

Resolution – HPTE #272

Approving an Intra-Agency Agreement with CDOT for the I-270 Project

WHEREAS, pursuant to § 43-4-806, *et seq.*, C.R.S., the General Assembly of the State of Colorado created the Colorado High Performance Transportation Enterprise (“HPTE”) as a government-owned business within the Colorado Department of Transportation (“CDOT”) to pursue innovative means of more efficiently financing important surface transportation projects that will improve the safety, capacity, and accessibility of the surface transportation system; and

WHEREAS, pursuant to § 43-4-806(6)(g), C.R.S., HPTE is empowered to enter into contracts or agreements with any public entity to facilitate a public-private partnership, including, but not limited to, an agreement in which the enterprise, on behalf of CDOT, provides services in connection with a surface transportation infrastructure project; and

WHEREAS, HPTE is also empowered, pursuant to § 43-4-806(6)(h), C.R.S., to make and enter into all other contracts and agreements that are necessary or incidental to the exercise of its powers and performance of its duties; and

WHEREAS, CDOT and HPTE are currently working in cooperation on the design phase of a potential surface transportation infrastructure project, generally consisting of the design and planning work on potential improvements to Interstate Highway 270 (“I-270”) between Interstate Highways 70 (“I-70”) and 25 (“I-25”) and U.S. Highway 36 (“U.S. 36”) (collectively, the “Design Project”), with the ultimate target of integrating the I-25, I-70 and U.S. 36 Express Lanes via direct-connect ramps with I-270; and

WHEREAS, the Board has reviewed the Intra-Agency Agreement, including the recitals thereto, and by this resolution accepts and confirms the findings and statements contained therein; and

WHEREAS, the Board has also reviewed the Scope of Work attached as Exhibit A to the Intra-Agency Agreement, and finds the services set forth to be within CDOT’s expertise and the compensation amounts set forth therein to constitute fair and reasonable compensation for the services to be provided by CDOT to HPTE; and

WHEREAS, in order to further the efficient completion of surface transportation infrastructure projects necessary to CDOT’s development of an integrated transportation system, HPTE desires that CDOT utilize its expertise to provide the Services, in exchange for which HPTE agrees to compensate CDOT in the amounts set forth in the Scope of Work.

NOW THEREFORE BE IT RESOLVED, that the Board of the High Performance Transportation Enterprise hereby approves the Intra-Agency Agreement with CDOT for Design Work on the I-270 Design Project.



Date: September 20, 2018

To: High Performance Transportation Enterprise Board / Colorado Transportation Commission

From: Nicholas Farber, HPTE Head of Innovative Project Delivery; Andrew Gomez, HPTE General Counsel

Subject: Intra-Agency Agreement Between HPTE and CDOT regarding contribution to the I-270 Project

Purpose

The purpose of this memo is to describe the Intra-Agency Agreement (IAA) between the Colorado Department of Transportation (CDOT) and the High-Performance Transportation Enterprise (HPTE) regarding HPTE's contribution to the I-270 Design Project.

Action

The HPTE Board and Transportation Commission are asked to adopt a resolution that supports the staff recommendation to approve HPTE's contribution to the I-270 Design Project.

Background

CDOT is starting to prepare the I-270 corridor for a potential project by identifying funding for traffic modeling, conceptual design, and other data gathering work. This work is expected to cost \$900,000, of which \$600,000 has already been identified from CDOT (SB 1) and Adams County. The Project approached the HPTE to see if it could help close the funding gap. HPTE identified \$300,000 of I-25 North Segment 2 revenues that it can contribute to the I-270 conceptual design, which consists of LIDAR topography surveys to assist with the design and cost estimates of the Express Lanes direct-connect ramps between I-270 and I-25, and U.S. 36. HPTE's intent in contributing to the I-270 Design Project is to bring together the Express Lanes on all of these corridors.

Overview of the IAA

For the consideration of HPTE's contribution of I-25 North Segment 2 revenues, CDOT agrees to conduct the conceptual design on the Project for the purpose incorporating the design of Express Lanes and Express Lane direct-connect ramps between the aforementioned corridors (subject to environmental review process). The HPTE is authorized pursuant to statute (43-4-806(2)(c)(I) C.R.S.) to impose user fees on the travelling public for the privilege of using surface transportation infrastructure, and can spend revenues collected on projects so long as they are integrated with the project as part of a surface transportation system (43-4-806(5) C.R.S.).

Options / Decision Matrix

1. **Staff Recommendation:** Approve the HPTE's \$300,000 contribution to the I-270 Design Project through the IAA between CDOT and HPTE.
2. Review but do not approve the IAA. Provide instructions on changes or revisions.

