or amend this Agreement.

[Signature page follows.]

STATE OF COLORADO
JOHN W. HICKENLOOPER, Governor

COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE

By: _____
SHAILEN P. BHATT
Executive Director
DEPARTMENT OF TRANSPORTATION

By: _____
DAVID I. SPECTOR
HPTE Director

APPROVED:

CYNTHIA H. COFFMAN
Attorney General

By: _____
ASSISTANT ATTORNEY GENERAL

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

Section 24-30-202, C.R.S. requires that the State Controller to approve all agreements. This Agreement is not valid until the State Controller, or such assistant as he may delegate, has signed it.

<p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p>Date: _____</p>
--

[Signature page to CDOT Backup Loan Agreement for Payment of HPTE Bank Loan Obligations/HPTE O&M Obligations].

**Attachment 1
NOTE**

\$ _____

For VALUE RECEIVED, THE COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE (the "Maker") subject to and in accordance with a Loan Agreement dated the [Date], promises to pay to the Colorado Department of Transportation (the "Holder") the principal sum of \$[Principal Amount], with interest from date at the rate [Interest Rate]% per annum on the balance from time to time remaining unpaid. The said principal and interest shall be payable in lawful money of the United States of America at 4201 East Arkansas Avenue, Rm. 212, Denver, CO 80222 or at such place as may hereafter be designated by written notice from the Holder to the Maker hereof, on the date and in the manner following:

The Maker shall make equal installments of \$[Payment Amount] to the Lender each [Payment Period] beginning on the sooner to occur of (i) [December 15] following the date on which all payment obligations under the Bank Loan Agreement are satisfied or the Bank Loan Agreement has been refinanced or (ii) [First Payment Due Date]; and continuing each [Payment Period] thereafter for [Number of Payments] consecutive [Payment Periods]. [*Or replace by reference to the agreed repayment schedule*].

COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE

By: _____

Its: _____

Attest: _____

**FIRST AMENDMENT TO
I-25 NORTH EXPRESS LANES PROJECT (SEGMENT 3)
INTRA-AGENCY AGREEMENT**

THIS FIRST AMENDMENT (the "Amendment") to the I-25 NORTH EXPRESS LANES PROJECT (SEGMENT 3) INTRA-AGENCY AGREEMENT is made this 11th day of December, 2018 by and between the COLORADO DEPARTMENT OF TRANSPORTATION ("CDOT"), an executive agency of the State of Colorado ("State") and the COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE, a government-owned business and a division of CDOT ("HPTE"). CDOT and HPTE are hereinafter referred to individually as a "Party" and collectively as the "Parties".

RECITALS

A. The Parties entered into that certain *I-25 North Express Lanes Project (Segment 3) Intra-Agency Agreement* dated February 24, 2016 (the "IAA"), pursuant to which the Parties agreed, *inter alia*, to undertake the I-25 North Express Lanes Project (Segment 3) (the "Segment 3 Project") to complete, implement and operate one new tolled express lane in each direction between approximately 120th Avenue and E-470.

B. CDOT has entered into that certain contract for the I-25 North Segment 3 Tolled Express Lanes Design-Bid-Build Project dated April 26, 2016 with Hamon Infrastructure, Inc. (the "Contractor") for the construction of the Segment 3 Project (the "Contract") which establishes, *inter alia*, minimum insurances to be provided by the Contractor during the construction period, certain required parent guarantees and payment and performance bonds, and sets forth liquidated damages to be assessed by CDOT in the event the Segment 3 Project is not completed within the timeframe set forth in the Contract.

C. HPTE has entered into that certain Managed Lanes Tolling Services Agreement, dated May 7, 2015 (such agreement, or any successor or replacement agreement, the "TSA") with the E-470 Public Highway Authority ("E-470"), or any successor counterparty, pursuant to which E-470 provides tolling related services for HPTE's tolling facilities, including, but not limited to, toll collection and adjudication services, conditioned upon payment by HPTE to E-470 of E-470's Expenses, including Transaction Costs, Reimbursable Costs, and/or costs per dollar of Gross Toll Revenue (each as defined in the TSA), all in accordance with the TSA.

