

**BURNHAM YARD PRE-PROCUREMENT PARTNERSHIP  
INTRA-AGENCY AGREEMENT**

THIS BURNHAM YARD PRE-PROCUREMENT PARTNERSHIP INTRA-AGENCY AGREEMENT (the “Agreement”) is made this \_\_\_ day of \_\_\_\_\_, 2019 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.

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

D. The business purpose of HPTE, as provided for in C.R.S. § 43-4-806(2)(c), is to pursue public-private partnerships and other innovative and efficient means of completing surface transportation infrastructure projects, which HPTE may agree to complete for CDOT under agreements entered into with the Department in accordance with C.R.S. § 43-4-806(6)(f).

E. 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.

F. 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.

G. CDOT acknowledges that HPTE possesses expertise and legal powers unavailable to CDOT, which enable it to accelerate the development and delivery of critical surface transportation infrastructure projects.

H. In July 2019, the Union Pacific Railroad (“UPRR”) released its Request for Qualifications (“RFQ”) for the Burnham Yard Redevelopment (“Burnham Yard”), the purpose of which was to identify qualified teams and solicit interest in an approximately 61-acre parcel of

land beginning at 13th Avenue and its northernmost point to roughly 4th Avenue at its southernmost point in the City and County of Denver (“CCD”).

I. CDOT is currently conducting the I-25 Central Planning and Environmental Linkage (“PEL”) Study, looking at I-25 between Santa Fe Drive and 20th Street to identify causes of congestion and considering options to improve safety, travel time reliability, decrease congestion, and provide improved cross-connectivity in this highly-congested corridor.

J. Upon the completion of the PEL study, CDOT will have a clear understanding of the transportation problems in the corridor, a collaboratively-developed vision for the future, and potential projects to implement that vision.

K. On August 7, 2019, CDOT submitted a proposal to purchase the Burnham Yard site in fee simple in response to UPRR’s RFQ.

L. UPRR responded to CDOT’s bid with the directive that it explore the possibility of partnering with a private developer and to re-submit its bid as a joint entity (the “Burnham Yard Partnership”).

M. Currently, HPTE has existing contracts for pre-procurement, procurement phase, and transactional counsel to assist the Attorney General’s Office on an as-needed basis on issues related to development, preparation, and advice for surface transportation projects as well as for Programmatic Support on an as-need basis related to general project support, and developer/contractor oversight.

N. Recognizing the usefulness of HPTE’s current contracts, their expertise and legal powers unavailable to CDOT, as well as HPTE’s experience in procuring and administering pre-procurement and procurement phase projects for potential surface transportation projects, CDOT desires to provide funding to HPTE for the development of the Burnham Yard Partnership, subject to TC and HPTE Board approval.

O. The Parties further desire to enter into this Agreement to define their respective roles and responsibilities with respect to the Burnham Yard Partnership, specifically related to funding the Burnham Yard Partnership and to allocate the costs related thereto.

P. HPTE has prepared a scope of work describing the services it intends to provide during the Burnham Yard Partnership study (the “Burnham Yard Partnership Services”), which is attached hereto and incorporated herein as **Exhibit A** (the “Scope of Work”).

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

R. 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. HPTE shall provide the Burnham Yard Partnership Services in its Scope of Work 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 HPTE during the term of this Agreement, provided that such modifications do not result in an increase or decrease in the overall maximum dollar CDOT contribution of the Burnham Yard Partnership 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 Burnham Yard Partnership Study 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 will request a payment by invoice in the amount of Three Hundred Sixty-Eight Thousand Six Hundred and Fifty-Five dollars and 50 cents (\$368,655.50) to CDOT for The Burnham Yard Partnership Services under this Agreement (the “**Maximum Payment Amount**”). CDOT shall pay the invoice within 45 days following CDOT’s receipt of that invoice.

HPTE intends to record the Maximum Payment Amount as deferred revenue, and recognize revenue on a pro-rata basis as the Burnham Yard Partnership Services are performed during the course of the fiscal year. HPTE will conduct a “true-up” of the balance at the end of the fiscal year, to coincide with the services actually provided.

b. The Burnham Yard Partnership Services to be provided, and the Maximum Payment Amount thereof, may be amended from time to time. The Burnham Yard Partnership Services provided by HPTE shall be compensated as part of the Maximum Payment Amount provided for herein.