Attachment

I-270 Project Design Intra-Agency Agreement

BE IT FURTHER RESOLVED, that the HPTE Board authorizes the HPTE Director to approve and execute the Intra-Agency Agreement and, in accordance with HPTE's bylaws and subject to any amendments thereto by the Colorado Office of the State Controller, to approve and enter into any amendments that do not exceed the estimate of available funds approved for the fiscal year by the Board, or cause a diminution in the same.

Signed as of September 19, 2018

Anthony Meneghetti
Interim Secretary, HPTE Board of Directors

**I-270 PROJECT DESIGN
INTRA-AGENCY AGREEMENT**

THIS I-270 PROJECT DESIGN INTRA-AGENCY AGREEMENT (the “Agreement”) is made this ___ day of _____, 2018 by and between the COLORADO DEPARTMENT OF TRANSPORTATION (“CDOT” or the “Department”), 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. CDOT is an agency of the State authorized pursuant to C.R.S. § 43-1-105, to plan, develop, construct, coordinate, and promote an integrated transportation system in cooperation with federal, regional, local, and other state agencies.

B. Pursuant to C.R.S. § 43-1-110 the executive director of CDOT is authorized to execute certain agreements on behalf of CDOT; and

C. HPTE was created pursuant to C.R.S. § 43-4-806(2) and operates as a government-owned business within CDOT.

D. Pursuant to C.R.S. § 43-4-806(6)(g) HPTE is empowered to prepare, or cause to be prepared, detailed plans, specifications, or estimates for any surface transportation infrastructure project within the state.

E. HPTE is further empowered, pursuant to C.R.S. § 43-4-806(6)(h) to make and enter into all other contracts and agreements, including intergovernmental agreements under C.R.S. § 29-1-103 that are necessary or incidental to the exercise of its powers and performance of its duties.

F. HPTE is authorized pursuant to C.R.S. § 43-4-806(2)(c)(I) to impose user fees on the traveling public for the privilege of using surface transportation infrastructure, provided that those user fee revenues be expended only for other surface transportation infrastructure projects that are integrated with the project as part of a surface transportation system pursuant to C.R.S. § 43-4-806(5).

G. CDOT and HPTE are currently working in cooperation on the conceptual design phase of a potential surface transportation infrastructure project, generally consisting of the survey and topography work on potential improvements to Interstate Highway 270 (“I-270”) between Interstate Highways 70 (“I-70”), 25 (“I-25”), and U.S. 36 (collectively, the “Design Project”), with the ultimate target of integrating the I-25, U.S. 36, and I-70 Express Lanes via direct-connect ramps with I-270.

H. Recognizing the need to be CDOT's partner in the Design Project, HPTE desires to contribute to the development of the Design Project by providing financial assistance to CDOT.

I. Given that HPTE is limited in what user fee revenues it is able to expend under C.R.S. § 43-4-806(5), HPTE shall use only those user fee revenues collected on the I-25 North Segment 2 corridor, generally consisting of the portion of Express Lanes between U.S. 36 and 120th Avenue, and to assist CDOT in the funding of the Design Project.

J. The Parties further desire to enter into this Agreement to define their respective roles and responsibilities with respect to the Design Project, specifically related to funding the Design Project and to allocate the costs related thereto.

K. HPTE acknowledges that CDOT possesses design expertise unavailable to HPTE, which enable it to plan for the development and delivery of critical surface transportation infrastructure projects.

L. CDOT has prepared a scope of work describing the services it intends CDOT to provide during the Design Project Services (the "Services"), which is attached hereto and incorporated herein as **Exhibit A** (the "Scope of Work").

M. In order to further the efficient completion of surface transportation infrastructure projects necessary to CDOT's development of an integrated transportation system, HPTE desires that CDOT utilize its expertise to provide the Services, in exchange for which HPTE agrees to compensate CDOT in the amounts set forth in the Scope of Work.

N. Both CDOT and HPTE are authorized under law to execute this Agreement.

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

1. Scope of Work and Responsibilities.

a. CDOT shall provide the Services set forth in Exhibit A.

b. The Parties may agree to modify the specific tasks set forth in the Scope of Work to be undertaken by CDOT during the term of this Agreement, provided that such modifications do not result in an increase or decrease in the overall maximum dollar amount of the Services to be provided under this Agreement. Any modifications to the Scope of Work resulting in an increase or decrease in the overall maximum dollar amount of the Services shall not be undertaken unless agreed to in writing by the Parties in an amendment to this Agreement.

2. Payment Amount and Procedures.

a. The Parties agree that HPTE shall provide payment of Three Hundred Thousand Dollars (\$300,000.00) to CDOT for the provision of the Services in fiscal years 2019 and 2020 under this Agreement (the “Maximum Payment Amount”).

b. The Services to be provided, and the Maximum Payment Amount therefore, may be amended from time to time. Services provided by CDOT shall be compensated as part of the Maximum Payment Amount provided for herein.

c. CDOT shall initiate payment requests by invoice to HPTE, in a form and manner approved by the Parties. HPTE shall pay each invoice within 45 days following HPTE’s receipt of that invoice.