D. In recognition of anticipated delays to the Segment 3 Project, the Parties desire to amend Section I of the IAA to make explicit certain financial obligations between the Parties for the Segment 3 Project, specifically related to costs incurred under the Bank Loan Agreement.

E. The Parties acknowledge they are each vested with the legal power to satisfy their respective obligations under this Amendment.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS, AND THE VARIOUS TERMS, COVENANTS, AND CONDITIONS SET FORTH HEREIN, AND

OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES TO THIS AMENDMENT HEREBY AGREE AS FOLLOWS:

TERMS AND CONDITIONS

1. Section I.1 of the IAA shall be replaced with the following language in its entirety:

1. Project Budget. CDOT is primarily responsible for the capital costs of the Segment 3 Project. Notwithstanding the foregoing, in consideration of the various benefits HPTE receives by implementing a user fee system on the I-25 North Express Lanes Project (Segment 3), HPTE has agreed to contribute a portion of the amounts deposited into the I-25 North Express Lanes Project Account (Segment 3) under the Bank Loan Agreement toward the construction of the Segment 3 Project, in full satisfaction of any obligations HPTE might have with respect to such construction. CDOT represents that such contribution, equal to the loan proceeds initially deposited into the I-25 North Express Lanes Project Account (Segment 3) under the Bank Loan Agreement, less working capital fees and other reasonable costs and expenses of HPTE, together with available CDOT moneys, is sufficient to complete the I-25 North Express Lanes Project (Segment 3) on or before December 31, 2019. HPTE's contributions to the Segment 3 Project may be applied to any lawful cost or expense related to the implementation of the Segment 3 Project, including reimbursement to HPTE for overhead and administration costs incurred in conjunction with the implementation of the Segment 3 Project.

2. The following section shall be added as new Section I.4 of the IAA:

4. Delays in Project Completion. CDOT acknowledges that time is of the essence in the completion of the Segment 3 Project; that HPTE intends to pledge future user fee revenues toward the repayment of the Bank Loan Agreement; and that HPTE may incur costs in the event tolling does not commence within the timeframes contemplated in the Contract. In addition to the obligation of CDOT to make Backup Loans pursuant to Section III of this Agreement, CDOT shall be liable to HPTE for any costs incurred by HPTE under the Bank Loan Agreement that arise as a result of construction delays, except to the extent any delay in tolling commencement is caused by HPTE or E-470, or any successor counterparty to the TSA, and is not attributable to the actions of CDOT or the Contractor. CDOT agrees and covenants that it shall: (i) undertake all actions necessary to enforce the provisions of the Contract; (ii) cause the Contractor to seek recovery under any available delay in start-up or builders risk insurance policies; (iii) take all reasonable actions to recover amounts payable under the provisions of any surety or parent company guarantees provided to CDOT by the Contractor; and (iv) in the event of delayed construction completion, enforce all liquidated damages provisions against the Contractor and remit liquidated damages amounts received, notwithstanding any costs of liabilities of CDOT, first to HPTE in such amount as is necessary to cover any costs or liabilities of HPTE incurred under the Bank Loan Agreement. Nothing in this Section 4 shall preclude CDOT from engaging in

discussions with the Contractor regarding its rights, duties and obligations under the Contract.

a. HPTE shall, in cooperation with CDOT, determine any liquidated damages provisions against the Contractor and notify the CDOT Chief Financial Officer in writing of the same.

i. Any such liquidated damages provisions against the Contractor shall be calculated within the timeframes contemplated in the Contract.

b. HPTE shall, in cooperation with CDOT, determine any amounts as is necessary to cover any costs or liability of HPTE incurred under the Bank Loan Agreement and notify the CDOT Chief Financial Officer in writing of the same.

