

**COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE
I-70 MOUNTAIN EXPRESS LANES PROJECT
INTRA-AGENCY AGREEMENT**

THIS INTRA-AGENCY AGREEMENT (this “**Agreement**”) is made and entered into this [•] day of [•], 2021, by and between the STATE OF COLORADO (the “**State**”), for the use and benefit of the COLORADO DEPARTMENT OF TRANSPORTATION (“**CDOT**”), and the COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE, a government-owned business within CDOT and a division of CDOT (“**HPTE**”). CDOT and HPTE are hereinafter referred to collectively as the “**Parties.**” Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the hereinafter defined 2021 Loan Agreement.

RECITALS

1. CDOT is an agency of the State authorized pursuant to Colorado Revised Statutes (“**C.R.S.**”) Section 43-1-105 to plan, develop, construct, coordinate, and promote an integrated transportation system in cooperation with federal, regional, local and other state agencies.

2. The Transportation Commission of Colorado (“**Transportation Commission**”) is the budgetary and policy making body for CDOT with all powers and duties granted by the Colorado General Assembly pursuant to C.R.S. Section 43-1-106.

3. HPTE was created pursuant to C.R.S. Section 43-4-806 as a government-owned business within CDOT and a division of CDOT to pursue innovative means of completing important surface transportation projects that (i) will improve the safety, capacity, and accessibility of the surface transportation system, (ii) can feasibly be commenced in a reasonable amount of time, and (iii) will allow more efficient movement of people, goods, and information throughout Colorado. As a means of pursuing its statutory charge, HPTE is specifically authorized pursuant to C.R.S. Section 43-4-806(2)(c)(I) to impose user fees on the travelling public for the privilege of using surface transportation infrastructure.

4. HPTE, in partnership with CDOT, is working to complete, implement and operate a transportation infrastructure project in the I-70 Mountain Corridor that consists of, among other components, widening the shoulder lanes, and operating such lanes as tolled express lanes during peak travel periods, located in (i) an approximate 13-mile segment of eastbound I-70 between the U.S. Highway 40 Interchange (from mile point 230) and through the Veterans Memorial Tunnels to Idaho Springs (from mile point 244) within CDOT’s existing right-of-way, and (ii) an approximate 12-mile segment of

westbound I-70 between the Veterans Memorial Tunnels (from mile point 242) and the U.S. Highway 40 Interchange (from mile point 230.5) within CDOT's existing right-of-way (collectively, the "**I-70 MEXL Project**").

5. The I-70 MEXL Project is expected to benefit CDOT and the State, among other things, improving travel times, managing congestion in the I-70 Mountain Corridor, enhancing the improvements made to the Veterans Memorial Tunnels and providing travelers with more reliable travel times.

6. Pursuant to C.R.S. Section 43-4-806(2)(c)(III), HPTE may contract with any governmental or nongovernmental source of funding for loans to be used to support HPTE's functions.

7. In 2014, HPTE entered into a loan agreement ("**2014 Loan Agreement**") with Banc of America Preferred Funding Corporation (the "**2014 Lender**") pursuant to which the 2014 Lender made a loan to HPTE in the principal amount of \$25,000,000 (the "**2014 Loan**"), the proceeds of which were used to fund a portion of the eastbound segment of the I-70 MEXL Project and pay other lawful expenses and costs related thereto.

8. In connection with the execution and delivery of the 2014 Loan Agreement, CDOT and HPTE entered into that certain HPTE I-70 PPSL Project Intra-Agency Agreement (the "**2014 Intra-Agency Agreement**"), pursuant to which, among other things (i) CDOT and HPTE defined their respective roles in cooperating to operate and maintain the eastbound segment of the I-70 MEXL Project and the adjacent I-70 general purpose lanes consistent with a Memorandum of Understanding, dated April 22, 2014, as amended and restated pursuant to that Amended and Restated Memorandum of Understanding, dated October 31, 2020 (as further amended, modified, supplemented or restated, the "**I-70 MEXL MOU**"), by and among CDOT, HPTE and the Federal Highway Administration, United States Department of Transportation ("**FHWA**"), and to allocate the costs related thereto, and (ii) CDOT agreed to provide (solely at its discretion) financial support to HPTE with respect to the 2014 Loan and certain other obligations of HPTE set forth in the 2014 Intra-Agency Agreement.

