

MEMORANDUM OF UNDERSTANDING

By and between the

COLORADO DEPARTMENT OF TRANSPORTATION

AND

HIGH PERFORMANCE TRANSPORTATION ENTERPRISE

THIS MEMORANDUM OF UNDERSTANDING, entered into as of the 30th day of September, 2013, by and between the Colorado Department of Transportation ("CDOT"), an agency of the State of Colorado ("State"), and the High Performance Transportation Enterprise ("HPTE"), a government-owned business created as a Division of CDOT by the "Funding Advancements for Surface Transportation and Economic Recovery Act of 2009" ("FASTER"). CDOT and HPTE are referred to in this Memorandum of Understanding individually as a "Party" and jointly as the "Parties".

RECITALS

WHEREAS, CDOT has the responsibility to plan, develop, construct, coordinate, and promote an integrated transportation system within the State; and

WHEREAS, the General Assembly of the State found and determined in FASTER (Section 43-4-806(1), C.R.S.) that:

- (a) It is necessary, appropriate and in the best interests of 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; and
- (b) The HPTE should actively seek out opportunities for public-private partnerships for the purpose of completing surface transportation infrastructure projects; and
- (c) The authority of the HPTE should be broadly construed to allow HPTE 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; and

(d) The types of innovative financing opportunities 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

WHEREAS, FASTER (Section 43-4-806(2), C.R.S.) created an HPTE board (“Board”) and the Board adopted on November 17, 2010, Articles of Organization (as amended from time to time “Articles of Incorporation”) and Bylaws (as amended from time to time “Bylaws”) providing for its operation and management and setting forth its powers; and

WHEREAS, FASTER (Section 43-4-806(2)(d), C.R.S.) provides that the HPTE shall constitute an “enterprise” for purposes of section 20 of article X of the State Constitution so long as it receives less than ten percent of its total revenues in grants from all Colorado state and local governments combined; and

WHEREAS, the funding for HPTE is expected to be derived from multiple sources including toll revenues, work and fee for service and completion fee agreements with CDOT and other entities, concession fees, bond issuance fees, federal funds, and loans from the Transportation Commission; and

WHEREAS, FASTER (Sections 43-4-806(2)(c), 6(f) and (h), C.R.S.) authorizes HPTE to enter into agreements with the Transportation Commission or CDOT in furtherance of the purposes for which HPTE was created; and

WHEREAS, CDOT and HPTE have determined that it will advance and promote the respective missions of CDOT and HPTE to define and set forth in this Memorandum of Understanding their operating roles and responsibilities as they relate to those missions.

NOW, THEREFORE, in consideration of the mutual covenants, obligations, and conditions expressed below, the Parties understand and agree as follows:

Article One

General Provisions

1.1 Definitions. Terms defined in FASTER (Section 43-4-803, C.R.S.) have the same meanings when used in this this Memorandum of Understanding.

1.2 Effective Date and Term. This Memorandum of Understanding shall be effective immediately upon its execution and shall continue in effect until terminated in accordance with its terms.

1.3 Termination of Master Agreement. The Master Agreement by and between the Colorado Department of Transportation and the Colorado High Performance Transportation Enterprise, entered into as of the 30th day of November, 2010, is terminated.

Article Two

Coordination between CDOT and HPTE

2.1 The Board has the authority to establish policies for HPTE under which it will identify and prioritize HPTE projects and make and enter into agreements and contracts with private entities for the financing, design, construction, operations and maintenance of surface transportation infrastructure projects. Nevertheless, as a division of CDOT, HPTE must coordinate and integrate its mission with CDOT in the fulfillment of its duties and the exercise of its powers.

2.2 Accordingly, CDOT has created and will maintain an Office of Major Project Development (OMPD) as a resource and center of expertise for the coordinated fulfillment of the joint missions of CDOT and HPTE. As a resource to both CDOT and HPTE, the purpose of the OMPD will be to provide the following services for P3 and other major projects:

(a) Supporting HPTE in overall program-level activities including the establishment of policies, strategic master planning, communications and marketing, establishment of procedures and budget planning and reporting, all in fulfillment of the mission of HPTE.

(b) Conducting early development activities and determining the overall feasibility of potentially eligible major projects, including project scoping, conceptual design, preliminary environmental evaluations, and support of HPTE with its initial financial analyses. In coordination with HPTE, define the initial project delivery structure to pursue.

(c) Identifying, analyzing and prioritizing corridors that are candidates for public-private partnerships, other innovative financing, or are potentially eligible for inclusion in a major project effort.

(d) Supporting HPTE in the value-for-money analyses and financial planning for candidate HPTE projects and in coordination with the HPTE, coordinating project delivery planning with the DTD, other relevant CDOT divisions, and CDOT regions for overall project funding and programming.

(e) In conjunction with HPTE, establishing criteria to determine when HPTE leads project procurement.

(f) In support of HPTE, deciding whether a project will be administered and contracted by the HPTE or CDOT. For non-HPTE projects, assessing the eligibility of the project for inclusion in the OMPD project program and making recommendations to the Chief Engineer for his final determination.

(g) For eligible major projects determined to be administered by HPTE:

(i) Leading the effort within CDOT to implement the project including overall project management, preliminary design, environmental studies and documentation, and agency and public coordination utilizing a team led by an OMPD project manager; and

(ii) Supporting HPTE-led activities including financial analyses, financial implementation and the procurement, including contract development, bidder selection, negotiations, and industry engagement.

(h) In conjunction with HPTE, developing a policy as to the acceptance and evaluation by CDOT and/or HPTE of unsolicited proposals involving potentially eligible major projects, which policy shall in any event provide that HPTE shall be the sole entity within CDOT to receive and evaluate unsolicited proposals for any such projects which are expected to be revenue-producing projects.