3. Term. The term of this Agreement shall be from October 1, 2018, through December 31, 2019, unless the Parties mutually agree in writing to an earlier termination.

4. Availability of Funds. Payment pursuant to this agreement is 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 HPTE, either Party may immediately terminate or seek to amend this Agreement.

5. Record Keeping Requirements. CDOT shall maintain a complete file of all books, records, papers, accounting records, and other documents pertaining to its execution of the Scope of Work under this Agreement, and shall make such materials available to HPTE upon request for a period of three years.

6. Right to Audit. CDOT shall permit HPTE, the State Auditor and/or their designee(s) to inspect all records of CDOT and audit all activities that are or have been undertaken pursuant to this Agreement.

7. Consideration; Exchange Transaction. The Parties acknowledge that the mutual promise and covenants contained herein, and other good and valuable consideration, are sufficient and adequate to support this Agreement. The Parties further acknowledge that, for accounting purposes, this Agreement represents an exchange transaction for HPTE’s purchase of specific services provided by CDOT at the market value of such services.

8. Dispute Resolution. Any dispute concerning the performance of this Agreement shall be referred to the CDOT Chief Engineer and the HPTE Director. Failing resolution by such officers, the dispute shall be submitted in writing by both parties to the State Controller, whose decision on the dispute shall be final.

9. Default; Termination. Any failure of either Party to perform in accordance with the terms of this Agreement shall constitute a breach of the Agreement. HPTE reserves the right to terminate this Agreement upon thirty (30) days written notice to CDOT of its nonperformance of the Services; provided, however that CDOT 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 Section shall be referred for dispute

resolution as provided for in Section 9 prior to any termination becoming effective. In the event of termination, including voluntary termination by the Parties under Section 3, CDOT shall be required to reimburse HPTE for the value of the Services not yet completed as of the date of termination.

10. Delegation. Except as identified or otherwise implied in the Scope of Work, the duties and obligations of CDOT with respect to the provision of the Services under this Agreement shall not be assigned, delegated or subcontracted without the prior consent of HPTE. All subcontractors will be subject to the requirements of this Agreement.

11. 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.

12. Severability. To the extent that this Agreement may be executed and performance of the obligations of the Parties may be accomplished within the intent of the Agreement, 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.

13. Waiver. The waiver of any breach of a term, provision, or requirement of this Agreement shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement, or the same term, provision or requirement upon subsequent breach.

14. No Third Party Beneficiaries. This agreement shall inure to the benefit of and be binding only upon the Parties hereto and their respective successors and assigns. 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 CDOT and HPTE. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of CDOT and HPTE that any such person or entity, other than CDOT or HPTE, receiving services or benefits under this Agreement, shall be deemed an incidental beneficiary only.

15. Entire Understanding. This Agreement is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or affect whatsoever. Except as otherwise provided in this Agreement, no subsequent renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved by the Parties.

16. Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. § 24-10-

101 *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671 *et seq.*, as applicable now or hereafter amended.

17. Adherence to Laws. At all times during the performance of this Agreement, HPTE 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.

18. Legal Authority. The Parties each warrant that they possess the legal authority to enter into this Agreement and that each has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind CDOT or HPTE, as applicable, to its terms. The persons executing this Agreement on behalf of CDOT and HPTE each warrant that they have full authorization to execute this Agreement.

19. 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 shall be addressed to the individuals identified below. Either Party may, from time to time, designate in writing new or substitute representatives.

If to CDOT:

Joshua Laipply, Chief Engineer
Colorado Department of Transportation
2829 W. Howard Place, 5th floor
Denver, CO 80204
Email: joshua.laipply@state.co.us

If to HPTE:

David Spector, Director
HPTE
Colorado Department of Transportation
2829 W. Howard Place, 5th floor
Denver, CO 80204
Email: david.spector@state.co.us

20. Controller's Approval. This agreement shall not be deemed valid until it has been approved by the State Controller or such assistant as he or she may designate.

[Signature page follows.]

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: _____
MICHAEL P. LEWIS
EXECUTIVE DIRECTOR
DEPARTMENT OF TRANSPORTATION

By: _____
DAVID I. SPECTOR
HPTE DIRECTOR

APPROVED:

Cynthia H. Coffman
ATTORNEY GENERAL

By: _____
ASSISTANT ATTORNEY GENERAL

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

§ 24-30-202, C.R.S. requires the State Controller to approve all State Contracts. This Agreement is not valid until signed and dated below by the State Controller or delegate of the State of Colorado.

<p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p>Date: _____</p>
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EXHIBIT A
CDOT Scope of Work for I-270 Design Work
(Attached)