3. Term. The term of this agreement shall be from the effective date of the agreement, through June 30, 2020, unless the Parties 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 CDOT, either Party may immediately terminate or seek to amend this Agreement.

5. Record Keeping Requirements. HPTE 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 CDOT upon request for a period of three years.

6. Right to Audit. HPTE shall permit CDOT, the State Auditor and/or their designee(s) to inspect all records of HPTE 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 CDOT's purchase of specific services provided by HPTE 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. CDOT reserves the right to terminate this Agreement upon thirty (30) days written notice to HPTE of its nonperformance of the Burnham Yard Partnership Services; provided, however that HPTE 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 7 prior to any termination becoming effective. In the event of termination, HPTE shall be required to reimburse CDOT for the value of the Burnham Yard Partnership 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 HPTE with respect to the provision of the Burnham Yard Partnership Services under this Agreement shall not be assigned, delegated or subcontracted without the prior consent of CDOT. 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:

If to HPTE:

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

Nicholas Farber, Director  
HPTE  
Colorado Department of Transportation  
2829 W. Howard Place, 5th floor  
Denver, CO 80204  
Email: nicholas.farber@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.]*

DRAFT

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

STATE OF COLORADO  
Jared S. Polis, Governor

COLORADO HIGH PERFORMANCE  
TRANSPORTATION ENTERPRISE

By: \_\_\_\_\_  
SHOSHANA LEW  
EXECUTIVE DIRECTOR  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
NICHOLAS J. FARBER  
HPTE DIRECTOR

APPROVED:

Philip J. Weiser  
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.**

**STATE CONTROLLER**  
**Robert Jaros, CPA, MBA, JD**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**HPTE Scope of Work for Burnham Yard Partnership**  
**(Attached)**

DRAFT

**CDOT Burnham Yard Budget Estimate  
Kaplan Kirsch & Rockwell**

Suggested scope and budget estimates for completion of contract negotiations with private developer and UP:

**1. Finalize RFQ and consult with HTPE on RFQ issues**

Brent Butzin: 3 hours

Sarah Rockwell: 5 hours

**2. Prepare RFP and consult with HPTE on RFP issues**

Brent Butzin: 3 hours

Sarah Rockwell: 6 hours

**3. Prepare private developer contract and assist with negotiating and finalizing same (including limited meetings).**

Brent Butzin: 10 hours

Sarah Rockwell: 25 hours

**4. Prepare UP contract and assist with negotiating and finalizing same (including limited meetings).**

Brent Butzin: 10 hours

Sarah Rockwell: 25 hours

**5. Assist with Burnham Yard property due diligence (title and survey, environmental, entitlements, etc.)**

Brent Butzin: 5 hours

Sarah Rockwell: 15 hours

Polly Jessen: 30 hours

Hanna Gustafsson: 10 hours

**6. Surface Transportation Board proceedings (State of Maine proceeding)**

Chuck Spitulnik: 25 hours

Christian Alexander 25 hours

**7. Other meetings and miscellaneous tasks as directed by HPTE**

Brent Butzin: 10 hours

Sarah Rockwell: 20 hours

Hanna Gustafsson: 5 hours

Totals:

Brent Butzin: 50.7 hours @ \$550	\$27,885.00
Sarah Rockwell: 105 hours @ \$550	\$57,750.00
Polly Jessen: 30 hours @ \$550	\$16,500.00
Hanna Gustafsson: 15 hours @ \$350	\$ 5,250.00
Chuck Spitulnik: 25 hours @ \$550	\$13,750.00
Christian Alexander 25 hours @ \$350	\$ 8,750.00
<b>Total:</b>	<b>\$129,885.00</b>

## Scope of Work:

The overall scope of AECOM is to augment your existing team developing the project, providing program management service to efficiently and effectively achieve the desired outcomes. Note the information contained below is our general understanding based on a brief overview, however AECOM will modify or adjust our proposal as directed or following additional clarification meetings.