2.3 The goal of the OMPD will be to provide the necessary resources, in coordination with HPTE, other CDOT divisions, and CDOT regions, for a unified management structure for the development and implementation of major projects. Major projects are defined as (i) projects involving public-private partnerships or other financings requiring the powers of HPTE; (ii) projects involving toll operations, technologies and equipment; or (iii) projects with non-traditional or innovative contracting methods requiring or otherwise benefitting from the centralized management or expertise of the OMPD, to be determined by the Chief Engineer of CDOT (Chief Engineer), in coordination with the OMPD and HPTE as appropriate.

2.4 The OMPD will be led by a Director, reporting directly to the Executive Director or his/her designee and the Director of HPTE. Primary personnel management will be the responsibility of the Executive Director or his/her designee. Funding of the OMPD will come from the annual CDOT budget as well as ongoing project funding allocations as part of the annual budgeting actions by the Transportation Commission. Technical staff support to the OMPD will come from full time employees assigned to the OMPD, participating staff from appropriate divisions and regions on an as needed basis,

and consultants as necessary to support the office's programmatic and project specific efforts.

2.5 The role and responsibilities of the OMPD will include, in coordination with other CDOT divisions and CDOT regions, leadership, overall management and/or support in identifying, selecting, developing and implementing eligible projects. Specifically, the responsibilities and resources of the OMPD and HPTE in respect of HPTE eligible major projects will be allocated as set forth in Attachment A.

2.6 Before any substantial work is done in respect of an eligible major project, HPTE and CDOT, working through the OMPD, will enter into a project-specific agreement defining the roles and responsibilities of the parties, the anticipated funding sources for the project, any fees to be paid to HPTE for services for completing the financing for the project or otherwise, the rights and obligations of the parties with respect to the assets be acquired, and such other matters as may be appropriate in the circumstances.

2.7 The OMPD Director and the Director of HPTE will be responsible for developing and implementing operating procedures and protocols for coordinating the activities of the OMPD and HPTE and for communicating with and reporting to the Executive Director and Transportation Commission and to the HPTE Board. In particular, the OMPD Manager and the Director of HPTE will develop for adoption by the Transportation Commission and the HPTE Board a "Program Implementation Process" for mutual approvals by each body at critical decision points of the planning, development, procurement, construction and operation phases of eligible projects.

Article Three

CDOT Services

3.1 HPTE may, with the approval of and subject to such condition as are imposed by the Executive Director, utilize the professional and administrative services of CDOT employees or agents and CDOT facilities in connection with its authorized activities.

3.2 HPTE will reimburse CDOT, at CDOT's regularly burdened rates, for any administrative services or facilities provided by CDOT, its employees or agents. To the extent reimbursement is not immediately forthcoming and the funds expended by the Transportation Commission derived from the state highway fund, pursuant to FASTER (section 43-4-806(d)(4), C.R.S.) the value of such services or facilities shall, notwithstanding any state fiscal rule or generally accepted accounting principle that

could be interpreted to require a contrary conclusion, constitute a loan from the Transportation Commission to HPTE.

3.3 Specific services CDOT will provide to the HPTE include but are not limited to accounting and budget support. CDOT's Chief Financial Officer will act as the Chief Financial Officer for HPTE and ensure, among other things necessary for its ongoing budgetary and accounting needs, that HPTE's annual budget, budget supplements, ongoing accounting, and annual audited financial statements are prepared timely and correctly in accordance FASTER and this Memorandum of Understanding. The CFO will ensure that accountants and budget analysts within the Division of Accounting and Finance assigned to support the HPTE will develop the specialized policies, procedures, and expertise required to meet the needs of HPTE.

Article Four

Procurement

4.1 The State Procurement Code is not applicable to HPTE and in order to facilitate its pursuit of public-private partnerships and other innovative and efficient means of financing surface transportation infrastructure projects, the HPTE Board has adopted a set of Project Proposal Guidelines (as modified, the "Guidelines") which the Board has determined to be consistent with best practice principles of transparency, competition and fair-dealing. The Guidelines are attached as Attachment B and are confirmed in their current form by the parties.

4.2 The parties agree that the HPTE will coordinate its procurement processes with the OMPD, the CDOT procurement office and other CDOT entities that support the processes of contracting and procuring for goods and services. CDOT procurement, and other internal entities that are components of a procurement process, will support the preparation of contracts and the encumbrance of funds for the HPTE whether or not the state procurement code is followed or not by the HPTE so long as they meet the HPTE Board's Guidelines and the state's fiscal rules.

4.3 The parties agree that if either of the following will occur, HPTE will use the modified procurement process set forth in section 4.14 of Attachment B.

(a) HPTE is to be reimbursed by CDOT for personal services or goods procured by HPTE, or

(b) CDOT will utilize personal services or goods procured by HPTE for CDOT projects.

4.4 The parties agree that HPTE will utilize CDOT processes and procedures for the procurement by it of any professional services.

4.5 The parties agree the procurement for outside legal services will be done by HPTE in coordination with the Attorney General's office.

Article Five

Budget Coordination

5.1 HPTE will prepare an annual budget and other budgeting documents in the format and by the deadlines set by the CDOT budget office each year. Additional required reports may include, but are not limited to, the long range plan and annual travel plan. HPTE and the OMPD agree to coordinate the development of the budgets to assure consistency and completeness. This coordination does not limit the HPTE Board's authority during the fiscal year to adjust its budget as it deems necessary so long as those actions do not exceed annually available revenues, nor does it limit the Board's authority to delegate budget authority to the Director.

5.2 The HPTE annual budget may contain a request for a CDOT loan to fund staff positions and other program costs.

5.3 Pursuant to the statutory requirements of FASTER and except as the terms of any relevant project-specific agreements may otherwise require, HPTE shall use available revenues to repay CDOT loans at the discretion of the Board. Furthermore, at the discretion of the Board and based on the HPTE annual budget, excess revenue derived from project-related operations may be retained by the HPTE in the statewide transportation enterprise operating fund or the transportation special fund, pursuant to 43-4-806(4), after fulfillment of all appropriate obligations, for HPTE priorities and for the sustained operations of the HPTE.