9. In 2019, in connection with operation and maintenance of the westbound segment of the I-70 MEXL Project, HPTE and CDOT entered into an Intra-Agency Agreement (the "**I-70 West Intra-Agency Agreement**"), pursuant to which, among other things (i) CDOT and HPTE defined their respective roles in cooperating to operate and maintain the westbound segment of the I-70 MEXL Project and the adjacent I-70 general purpose lanes consistent with the I-70 MEXL MOU, and to allocate the costs related thereto, and (ii) CDOT agreed to provide (solely at its discretion) financial support to HPTE with respect to certain obligations of HPTE set forth in the I-70 West Intra-Agency Agreement.

10. HPTE has determined that it is necessary, desirable and in the best interest of HPTE to prepay the 2014 Loan.

11. HPTE has entered into a Loan Agreement (as amended, modified, supplemented or restated, the “**2021 Loan Agreement**”) with Wells Fargo Municipal Capital Strategies, LLC (the “**2021 Lender**”) dated as of [•], 2021, pursuant to which the 2021 Lender has loaned \$•] to HPTE (the “**2021 Loan**”) which will use such loan proceeds to (i) prepay the 2014 Loan, and (ii) pay certain costs associated with entering into the 2021 Loan Agreement.

12. Under the 2021 Loan Agreement, HPTE has agreed to pledge to the 2021 Lender, for payment of the principal of and interest on the 2021 Loan and any other amounts that are owing to the 2021 Lender from time to time under the 2021 Loan Agreement, all amounts received by HPTE from the user fees imposed by HPTE pursuant to C.R.S. Section 43-4-806(2)(c)(I) for the privilege of traveling on the I-70 MEXL Project less the expenses incurred to collect the user fees (“**Net Revenues**”), except to the extent otherwise provided for in the 2021 Loan Agreement, and certain funds and accounts established pursuant to the 2021 Loan Agreement.

13. Pursuant to C.R.S. Section 43-4-806(4), the Transportation Commission may authorize the transfer of money from the state highway fund to HPTE to defray expenses of HPTE and, notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, such a transfer shall constitute a loan from the Transportation Commission to HPTE and shall not be considered a grant for purposes of section 20(2)(d) of article X of the state constitution.

14. In consideration of the various terms, covenants, and conditions set forth herein (including the benefits that CDOT will receive as a result of the I-70 MEXL Project, which include (but are not limited to) those identified in Recital 5 above), CDOT and HPTE have agreed to enter into this Agreement pursuant to which HPTE may request financial support from the Transportation Commission to assist HPTE in fulfilling the HPTE Payment Obligations (as defined and further described in Section II.A. hereof) in the event the Net Revenues are insufficient, or are projected to be insufficient, to satisfy any HPTE Payment Obligations.

15. HPTE recognizes and acknowledges that any financial support provided by the Transportation Commission pursuant to C.R.S. Section 43-4-806(4) shall be in the form of a CDOT Backup Loan (as defined and further described in Section II hereof). The Transportation Commission may, in its sole and absolute discretion, but shall not be obligated to, make a CDOT Backup Loan. If the

Transportation Commission elects not to make a CDOT Backup Loan, such election shall not, in and of itself, result in a default of HPTE under the 2021 Loan Agreement.

16. CDOT and HPTE further desire to enter into this Agreement to further define their respective roles in cooperating to operate and maintain the I-70 MEXL Project and the adjacent I-70 general purpose lanes consistent with I-70 MEXL MOU.