Key next steps identified in this scoping document include:

- Owner's Representation – Program Management Services
- Additional Services

**Our anticipated efforts are summarized in the following tasks for review. We suggest an internal kick off meeting and full project debrief on this approach to define and refine the scope as required.**

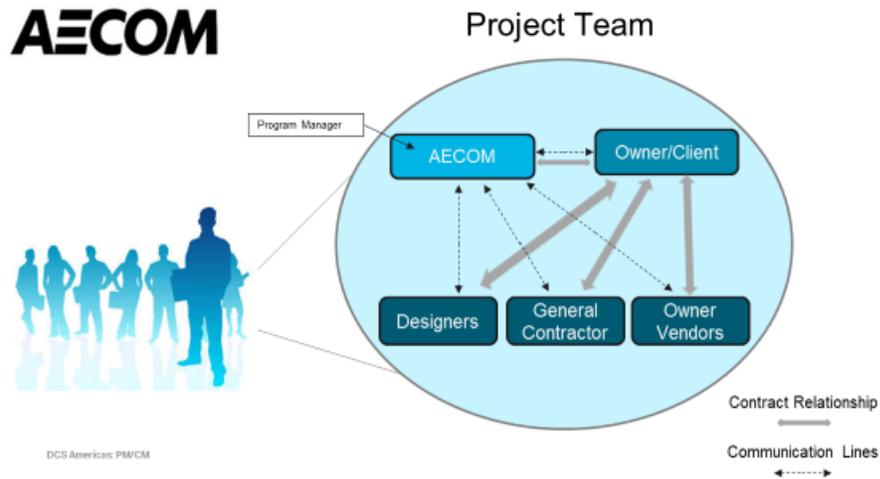
### Task 1: Program Management Services

AECOM's program management team will provide owner's representation services for strategic review, consideration and recommendations to HPTE - CDOT regarding the development of Burnham Yard. Key focus areas are to serve as your Owner's Representative for all program and project related tasks, with limited authority as defined by the OMPD master services agreement with our partner HDR.

AECOM's ability to augment HPTE with the strategic and technical expertise provides the experience and flexibility to assist in navigating the development activities and partners as required. Key to effectively transitioning into owner's representation, will be a complete understanding of the CDOT infrastructure requirements, vision and collaboration with stakeholders to include but not limited to Union Pacific, City and County of Denver, RTD, Front Range Rail, regulatory agencies, CDOT and utility providers as required. HPTE working with AECOM will identify the need for meetings, intended scope of the meeting and key participants prior to the meeting. Primary areas of focus include, but are not limited to, obtaining clarity for the vision of Burnham Yard, building on our key stakeholder relationships, reviewing and recommending direction regarding the establishment of a master developer. Specifically, our program management team will conduct:

- **Client Coordination/Progress Meetings:** Program team meetings (HPTE and AECOM), Frequency – as required.
- **AECOM Coordination Meetings:** Internal coordination meetings with key individuals from multiple disciplines (AECOM dedicated team). Frequency – as required.
- **Developer Meetings:** Meeting with private development and scoping meetings. Frequency – as required.

AECOM will coordinate all the work tasks being accomplished by AECOM staff members, as applicable, to ensure project work is proceeding on schedule. This work includes project team communications, overall contract management, monthly project invoicing and monthly progress reports. Project controls and internal task management activities will be implemented to prepare the upcoming work progress per agreed schedules.



**I.**

**II.**

**III. Assumptions:**

- Part-time engagement for Program Management Services
- Additional part-time resources will be provided at the request of the HPTE/CDOT project manager
- The duration of services is anticipated for 1-yr.

**IV. Deliverables:**

- Meeting agendas and summaries, monthly progress reports
- 3<sup>rd</sup> Party review and strategic recommendation to align with HTPE – CDOT’s vision

**V. Compensation Structure:**

VI. The compensation structure is designed to be flexible and transparent, mobilizing the most qualified staff to meet the requirements. Our program management staff will augment HPTE in a management and oversight role to drive deliverables and project leadership, while maintaining a trusted advisor role assisting in the strategic decisions and general oversight. The compensation structure envisions a dedicated part-time program manager,

with assistance of project controls and as-needed support from other project management staff.

**VII.** You may also consider the possibility of increasing the role of a part-time project manager at a certain point on the project to help manage all additional tasks as required. Following the agreed upon duration of the phases, AECOM can discuss modifying the rate structure for part-time staff to better match the program needs.

- AECOM one (1) part time staff for Program Management requirements.
  - Anticipated 40% or 16 hrs/week
  - Duration: 1yr commitment
- (Optional) AECOM one (1) part-time staff resource to assist with Project Management specific requirements.
  - Minimal hours have been included for this role to allow you flexibility to add this scope and fee to future task orders as requested.