Article Six

CDOT Policies and Procedures

6.1 The parties agree that only the CDOT Policy and Procedural Directives listed on Attachment C shall apply to HPTE; except as they may be superseded by the

terms of this Memorandum of Understanding. The Board will pass a Resolution adopting the Policy and Procedural Directives listed on Attachment C

6.2 Future Policy and Procedural Directives adopted by the Transportation Commission shall not apply to HPTE unless the HPTE Board adopts them by Resolution.

Article Seven

Termination

7.1 This Memorandum of Understanding may be terminated at any time by mutual agreement of the parties.

Article Eight

Amendments

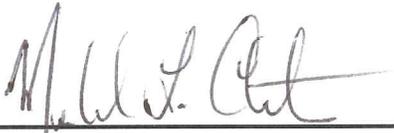
8.1 Amendments to this Memorandum of Understanding must be in writing and must be duly authorized and approved by the Transportation Commission and the Board.

SIGNATURE PAGE

Effective this 30th day of September, 2013.



Don Hunt, Executive Director, Colorado Department of Transportation



Michael Cheroutes, Director, High Performance Transportation Enterprise

Attachment A

Office of Major Project Development (OMPD)/High Performance Transportation Enterprise (HPTE)

Resources and Responsibilities for Basic Functions

The following table assigns the source of resources and responsibilities for the fulfillment of the basic functions for the OMPD and HPTE for the coordinated implementation of the HPTE P3 and Innovative Finance Program. The HPTE and the OMPD will work collaboratively to accomplish the mutual and joint goals of CDOT and the HPTE, in compliance with the statutory authority of the HPTE, as follows:

| Program/ Project Phase | Description | Responsibilities and Resources (HPTE Eligible Projects Only) | |
|--|--|---|-----------------|
| | | OMPD* | HPTE |
| Overall Program | <u>Management and Oversight:</u> Provide communications, overall administration and reporting of P3 Program | Support | Lead |
| | • Establish policies | Support | Lead |
| | • Provide strategic master planning | Lead | Support |
| | • Conduct program communications and marketing | Lead | Support |
| | • Establish procedural guidelines and procedures | Lead | Support |
| | • Conduct program-level budget planning and reporting | Lead (Commission) | Lead (Board) |
| Program Planning | <u>Management and Oversight:</u> Conduct initial feasibility, conceptual design, financial plan, initial environmental planning, delivery plan, ID and select projects, prioritization | Lead | Support |
| | • Identify and prioritize potential projects | Lead | Support |
| | • Determine initial feasibility of potential projects | Lead | Support |
| | • Prepare conceptual project definition/scope/design | Lead | Support |
| | • Conduct Phase I T&R Study (revenue projections) | Support | Lead |
| | • Prepare conceptual cost estimates and scheduling | Lead | Support |
| | • Conduct environmental review (pre-NEPA) | Lead | Support |
| | • Prepare value-for-money analysis | Support | Lead |
| | • Prepare initial financing plan | Support | Lead |
| | • Engage industry (program info, initial interest) | Support | Lead |
| | • Conduct public engagement | Lead | Support |
| | • Conduct stakeholder engagement (local TR agencies) | Lead | Support |
| • Provide FHWA coordination and approvals | Lead | Support | |
| • Make P3 decision and prepare delivery plan | Support | Lead | |
| Project Development | <u>Management and Oversight:</u> Conduct final feasibility, financing plan, NEPA, and preliminary engineering | Lead | Support |
| | • Provide overall project management | Lead | Support |
| | • Determine final feasibility of project | Lead | Support |

| | | | |
|--|---|-----------------|-----------------|
| | <ul style="list-style-type: none"> • Prepare preliminary project design | Lead | Support |
| | <ul style="list-style-type: none"> • Conduct Phase II T&R Study (revenue projections) | Support | Lead |
| | <ul style="list-style-type: none"> • Prepare preliminary cost estimates and scheduling | Lead | Support |
| | <ul style="list-style-type: none"> • Provide environmental clearance/approval (NEPA) | Lead | Support |
| | <ul style="list-style-type: none"> • Prepare value-for-money analysis | Support | Lead |
| | <ul style="list-style-type: none"> • Prepare final financing plan | Support | Lead |
| | <ul style="list-style-type: none"> • Engage industry (project information, RFI) | Support | Lead |
| | <ul style="list-style-type: none"> • Conduct public engagement (project specific) | Lead | Support |
| | <ul style="list-style-type: none"> • Conduct stakeholder engagement (local TR agencies) | Lead | Support |
| | <ul style="list-style-type: none"> • Provide FHWA coordination and approvals | Lead | Support |
| | <ul style="list-style-type: none"> • Develop project communications plan | Lead | Support |
| | <ul style="list-style-type: none"> • Develop project management plan | Lead | Support |
| | <ul style="list-style-type: none"> • Make P3 procurement decision and define delivery plan | Support | Lead |
| Project Procurement | <u>Management and Oversight: Procure the project</u> | Lead | Support |
| | <ul style="list-style-type: none"> • Provide overall project management | Lead | Support |
| | <ul style="list-style-type: none"> • Prepare solicitation documents (RFI, RFP, others) | Support | Lead |
| | <ul style="list-style-type: none"> • Prepare contract documents | Support | Lead |
| | <ul style="list-style-type: none"> • Prepare investment-grade T&R (revenue projections) | Support | Lead |
| | <ul style="list-style-type: none"> • Prepare final financial documents and requirements | Support | Lead |
| | <ul style="list-style-type: none"> • Prepare value engineering and technical requirements | Lead | Support |
| | <ul style="list-style-type: none"> • ATC reviews | Lead | Support |
| | <ul style="list-style-type: none"> • Coordinate procurement with industry bidders | Support | Lead |
| | <ul style="list-style-type: none"> • Review proposals and conduct evaluations | Support | Lead |
| | <ul style="list-style-type: none"> • Conduct public engagement (project specific) | Lead | Support |
| | <ul style="list-style-type: none"> • Conduct stakeholder engagement (local TR agencies) | Lead | Support |
| | <ul style="list-style-type: none"> • Provide FHWA coordination and approvals | Lead | Support |
| <ul style="list-style-type: none"> • Select winning bidder and negotiate contract | Support | Lead | |
| Construction | <u>Management and Oversight: Construct the project</u> | Lead | Support |
| | <ul style="list-style-type: none"> • Provide contract management and administration | Lead | Support |
| | <ul style="list-style-type: none"> • Provide change management | Lead | Support |
| | <ul style="list-style-type: none"> • Provide budget management | Lead | Support |
| | <ul style="list-style-type: none"> • Provide financial reviews | Support | Lead |
| | <ul style="list-style-type: none"> • Conduct design reviews | Lead | Support |
| | <ul style="list-style-type: none"> • Construction oversight and quality audits | Lead | Support |
| | <ul style="list-style-type: none"> • Conduct final project acceptance | Lead | Support |
| O&M | <u>Management and Oversight: Operating the Project</u> | | |
| | <ul style="list-style-type: none"> • Manage concession and related contracts (incl. reporting) | Lead | Support |
| | <ul style="list-style-type: none"> • Toll collection • Maintenance | Support Lead | Lead Support |