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

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

**SECTION I
OPERATIONS AND MAINTENANCE OF THE I-70 MEXL PROJECT**

A. Overview and Costs. The I-70 MEXL Project is and will be adjacent to the I-70 general purpose lanes (within the I-70 MEXL Project, referred to herein as the “**I-70 General Purpose Lanes**”), and the Parties recognize the need to cooperate in carrying out the related operations and maintenance for the I-70 MEXL Project and the I-70 General Purpose Lanes. To that end, the Parties agree to cooperate in ensuring that the operations and maintenance are performed and agree to the division of costs as set forth in this Agreement. As a general matter, HPTE shall be responsible for operating and maintaining the I-70 MEXL Project (including contracting for tolling services and tolling enforcement), and CDOT shall be responsible for operating and maintaining the I-70 General Purpose Lanes. It is the intent of the Parties that, except as otherwise specifically provided herein, CDOT shall perform such operations and maintenance of both the I-70 MEXL Project and the I-70 General Purpose Lanes, subject to payment from HPTE for HPTE’s share of the overall operations and maintenance expenses, as further described herein. The Parties recognize that CDOT and HPTE have certain obligations to FHWA under the I-70 MEXL MOU, as further set forth in Exhibit A attached hereto. CDOT agrees that in the course of its operation of the I-70 MEXL Project it will utilize reasonable efforts to comply with the FHWA requirements.

B. HPTE License. In consideration of the various benefits CDOT will receive as a result of the I-70 MEXL Project (which include (but are not limited to)) those identified in Recital 5 above), CDOT hereby provides a perpetual, non-exclusive, non-terminable license over, under, upon and in the site of the

I-70 MEXL Project (“**License**”) for HPTE to operate the I-70 MEXL Project. CDOT acknowledges and agrees that HPTE may sublicense the License as needed to fulfill its obligations hereunder, including, but not limited to, its obligation to operate and maintain the I-70 MEXL Project. Subject to the License, CDOT reserves the right of use, occupancy and ownership over, under, upon and in the lands comprised of the I-70 MEXL Project.

C. CDOT Services; HPTE Payment for CDOT Services.

(a) On or before July 1 of each State fiscal year (currently beginning on July 1 and ending on June 30 of the immediately subsequent year), HPTE and CDOT shall agree, in writing, to a scope of services to be provided by CDOT during such fiscal year with respect to the I-70 MEXL Project (the “**CDOT Services**”) and the estimated costs of such CDOT Services. The written agreement between HPTE and CDOT setting forth the CDOT Services for the applicable year and the estimated costs of such services, shall be referred to herein as the “**Scope of Work.**”

(i) CDOT shall provide the CDOT Services during the applicable fiscal year.

(ii) No later than January 15th and July 15th of each year, CDOT shall submit to HPTE a progress report. The progress report is to include a narrative summary of CDOT’s activities during the previous six months, as well as a detailed report on the progress being made in the performance of the CDOT Services. The submission of the semi-annual reports will be used by HPTE and CDOT to recognize revenue and expenses, respectively, and are to be tied to the specific tasks, and categories of work within each task, described in the Scope of Work.

(iii) During a fiscal year, the Parties may agree to modify the specific tasks set forth in the Scope of Work for such fiscal year, provided that such modifications do not result in an increase or decrease in the overall estimated value of the CDOT Services. Any such modifications shall be specifically identified, and their estimated values reconciled, in the progress report submitted by CDOT on July 15th following the close of the prior fiscal year. Any modifications to the Scope of Work resulting in an increase or decrease in the overall estimated value of the CDOT Services shall not be undertaken unless agreed to in writing by the Parties pursuant to the Scope of Work.

(b) The Parties hereby agree that on July 1 of each fiscal year, HPTE shall provide payment to CDOT for the provision of the CDOT Services to be undertaken during the upcoming fiscal year as set forth in the Scope of Work for such fiscal year.

(c) Any CDOT Services not completed within a fiscal year shall be reflected in the progress report submitted by CDOT on July 15th following the close of the prior fiscal year. In the event the value of the CDOT Services actually completed during the fiscal year is less than what was estimated at the beginning of such fiscal year, CDOT may be required to reimburse HPTE for the value of the CDOT Services not completed.