Additional services will be contemplated on an as-needed basis. The additional services will be authorized through email approval from authorized HPTE/CDOT staff.

### **VIII. Overall Assumptions and Clarifications:**

- **Standard of Performance:** In the performance of its professional services, AECOM will use that degree of care and skill ordinarily exercised by members of AECOM's profession under similar conditions in similar localities and no other warranties, express or implied, are made or intended by AECOM.
- **Entitled to Rely:** Consistent with the professional standard of care, AECOM shall be entitled to rely upon the accuracy of data and information provided by CDOT or others without independent review or evaluation.
- **Opinions of Construction Cost:** Any opinion of the construction cost prepared by an AECOM professional represents its judgment as a design professional and is supplied for the general guidance of the project. Since AECOM has no control over the cost of labor and material, or over competitive bidding or market conditions, AECOM does not guarantee the accuracy of such opinions as compared to contractor bids or actual cost.

FIRM NAME:  
 NAME OF PREPARER:  
 PHONE NO:  
 SCOPE OF WORK DATE:  
 CONTRACT TIME:  
 TYPE OF PROPOSAL: Cost Plus Fixed Fee

AECOM Technical Services, Inc.  
 Alan Eckman  
 (303) 376-2979  
 9/5/2019  
 Program Management and Support  
 Contract #: CDOT OMPD Program Management

1A. SPECIFIC LABOR RATES:

Employee Name	Employee Classification	Direct Labor Rate 2014	Indirect Office Cost (%)	Labor Rate \$/Hour
Arbogast, Dennis	Engineering Manager	\$ 79.36	133.02%	\$ 184.92
Heugh, Megan M	Project Coordinator I	\$ 33.48	133.02%	\$ 78.02
Cirulli, Matthew R	Project Manager III	\$ 79.38	133.02%	\$ 184.97

\* Added to Contract per current CDOT MPA



1B. LABOR COSTS:

Employee Name	Employee Classification	Labor Rate \$/Hour	Estimated Number of Work Hours	Estimated Cost per Employee
Arbogast, Dennis	Engineering Manager	\$ 184.92	720	\$ 133,142.40
Heugh, Megan M	Project Coordinator I	\$ 78.02	48	\$ 3,744.96
Cirulli, Matthew R	Project Manager III	\$ 301.47	48	\$ 14,470.56
0	0	\$ -		\$ -

\* Added to Contract per current CDOT MPA

**TOTAL LABOR \$151,357.92**

2. FEE ( 10.5 % X Section 1 B.) **FIXED FEE \$15,892.58**

3A. OTHER DIRECT COST RATES (In-House)\*:

ITEM	EST. UNITS	UNIT RATES	EST. COST
Mileage (1) (1) Current State Government rates	1,000	\$ 0.520	\$520.00
			\$520.00

3B. OTHER DIRECT COSTS (Outside)\*: N/A

ITEM	UNITS	UNIT RATES
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\*Prior Approval from CDOT Project Manager Required



PROJECT NUMBER: OMPD Task Order \_\_

LOCATION: Denver, Colorado

4A. OUTSIDE SERVICE RATES (Subconsultants): N/A

4B. OUTSIDE SERVICE CHARGES (Vendors)\*: N/A

\*Prior Approval from CDOT Project Manager Required

**TOTAL ESTIMATED COST (Sum of 1B, 2, 3B and 4B) \$167,770.50**

**HPTE SCOPE OF WORK FOR THE BURNHAM YARD PARTNERSHIP**

**Summary of Work:** HPTE will lead the selection of the developer partnership on the Burnham Yard Development and then lead the negotiations to reach a mutually beneficial contract. HPTE will also lead the due diligence on the property (title, survey, etcetera), and based off those finding will help prepare a final contract to transfer ownership of the property in fee simple from the Union Pacific Railroad to the HPTE. Once the property ownership is transferred, HPTE will work with Region 1 on the NEPA environmental document.

<b>HPTE Staff Position</b>	<b>Hours Per Week</b>	<b>Total Hours</b>
HPTE Director	15	630
Budget & Special Projects Manager	10	420
<b>Total</b>	<b>30</b>	<b>1,050</b>

**Total Fee for Burnham Yard Partnership: \$71,000**

DRAFT