Attachment B

COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE PROJECT PROPOSAL GUIDELINES (THE "GUIDELINES")

1. INTRODUCTION

- 1.1 These Guidelines are intended to provide a project identification and evaluation process to be utilized by the Colorado High Performance Transportation Enterprise (the "Enterprise") in connection with its pursuit of public-private partnerships and other innovative and efficient means of completing surface transportation infrastructure projects in accordance with the provisions of Section 43-4-806, Colorado Revised Statutes, as amended. The Enterprise recognizes that each project will have its unique characteristics and goals and that tailored approaches to assessing and implementing projects will be required for the Enterprise's program to be successful. The Enterprise intends to retain the flexibility to modify or deviate from these Guidelines as it sees fit and in the interest of the State and the public.
- 1.2 These Guidelines may be revised from time to time and such revisions will be promptly posted on the Enterprise's website. Those performing work or otherwise relying on these Guidelines assume all risks related to any revisions. The Enterprise will not be liable for any damages sustained by anyone based on a modification or failure to modify the Guidelines. In addition, the Enterprise, at its sole discretion, may waive or deviate from some or all of these Guidelines where it deems such waiver(s) or deviation to be in the best interest of the State. In no event shall any such waiver or deviation result in any liability for the Enterprise, the State or any other party.

2. INTERPRETATION

- 2.1 Definitions. The following definitions are provided to assist in understanding of the Guidelines and may be modified in any Solicitation Documents or Agreements issued by the Enterprise:

"Agreement" means a binding document or series of documents between the Enterprise (or the Enterprise and CDOT) and a Person that outline the basis on which to plan, finance, design, engineer, construct, install, acquire, operate and maintain (or any combination of these activities) an Eligible Project.

"Bidder" means a Person or Consortium who seeks to enter into an Agreement in response to Solicitation Documents.

"CDOT" means, the Colorado Department of Transportation created in Section 24-1-128.7, Colorado Revised Statutes, as amended.

| | |
|--------------------------|--|
| “Consortium” | means two or more Persons acting together for the purpose of seeking to enter into an Agreement. |
| "Eligible Project" | means any surface transportation infrastructure project as defined in Section 43-4-803(23), Colorado Revised Statutes, as amended. |
| "Person" | means any individual, sole proprietorship, corporation, partnership, unincorporated association or public entity and includes successors and permitted transferees and their assigns. |
| “Project Participant” | means any Person or Consortium who or which enters into an Agreement. |
| “Solicitation Documents” | means procurement documents, including but not limited to requests for information, requests for proposals, requests for qualifications and statements of qualifications, initiated by the Enterprise in connection with an Eligible Project. |
| “Solicited Proposal” | means a procurement initiated and issued by the Enterprise in connection with an Eligible Project either (i) through a determination by the Enterprise that, based on its findings and evaluations, a procurement for such Eligible Project is in the best interest of the State or (ii) through a determination by the Enterprise that, based on an Unsolicited Proposal, a procurement is in the best interest of the State. |
| “State” | means the State of Colorado. |
| “Unsolicited Proposal” | means a submittal by a potential Project Participant with respect to an Eligible Project which has not been initiated by the Enterprise. |

2.2 In these Guidelines

- (a) the singular includes the plural and vice versa;
- (b) the headings are inserted for convenience only and shall not affect interpretation of the Guidelines;
- (c) when there are references with general words followed by a list to make it clear that those general words "include" the matters set out in that list, then the contents of the list shall be taken not to limit the generality of those general words; and
- (d) in accordance with these Guidelines the Enterprise is free to exercise its discretion in such matters as it considers necessary or expedient in the light of all circumstances prevailing at the time which the Enterprise considers to be relevant.