D. CDOT O&M Obligations. The CDOT Services shall not apply to those operations and maintenance obligations or operations and maintenance expenses existing and regularly funded by CDOT prior to the implementation of the I-70 MEXL Project, and for which the addition of the I-70 MEXL Project results in a de minimus impact on overall operations and maintenance operations and operations and maintenance expenses of the I-70 MEXL Project and the I-70 General Purpose Lanes.

E. HPTE O&M Obligations. In addition to the CDOT Services, HPTE shall be solely responsible for costs incurred with respect to: (i) toll processing and collection; (ii) Level I and Level II] maintenance of toll equipment; (iii) contracts for toll evasion enforcement with the Colorado State Patrol or other law enforcement entity; and (iv) HPTE overhead and administrative costs related to the operations and maintenance of the I-70 MEXL Project. Such costs, together with the costs of the CDOT Services, shall constitute the “**HPTE O&M Obligations.**”

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

G. Net Revenue Shortfall to Pay HPTE O&M Obligations. To the extent the Net Revenues [(as they are first required to be applied in the 2021 Loan Agreement)] are inadequate, or are expected to be inadequate, in any fiscal year to fully pay the HPTE O&M Obligations for such fiscal year, HPTE may request a CDOT Backup Loan to fund such shortfall. Notwithstanding such shortfall in the availability of Net Revenues to cover the HPTE O&M Obligations, CDOT agrees that it shall continue to perform operations and maintenance of both the I-70 MEXL Project and the I-70 General Purpose Lanes, including, but not limited to, the CDOT Services.

Before HPTE submits to CDOT the written notification described in Section II.B. hereof, CDOT and HPTE agree to cooperate in estimating the expected cost of operating the I-70 MEXL Project for the upcoming fiscal year. This estimate and the projected Net Revenues for the upcoming fiscal year shall serve as a basis for submitting the notification described in Section II.B. hereof.

SECTION II CDOT BACKUP LOAN OBLIGATIONS

A. The 2021 Loan Agreement, attached hereto as Exhibit B, contains obligations of HPTE to pay to 2021 Lender the principal of and interest on, and certain other amounts with respect to, the 2021 Loan made by the 2021 Lender pursuant to the 2021 Loan Agreement (the “**HPTE 2021 Loan Payment Obligations**”). In addition to the HPTE 2021 Loan Payment Obligations, HPTE is responsible for the HPTE O&M Obligations as described in Section I hereof. The HPTE O&M Obligations and the HPTE 2021 Loan Payment Obligations are referred to collectively herein as the “**HPTE Payment Obligations.**”

B. The Transportation Commission has reviewed the 2021 Loan Agreement and acknowledges the HPTE 2021 Loan Payment Obligations and acknowledges HPTE’s operations and maintenance responsibilities with respect to the I-70 MEXL Project. On or before [September 15] of the immediately preceding fiscal year, HPTE shall estimate whether and in what maximum amount it may be necessary for HPTE to request that CDOT provide financial support to fulfill an HPTE Payment Obligation in any fiscal year, it being understood that any such financial support shall be in the form of a loan from CDOT to HPTE pursuant to C.R.S. Section 43-4-806(4) (a “**CDOT Backup Loan**”). HPTE shall notify the CDOT Executive Director in writing as to the estimated maximum amount, if any, that is expected to be payable in the succeeding fiscal year to satisfy the HPTE Payment Obligations in excess of the amount of Net Revenues anticipated to be generated by the I-70 MEXL Project in such fiscal year, and such maximum amount (the “**CDOT Backup Loan Set Aside**”) shall be included in the budget request to the Transportation Commission for an allocation of moneys in the state highway fund for such purpose.

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

amount set forth in the notice delivered by HPTE to the CDOT Executive Director pursuant to this Section II.C.

D. Moneys allocated by the Transportation Commission to make CDOT Backup Loans shall be transferred to HPTE, and shall be used by HPTE to satisfy the HPTE Payment Obligations, as they become due.

E. Notwithstanding any other provision hereof:

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

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

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

(d) if an allocation by the Transportation Commission shall have been made, CDOT Backup Loans shall be made up to the amounts requested by HPTE as set forth above; and

(e) no CDOT Backup Loan shall be repaid earlier than the date on which all HPTE 2021 Loan Payment Obligations are satisfied or, if the 2021 Loan Agreement has been refinanced, the date on which all HPTE 2021 Loan Payment Obligations are satisfied.