i. On or before November 1 of each year, HPTE shall submit to CDOT an invoice describing any costs incurred under the Bank Loan Agreement, including any such terms as specifically defined in the Bank Loan Agreement. CDOT shall (to the extent consistent with, and subject to, the Bank Loan Agreement) cause such amounts to be remitted with 30 days of receipt of HPTE's invoice.

ii. In the event any such costs incurred under the Bank Loan Agreement exceed the liquidated damages amount actually received by CDOT from the Contractor, CDOT agrees and covenants that it shall, without limitation, cover any costs or liabilities of HPTE incurred under the Bank Loan Agreement.

c. The provisions of this Section I.2 shall be made retroactive to January 21, 2016 and be construed as if the provision of Section I.2 had been made a part thereof on such date.

3. The following section shall be added as new Section I.2.j of the IAA:

j. CDOT will assist HPTE in complying with all reporting requirements under the Bank Loan Agreement and related documents.

4. The following section shall be added as new Section I.3.c of the IAA:

c. HPTE will be responsible for complying with all reporting requirements under the Bank Loan Agreement and related documents.

5. Section V.4 of the IAA shall be replaced with the following language in its entirety:

4. Notices. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of CDOT and HPTE. All communications, notices, and correspondence with respect to the performance of this Agreement shall be addressed to the individuals identified below. Either Party from time to time, may designate in writing new or substitute representatives.

If to CDOT:

Joshua Laipply, Chief Engineer
CDOT
2829 West Howard Place
Denver, CO 80204
Email: joshua.laipply@state.co.us

If to HPTE:

David I. Spector, Director
HPTE
2829 West Howard Place
Denver, CO 80204
Email: david.spector@state.co.us


6. General Provisions. All capitalized terms used in this Amendment but not otherwise defined in this Amendment shall have the meaning for such terms as set forth in the IAA. With the exception of those terms and conditions specifically modified and amended herein, the IAA shall remain in full force and effect in accordance with all of its terms and conditions. In the event of any conflict between the terms and provisions of the IAA and the term and provisions of this Amendment, the terms and provisions of this Amendment shall supersede and control. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, and all of such counterparts shall constitute one agreement.

[Signature pages follow.]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the Effective Date.

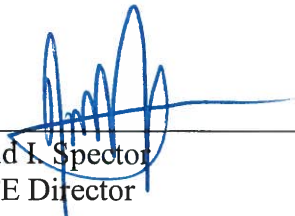
FOR THE COLORADO DEPARTMENT OF TRANSPORTATION:

STATE OF COLORADO
JOHN W. HICKENLOOPER, Governor

By: 

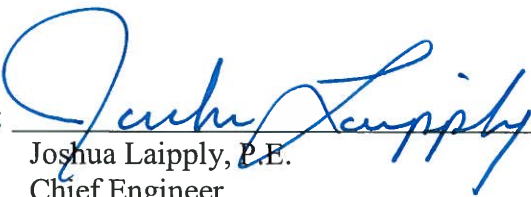
Michael P. Lewis
Executive Director

FOR THE COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE:

By: 

David I. Spector
HPTE Director


FOR THE COLORADO BRIDGE ENTERPRISE:

By: 

Joshua Laipply, P.E.
Chief Engineer

APPROVED:


CYNTHIA H. COFFMAN
Attorney General

By: 

Andrew J. Gomez
Assistant Attorney General

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

Section 24-30-202, C.R.S. requires that the State Controller to approve all agreements. This Agreement is not valid until the State Controller, or such assistant as he may delegate, has signed it.

<p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: <u></u> Office of the State Controller, Controller Delegate</p> <p style="text-align: center;"><u>Nathan Weatherford</u> Printed name of signatory</p> <p>Effective Date: <u>12/11/2018</u></p>