3. **UNSOLICITED PROPOSALS**

- 3.1 The Enterprise may consider and evaluate an Unsolicited Proposal, or decline to do so, in accordance with the provisions of this Section 3. The Enterprise may, in its sole discretion, decline to consider and evaluate an Unsolicited Proposal, in which case it shall so notify the Person or Consortium submitting that Unsolicited Proposal. If the Enterprise makes a determination to consider and evaluate an Unsolicited Proposal, then, upon completion of its evaluation in accordance with the provisions of this Section 3, it shall proceed as provided in Paragraph 3.5 hereof.
- 3.2 In determining whether to consider and evaluate an Unsolicited Proposal, the Enterprise shall have regard to all or any facts and matters which the Enterprise considers to be relevant, including:
- (a) the resources available to the Enterprise, both from its own staff and from any necessary or desirable consultants and external resources, to enable it to conduct the evaluation;
 - (b) the extent to which the Unsolicited Proposal appears to offer benefits to the State by fulfilling requirements related to an Eligible Project identified by the Enterprise or CDOT as a priority;
 - (c) the extent to which the Unsolicited Proposal presents a financing plan that efficiently includes Enterprise/CDOT funding and/or maximizes project revenues to present a viable funding proposal;
 - (d) the extent to which the Unsolicited Proposal may significantly shorten a timetable for satisfying a known requirement in any plan set out by CDOT or the Enterprise; and
 - (e) the extent to which the Enterprise or CDOT is already developing its own plans for meeting the requirement which the Unsolicited Proposal is seeking to address.
- 3.3 Except as otherwise determined by the Enterprise, the Enterprise will only consider an Unsolicited Proposal if the Enterprise is given a royalty-free license in any and all intellectual property rights comprised in the Unsolicited Proposal to the full extent necessary to enable the Enterprise to accept the proposal (with or without amendments) for the purpose of seeking competitive proposals as contemplated in Subparagraph 3.5(a) hereof. The Person or Consortium making an Unsolicited Proposal may identify appropriate material contained therein as proprietary or confidential; however, the Enterprise may disclose proprietary or confidential material contained in the Unsolicited Proposal to CDOT personnel, the Transportation Commission or the Enterprise Board of Directors. At the time of submission to the Enterprise the Proposer must also include an executive summary covering the major elements of the Unsolicited Proposal that do not address the Proposer's price, financing plan or other confidential or proprietary information or trade secrets that the Proposer intends to be exempt from disclosure. The Executive Summary will be a public document and will be posted on the Enterprise's website. The executive summary will also be used in connection with seeking competitive proposals as contemplated in Subparagraph 3.5(a) hereof. In the event the Enterprise determines that it is unable to effectively solicit competitive proposals due to the scope of the material in the Unsolicited Proposal that has been designated as proprietary or confidential, the Enterprise may either (i) negotiate with the Person or

Consortium submitting the Unsolicited Proposal to allow the use of so much of such proprietary or confidential information as the Enterprise determines is required for use in connection with seeking competitive proposals or (ii) determine not to proceed further with the Unsolicited Proposal.

- 3.4 The Enterprise will only accept submission of an Unsolicited Proposal if, at the time the Unsolicited Proposal is submitted, the Person or Consortium making the Unsolicited Proposal pays to the Enterprise an initial fee of \$1,000. Such initial fee shall be nonrefundable, whether or not the Enterprise chooses to consider and evaluate the Unsolicited Proposal. If the Enterprise decides to proceed to consider and evaluate an Unsolicited Proposal, then it may make it a condition of proceeding that the Person or Consortium making the Unsolicited Proposal agrees to pay an amount to be determined by the Enterprise to cover the actual costs incurred by the Enterprise in considering and evaluating the Unsolicited Proposal. The Person or Consortium making the Unsolicited Proposal may withdraw such Unsolicited Proposal if it is unwilling to pay such actual costs. In the event that, following a solicitation based upon an Unsolicited Proposal, an award is made for the Eligible Project described in the Unsolicited Proposal to a Bidder other than the Person or Consortium making the Unsolicited Proposal, the Enterprise will require that the successful Bidder pay the Enterprise an amount sufficient for the Enterprise to reimburse the Person or Consortium making the Unsolicited Proposal for amounts paid by such Person or Consortium to the Enterprise for the actual costs incurred by the Enterprise to consider and evaluate the Unsolicited Proposal.
- 3.5 On completion of the evaluation of an Unsolicited Proposal, the Enterprise may:
- (a) seek proposals for the Eligible Project described in the Unsolicited Proposal either (i) in accordance with the procedures set forth in Section 4 hereof, subject to such amendments to the Unsolicited Proposal as the Enterprise may consider appropriate, or (ii) in accordance with such alternative procedures as the Enterprise may determine are appropriate under the relevant circumstances and will encourage competition, provide transparency and ensure nondiscriminatory treatment of potential bidders, subject, however, in either case to exceptions of the type described in Paragraph 4.8 hereof; or
 - (b) notify the proposer(s) that the Enterprise will not proceed any further with the Unsolicited Proposal, and provide a general description of the reasons for that decision.

4. **SOLICITED PROPOSALS**

- 4.1 The Enterprise may solicit proposals in connection with an Eligible Project when it determines either that, based on its findings and evaluations, a procurement for such Eligible Project is in the best interest of the State or that, based on an Unsolicited Proposal, a procurement for such Eligible Project is in the best interest of the State.
- 4.2 In connection with any Solicited Proposal, the Enterprise will issue such Solicitation Documents as it determines may be appropriate under the circumstances. The Solicitation Documents may include such terms and requirements as are determined by the Enterprise to be appropriate and may request submission of such information, including financial and

technical information, as the Enterprise determines to be necessary or useful in evaluating any proposal and the viability of the relevant Eligible Project.