F. Any CDOT Backup Loans made to HPTE in support of either HPTE 2021 Loan Payment Obligations or HPTE O&M Obligations shall be authorized by and subject to a separate Transportation Commission resolution and shall be evidenced by separate loan agreements in substantially the form attached hereto as Exhibit C (a “**CDOT Backup Loan Agreement**”), with terms consistent with the terms

contained herein. In particular, having regard to the intent of the Parties that the CDOT Backup Loans shall be repaid from Net Revenues on a basis subordinate to the HPTE 2021 Loan Payment Obligations and any similar obligations incurred by HPTE under any future refinancing of the 2021 Loan Agreement. CDOT shall determine a reasonable repayment schedule for each CDOT Backup Loan after consultation with HPTE, provided that no portion of any such CDOT Backup Loan shall be repaid earlier than the date on which all payment obligations under the 2021 Loan Agreement are satisfied or, if the 2021 Loan Agreement has been refinanced, the date on which all payment obligations under the 2021 Loan Agreement are satisfied.

SECTION III DEFAULTS, TERMINATION AND REMEDIES

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

B. Default for Non-Payment. If HPTE fails to repay any CDOT Backup Loan in accordance with the applicable CDOT Backup Loan Agreement and upon notice to HPTE and failure by HPTE to cure within thirty (30) days thereof, CDOT may, at its option: (a) terminate its commitment to make future CDOT Backup Loans hereunder; (b) declare the entire principal amount of all CDOT Backup Loans then outstanding immediately due and payable; (c) take any other appropriate action available at law or in equity; provided, however, that no CDOT Backup Loan or interest thereon shall be paid at any time there are amounts outstanding under the 2021 Loan Agreement. Notwithstanding the exercise of any of the remedies above, HPTE shall not be relieved of liability to CDOT for any damages sustained by CDOT by virtue of any breach of this Agreement by HPTE.

C. Dispute Resolution. Any dispute concerning the performance of this Agreement shall be resolved at the lowest staff level possible, and shall first be referred to the Region 1 Regional Transportation Director and the HPTE Operations Manager. Failing resolution by such officers, the escalation process

shall be: (i) CDOT Chief Engineer and HPTE Director; (ii) CDOT Executive Director and HPTE Director; and (iii) Transportation Commission and HPTE Board of Directors.

SECTION IV GENERAL PROVISIONS

A. Effective Date; Term; Termination of 2014 Intra-Agency Agreement and I-70 West Intra-Agency Agreement. This Agreement shall be effective as of the date first written above and shall continue until the earlier of (i) the useful life of the I-70 MEXL Project; (ii) the date HPTE no longer operates the I-70 MEXL Project; and (iii) the Parties mutually agree to terminate this Agreement. Notwithstanding any other provision of this Agreement to the contrary, the Parties shall not terminate this Agreement while any HPTE 2021 Loan Payment Obligations remain outstanding under the 2021 Loan Agreement.

Upon the effective date of this Agreement and the payment of all amounts due and payable by HPTE to the 2014 Lender under the 2014 Loan Agreement, HPTE and CDOT hereby agree to terminate the 2014 Intra-Agency Agreement and the I-70 West Intra-Agency Agreement, that the 2014 Intra-Agency Agreement and the I-70 West Intra-Agency Agreement shall be terminated, and that upon such termination the 2014 Intra-Agency Agreement and the I-70 West Intra-Agency Agreement shall no longer have any force or effect. [*NTD*: confirm no outstanding Back-up Loans under 2014 Loan Agreement and the I-70 West Intra-Agency Agreement.]

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

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

D. Notices. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of CDOT and HPTE. All communication, notices, and correspondence

with respect to the performance of this Agreement shall be addressed to the individuals identified below. Either Party from time to time, designate in writing new or substitute representatives.