- 4.3 The Enterprise may provide in the Solicitation Documents that the solicitation will take place in successive stages, in order to reduce the number of proposals to be negotiated at each stage, by applying criteria as set forth in the Solicitation Documents.
- 4.4 Prior to issuing any Solicitation Documents, the Enterprise may request expressions of interest in relation to an Eligible Project and take such other preliminary steps as it may deem appropriate to engage with potential Bidders, including but not limited to, conducting meetings with industry participants in order to inform the industry of the opportunity and to hear industry suggestions which may, in the Enterprise's sole discretion, be incorporated into the Solicitation Documents.
- 4.5 For the purpose of encouraging competition, providing transparency and ensuring the nondiscriminatory treatment of potential Bidders, the Enterprise shall, except in certain circumstances as set forth in Paragraph 4.8, provide public notices in connection with its solicitations by such means and in such forms as shall be appropriate under the circumstances, including the publication of the applicable Solicitation Documents. Such public notices may precede or be accompanied by the applicable Solicitation Documents and may include an estimated timetable relating to the solicitation process if available.
- 4.6 The Enterprise may consider requests for further information relating to the Solicitation Documents as may be reasonably requested by a Bidder, and, if the Enterprise determines it appropriate under the circumstances to provide such further information, it will supply such information to all Bidders, provided that the request for such information is received in sufficient time to enable the Enterprise to supply it.
- 4.7 If the Bidder consists of or includes a Consortium, the Bidder may rely on the capacities of the members of the Consortium in responding to and complying with the requirements set forth in the Solicitation Documents regardless of whether or not the members of the Consortium have entered into a legal relationship for purposes of submitting a proposal. If the Enterprise awards an Agreement to a Consortium, it may, if the Enterprise deems it to be necessary or expedient for the satisfactory performance of the Agreement, require the Consortium to form a legal entity before entering into, or as a term of, the Agreement.
- 4.8 The Enterprise may elect not to provide a public notice in connection with the solicitation of work or services relating to an Eligible Project in certain circumstances, including the following:
 - (a) when, for technical, artistic or design reasons, or for reasons connected with the protection of exclusive rights, an Agreement may be awarded only to a particular Bidder;
 - (b) when for reasons of extreme urgency brought about by events unforeseeable by the Enterprise there is insufficient time to provide for the step of issuing a public notice;

- (c) when the Enterprise wants a Project Participant which has entered into an Agreement with the Enterprise to carry out additional work or to provide additional services
 - (i) which were not included in the project initially considered or in the original Agreement but which through unforeseen circumstances have become necessary; and
 - (ii) which cannot for technical or economic reasons be carried out or provided separately from those under the original Agreement without major inconvenience to the Enterprise; and
 - (d) when the Enterprise wants a Project Participant which has entered into an Agreement with the Enterprise to carry out new work or to provide new services which are a repetition of the work or services provided under the original Agreement and which are in accordance with the project for the purpose of which the first Agreement was entered into.
- 4.9 All material submitted by Bidders in response to Solicitation Documents will be the property of the Enterprise. As may be further provided in the Solicitation Documents, any material submitted by Bidders and requested to be treated as proprietary or confidential will be identified and treated in accordance with the relevant procedures set forth in the Solicitation Documents. After a final determination is made by the Enterprise in connection with a Solicited Proposal, all material submitted by Bidders, except material treated as proprietary or confidential in accordance with the Solicitation Documents, will become public record and open to inspection.
- 4.10 The evaluation of Solicited Proposals shall be made by a committee selected by the Director of the Enterprise to evaluate the merits of all responses received in connection with Solicited Proposals. The specific evaluation criteria to be utilized by the committee and any weighting of such criteria will be specified in the Solicitation Documents. Failure of a Bidder to provide in its proposal any information requested by the Solicitation Documents may result in disqualification of the proposal. During the evaluation process, meetings may be scheduled with Bidders, either individually or as a group, to the extent the committee determines that additional information or clarification is needed that would assist in the evaluation process. The recommendations of the committee will be forwarded to the Director of the Enterprise for final approval by the Board or, if the authority is delegated, by the Director.
- 4.11 The Enterprise reserves the right to reject any and all proposals received in response to Solicitation Documents or to cancel the Solicited Proposal process if it is in the best interest of the Enterprise or the State to do so. The Enterprise may reject any proposal received in response to Solicitation Documents if the Bidder, any member of a Consortium acting as a Bidder or any Person who has powers of representation, decision or control of the Bidder or any member of a Consortium acting as the Bidder is ineligible to contract with the State, CDOT or the Enterprise under applicable provisions of federal or state law or under any rules or regulations applicable to the State, CDOT or the Enterprise.
- 4.12 The Enterprise will not be liable for any costs incurred by Bidders prior to the execution of the relevant Agreement or other contract. All costs to prepare and submit responses to Solicitation Documents shall be borne solely by the Bidders. Nothing in Paragraph 4.12 will

prevent the Enterprise, in its sole discretion, from offering stipends and/or cancellation payments to Bidders on such terms as may be determined by the Enterprise.

- 4.13 The award in connection with a Solicited Proposal will be made to the Bidder whose proposal is determined to be the most advantageous to the State and the Enterprise, and shall be subject to negotiation and execution of an acceptable Agreement.
- 4.14 At the Enterprise's discretion, it may solicit a proposal that complies with the Colorado Procurement Code (CRS § 24-103-101, et al.). If the Enterprise determines that a solicitation will comply with the procurement code, the following shall occur to the extent that they have not already occurred following HPTE's process for Solicited Proposals outlined above:
- (a) Prior to a solicitation being advertised, a representative of the Enterprise shall meet with CDOT's Purchasing Director to discuss the solicitation and process, to discuss all written determinations that must be made under the Procurement Code and the development of the official file;
 - (b) CDOT's Purchasing Director may determine "competitive sealed proposals" is the most advantageous and practical procurement method for HPTE solicited proposals, and if this determination is made, Colorado Procurement Rule R-24-103-203 shall be followed;
 - (c) the Solicited Proposal will be advertised for a minimum of thirty (30) days unless CDOT's Purchasing Director determines a shorter time is warranted;
 - (d) If CDOT's Purchasing Director, pursuant to Colorado Procurement Rule R-24-102-202.5-.2, determines that the Colorado Bid Information and Distribution System (BID) is not likely to yield adequate competition, the Solicited Proposal will be advertised on the Enterprise's website and not on BIDS;
 - (e) the Solicited Proposal shall state the evaluation factors;
 - (f) If a Solicited Proposals warrants it, a shortlist will be created and individuals or firms will be given a minimum of seven business days to prepare for an interview;

The award shall be made to the responsible offer or whose Solicited Proposal is determined in writing to be the most advantageous to the Enterprise, taking into consideration the price and the evaluation factors set forth in the Solicited Proposal. No other factors or criteria shall be used in the evaluation.