If to CDOT:

Colorado Department of Transportation
2829 W. Howard Place
Denver, Colorado 80204
Attn: Chief Financial Officer
Email: jeffrey.sudmeier@state.co.us

If to HPTE:

Colorado High Performance Transportation
Enterprise
2829 W. Howard Place
Denver, Colorado 80204
Attn: Director
Email: nicholas.farber@state.co.us

E. Maintenance of Records. Each Party shall maintain all books, documents, papers, accounting records and other evidence pertaining to the I-70 MEXL Project including, but not limited to, any costs incurred during the construction, operation and maintenance of the I-70 MEXL Project, and make such materials available to the other Party upon reasonable request.

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

G. No Third Party Beneficiaries. No third party beneficiary rights or benefits of any kind are expressly or impliedly provided herein. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by the 2021 Lender or any other third person.

H. Governmental Immunity. Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, C.R.S. Sections 24-10-101, et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671, et seq, as applicable, as now or hereafter amended.

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

J. Availability of Funds. All payments pursuant to this Agreement are subject to and contingent upon the continuing availability of funds appropriated for the purposes hereof. If any of said

funds become unavailable, as determined by CDOT, either Party may immediately terminate or seek to amend this Agreement, subject to the provisions set forth in Section IV.A. hereof.

K. Choice of Law. The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision of this Agreement, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Agreement to the extent that the Agreement is capable of execution.

L. Titles and Headings. The titles and headings of the Sections of this Agreement have been inserted for convenience of reference only, are not to be considered a part hereof, shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

M. Employee Financial Interest. Each of the Parties avers, to the best of its knowledge, no employee of HPTE or CDOT, as the case may be, has any personal or beneficial interest whatsoever in the service or property described herein.

N. Execution in Counterparts; Electronic Signatures. This Agreement may be executed in several counterparts, including counterparts that are manually executed and counterparts that are in the form of electronic records and are electronically executed, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

An electronic signature means a signature that is executed by symbol attached to or logically associate with a record and adopted by a party with the intent to sign such record, including facsimile or e-mail signatures. The Parties hereby acknowledge and agree that electronic records and electronic signatures, as well as facsimile signatures, may be used in connection with the execution of this Agreement and electronic signatures, facsimile signatures or signatures transmitted by electronic mail in so-called PDF format shall be legal and binding and shall have the same full force and effect as if a paper original of this Agreement had been delivered that had been signed using a handwritten signature. All Parties to this Agreement (a) agree that an electronic signature, whether digital or encrypted, of a party to this Agreement

is intended to authenticate this writing and to have the same force and effect as a manual signature; (ii) intended to be bound by the signatures (whether original, faxed, or electronic) on any document sent or delivered by facsimile or electronic mail or other electronic means; (iii) are aware that the other Party(ies) will rely on such signatures; and, (iv) hereby waive any defenses to the enforcement of the terms of this Agreement based on the foregoing forms of signature. If this Agreement has been executed by electronic signature, all parties executing this Agreement are expressly consenting, under the United States Federal Electronic Signatures in Global and National Commerce Act of 2000 (“**E-SIGN**”), the Colorado Uniform Electronic Transactions Act (“**CUETA**”) (C.R.S. Section 24-71.3-101 et seq.), or any other similar state laws based on Uniform Electronic Transactions Act, that a signature by fax, e-mail, or other electronic means shall constitute an Electronic Signature to an Electronic Record under E-SIGN and CUETA with respect to this specific transaction.

[Remainder of page intentionally left blank; signature page follows]

Attachment A

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

STATE OF COLORADO
JARED S. POLIS, Governor
DEPARTMENT OF TRANSPORTATION

COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE

By: _____
SHOSHANA M. LEW
Executive Director

By: _____
NICHOLAS J. FARBER
Director

APPROVED:
PHILIP J. WEISER
Attorney General

By: _____
ANDREW GOMEZ
Assistant Attorney General

ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER

C.R.S. Section 24-30-202 requires that the State Controller 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

I-70 MEXL MOU

EXHIBIT B

2021 LOAN AGREEMENT

See Tab 1 of Transcript

EXHIBIT C

CDOT BACKUP LOAN AGREEMENT

THIS LOAN AGREEMENT, is made and entered into this ___ day of _____, 20___, by and between the State of Colorado for the use and benefit of THE COLORADO DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the “**Lender**”, and the COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE, hereinafter referred to as the “**Borrower**”, pursuant to the Colorado High Performance Transportation Enterprise I-70 Mountain Express Lanes Project Intra-Agency Agreement dated as of January [•], 2021 between the Lender and the Borrower (the “**I-70 MEXL Intra-Agency Agreement**”). Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the I-70 MEXL Intra-Agency Agreement.