Attachment C

CDOT Policy and Procedural Directives Applicable to HPTE

| Short Name | Title |
|------------|--|
| 0001-0 | Policy & Procedural Directives |
| 0001-1 | Procedure for Creating & Updating & Procedural Directives & PD Flow |
| 0002-0 | CDOT Values |
| 0004-0 | Audit Division |
| 0004-1 | Audit Division Responsibilities |
| 0004-2 | Audit Recommendation Tracking Report |
| 0004-3 | Coordination for Outside Audits and Studies |
| 0006-0 | Vehicle Fuels Control Policy Directive |
| 0006-1 | Vehicle Fuels Control Procedural Directive |
| 0008-0 | Residence and Telephone Requirements |
| 0009-0 | Equipment Management |
| 0009-1 | Commute Vehicles |
| 0009-2 | PD Utilization and Replacement of Road Equipment |
| 0010-0 | Workplace Violence |
| 0010-1 | Workplace Violence Procedural Directive |
| 0012-0 | Workplace Accommodation for Nursing Mothers Policy Directive |
| 0012-1 | Workplace Accommodation for Nursing Mothers Procedural Directive |
| 0014-0 | CDOT Vision, Mission, Investment Category Goals and Objectives |
| 0015-1 | Employee Wellness Program |
| 0016-0 | Regional Transportation Director Authority for Administrative Settlement of Construction Contract Claims |
| 0018.1 | Notification of Division Authority When Out of State or on Vacation |
| 0019-1 | Service of Legal Action |
| 0020-0 | Rule Making Policy Directive |
| 0020-1 | Rule Making Procedural Directive |
| 0022-1 | Mail and Messenger Service |
| 0024-1 | Publication Approval & State Publications Law Compliance |
| 0025-2 | Reimbursement of Cost Incurred Responding to Open Records |
| 0026-0 | Electronic Messaging Policy |
| 0027-0 | Internet Policy |
| 0027-1 | Social Marketing Use of Web 2.0 & Similar Applications |
| 0028-1 | Employee Identification Card |
| 0029-1 | Guidelines for Submitting Resolutions to the Transportation Commission |
| 0031-1 | Website Development |
| 0032-1 | Internal Web Page Development |
| 0041-1 | Disbursement of Motor Pool Vehicles |
| 0042-1 | Contact with Private Attorneys or their Agents |

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| 0043-1 | Administration of Special Bridge Account |
| 0044-1 | Tort Lawsuits Against the Division of Highways |
| 0046-1 | Mobile Device Procedure |
| 0051-1 | Records Management |
| 0051-2 | Public Inspection of Department Records |
| 0051-3 | Confidential Records |
| 0060-1 | Property Funds - Maintenance and Operations Budget |
| 0080-0 | Occupational Health and Safety |
| 0080-1 | Personal Protective Equipment Use |
| 0080-2 | Reporting of Unsafe or Unhealthy Working Conditions |
| 0080-3 | Accident Review Board |
| 0080-5 | Voluntary medical Monitoring Program for Identified Positions |
| 0080-6 | Vehicle Backing |
| 0080-7 | Electrical Safety in the Workplace |
| 0080-8 | Lockout / Tagout/ Tryout - Controlling Hazardous Energy |
| 0080-9 | Confined Spaces Entry |
| 0080-10 | Respiratory Protection Program |
| 0080-11 | State Vehicle Operations and Wireless Mobile Devices |
| 0081-1 | Drug & Alcohol Policy |
| 0081-1 | CDOT Substance Abuse, Controlled Substance and Alcohol Testing for Safety-Sensitive Positions |
| 0081-1 | CDOT Substance Abuse, Controlled Substance and Alcohol Testing for Non Safety-Sensitive Positions |
| 0081-2 | Employee Disclosure of Alcohol Misuse or Controlled Substances Use Program |
| 0081-3 | Risk & Insurance Management |
| 0089-0 | Accident Reporting and Claim Handling |
| 0089-1 | Worker's Compensation |
| 0089-2 | Modified Duty |
| 0206-1 | Reporting and Investigating Cash Shortages or Thefts |
| 0206-2 | Maintenance Section Recovery of Cost for Highway Damage Repairs |
| 0206-3 | Securities in Lieu of Retainage |
| 0207-0 | Travel Policy |
| 0207-1 | In State Travel |
| 0207-2 | Out of State Travel |
| 0302-0 | PO Anti-Trust Monitoring and Detection Program |
| 0302-1 | PD Anti-Trust Monitoring and Detection Program |
| 0306-1 | Flagger Training & Certification Program |
| 0315-0 | Contract Time and Contract Time Extensions |
| 0357-2 | Revocation of Pre-qualifications and/ or Debarment for Bid-related Offenses |
| 0384-0 | Subletting a Contract |
| 0387-0 | Construction by Public Agencies |
| 0390-0 | Accommodation if Utilities within State Highway System ROW |
| 0400-1 | Obtaining and Modifying Professional Consultant Services |

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| 0500-1 | Plans, Specifications, and Estimates (PS - E) to advance Federal-Aid Projects to Advertisement and Award in a |
| 0500-0 | PO Development of Federal Aid Projects under the CDOT Federal -Aid Highway Program Stewardship Agreement |
| 0501-0 | Drainage Design and Cooperative Storm Drainage System |
| 0501-1 | Drainage Design |
| 0501-2 | Cooperative Storm Drainage System |
| 0503-0 | Landscaping with Native Plant Material |
| 0507-0 | ADA Accessibility for CDOT Projects |
| 0507-1 | Standards for Rest Areas & Pedestrian Underpasses & Overpasses |
| 0508-1 | Release Memo PD's Engineer's Stamp |
| 0600-0 | Equal Employment Opportunity and Non-Discrimination Policy |
| 0600-1 | Equal Employment Opportunity and Non-Discrimination Policy |
| 0600-2 | Placement of Employees with Disabilities |
| 0600-6 | Internal Discrimination Complaint Procedures |
| 0602-0 | Diversity Policy |
| 0603-0 | Sexual Harassment |
| 0604-0 | Non-Discrimination Federally Funded Program Policy |
| 0605-0 | PO Release Memo Comprehensive Accessibility for Persons with Disabilities Release Memo PD ADA Accessibility Requirements in CDOT Transportation |
| 0605-1 | Projects |
| 0611-0 | Disadvantaged Business Enterprise Program Review Procedures for A-95 Notices of Intent/ Applications from Outside |
| 0700-1 | Agencies |
| 0701-0 | Access Control Policy |
| 0707-3 | Resource Allocation |
| 0715-1 | Financial Monitoring of Projects |
| 0717-1 | Fiscal Notes New |
| 0720-0 | Colorado State Infrastructure Bank (SIB) |
| 0720-1 | Colorado State Infrastructure Bank (SIB) |
| 0800-0 | State Highway Safety Agency |
| 0800-1 | State Highway Safety Agency |
| 0803-0 | Naming Highways, Bridges or Other Components of the Highways |
| 0805-0 | Work Safety and Mobility Policy |
| 0805-1 | Work Zone Safety and Mobility |
| 0902-0 | Shoulder Policy |
| 1000-0 | Maintenance Work Requiring State Highway Commission Action |
| 1001-1 | Handling of Hazardous Materials and Hazardous Waste |
| 1003-0 | Maintenance Incentive Pilot Program |
| 1004-0 | Rock fall Management Policy |
| 1005-0 | Removal and Disposal of Wildlife Carcasses from State Highway & ROW |
| 1005-1 | Removal and Disposal of Wildlife Carcasses from State Highway & ROW |
| 1006-0 | Adopt-A-Highway Program |

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| 1006-1 | Adopt-A-Highway Program |
| 1006-2 | Adopt-A-Highway Program Signing |
| 1050-0 | Division of Authority over State Highways within Cities, Cities & Counties, and Incorporated Towns |
| 1050-1 | Contracts with local Agencies for Maintenance of State Highways |
| 1055-0 | Snow Removal on State Highways |
| 1055-2 | Priorities and Level of Service for Snow and Ice Control |
| 1200-0 | General Personnel Administration |
| 1200-1 | Limitation on State Spending for Meals, Gifts, and Official Functions |
| 1200-2 | Outside Employment and Outside Business Interest |
| 1200-3 | Procedure or Administration of Furlough |
| 1204-1 | Leave Sharing |
| 1204-2 | General Leave |
| 1205-1 | Employee Organization Access |
| 1206-1 | PD Family Medical Leave Program |
| 1207-0 | Employee Innovations Policy New |
| 1207-1 | PD CDOT Cost Savings IDEA Incentive Program |
| 1221-1 | Interviewer Guidelines |
| 1222-0 | Driving Record and License Requirements |
| 1222-1 | Driving Record and License Requirements |
| 1226-1 | Employee Orientation |
| 1230-0 | Hours of Work and Overtime Compensation |
| 1230-1 | Flextime Agreements |
| 1230-2 | Compensation for Overtime, on-call, call-back, shift differential, and compensatory time |
| 1230-4 | Flex place |
| 1240-1 | Inclement Weather |
| 1260-0 | Organizational Learning Policy |
| 1260-1 | CDOT University College Deans |
| 1262-1 | Education and Professional Development Reimbursement Program |
| 1265-1 | Service Awards |
| 1280-1 | Transfer Policies and Procedures |
| 1291-1 | Retirement Plaques |
| 1300-0 | Disposition of Excess Land |
| 1300-1 | Property Inventory & Review |
| 1300-2 | Disposal of Excess Property |
| 1303-0 | |
| 1303-1 | Annexation of Department Property |
| 1307-0 | Property Leases |
| 1400-0 | Surface Treatment Program |
| 1401-0 | Product Evaluation and Experimental Features |
| 1401-1 | Product Evaluation and Experimental Features |
| 1500-0 | Guide Sign Policy |

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| 1501-0 | Roadside Memorial Signing |
| 1501-1 | Roadside Memorial Signing |
| 1503-0 | Naming Highways, Bridges, or Components of Highway Procedure of Implementing Commission Resolutions Regarding the Naming of |
| 1503-1 | Highways, Bridges, or Components of the Highway System |
| 1505-1 | Traffic Safety in Highway and Street Work Zones |
| 1510-1 | Promptly Reopening Roadway to traffic |
| 1511-0 | DUI/DUID Fatal Crash Signage |
| 1511-1 | DUI/DUID Fatal Crash Signage |
| 1600-2 | Research and Development Project Proposal Selection and Control Process |
| 1601-0 | Interchange Approval Process |
| 1601-1 | Interchange Approval Process |
| 1602-0 | Bike & Pedestrian |
| 1602-1 | Bike & Pedestrian |
| 1603-0 | Managed Lanes Policy |
| 1604-0 | Public Notification |
| 1606-0 | Maintaining Linear Reference System |
| 1606-1 | Maintaining Linear Reference System |
| 1607-0 | Rail Corridor Preservation Policy |
| 1612-0 | State Highway Relocation Policy |
| 1800-1 | Reproduction Work Orders and Charging to Using Organization |
| 1900-0 | Sound wall Policy |
| 1900-1 | Implementation of Sound wall Policy |
| 1901-0 | CDOT Policy on Air Quality |
| 1902-0 | CDOT Environmental Compliance (Water Quality) |
| 1903-0 | Hazardous Materials Routing Procedure |
| 1903-1 | Hazardous Materials Routing Procedure |