FACTUAL RECITALS:

1. The Lender is an agency of the State of Colorado authorized pursuant to Colorado Revised Statutes (“**C.R.S.**”) Section 43-1-105 to plan, develop, construct, coordinate, and promote an integrated transportation system in cooperation with federal, regional, local and other state agencies;

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

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

4. The Borrower has entered into a Loan Agreement (the “**2021 Loan Agreement**”) with Wells Fargo Municipal Capital Strategies, LLC (the “**Bank**,” referred to in the 2021 Loan Agreement as the 2021 Lender) dated as of January [•], 2021 to finance and refinance a portion of the I-70 MEXL Project.

5. The 2021 Loan Agreement contains obligations of the Borrower to pay to the Bank the principal of and interest on, and certain other amounts with respect to, the loan made by the Bank pursuant to the 2021 Loan Agreement (the “*HPTE 2021 Loan Payment Obligations*”).

6. The I-70 MEXL Intra-Agency Agreement also sets forth the Borrower’s obligation to pay for the HPTE O&M Obligations, which consist of certain obligations of the Borrower with respect to the operation and maintenance of the I-70 MEXL Project.

7. The Borrower has requested a loan from the Lender in the amount of \$[Requested Amount] for [HPTE 2021 Loan Payment Obligations and/or to satisfy the HPTE O&M Obligations] because [description].

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

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

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

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

ARTICLE I

LOAN AND CLOSING

Section 1.01. Loan and Promissory Note. Pursuant to the terms of the I-70 MEXL Intra-Agency Agreement and this Agreement, the Lender hereby agrees to loan \$[Principal Amount] (the “*Principal Amount*”) to the Borrower and the Borrower agrees to pay the Lender the Principal Amount plus interest on the terms described herein (collectively, the “*Loan*”). The Borrower’s obligation to pay the Lender the Principal Amount of and interest on the Loan is evidenced by a promissory note (the “*Note*”) in the form attached as Attachment I.

Section 1.02. Closing. The Lender shall deliver the Principal Amount to the Borrower, by means of a transfer immediately available funds to Borrower on a date mutually agreed to by the Borrower and the Lender (such date is referred to as the “*Closing Date*”).

ARTICLE II

LOAN OBLIGATIONS

Section 2.01. Principal and Interest Payments. The Borrower shall pay to the Lender the Principal Amount plus accrued interest in accordance with Section 2.07 hereof or the Borrower may make prepayments in accordance with Section 2.05 hereof (a “*Prepayment Date*”) only to the extent permitted under the 2021 Loan Agreement.

Section 2.02. Lender Invoice and Reports. The Lender shall forward an invoice that includes the amount of principal and interest that shall be due to the Borrower at least thirty (30) days before the next scheduled payment is due; provided that no payment of the principal of or interest on the Loan shall be made at any time there are amounts outstanding under the 2021 Loan Agreement.

Section 2.03. Interest. Interest shall accrue on the Principal Amount from the Closing Date through the day preceding the Maturity Date or Prepayment Date at the Interest Rate (defined in Section 2.04 hereof), computed on the basis of a 360-day year of twelve 30-day months.

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

Section 2.05. Optional Prepayment. The Borrower, at its option, may prepay the Loan in whole by paying the Lender the outstanding Principal Amount or a portion of the Loan, plus accrued interest to the Prepayment Date as selected by the Borrower; provided that no optional prepayment shall be made at any time there are amounts outstanding under the 2021 Loan Agreement.

Section 2.06. Resource Pledge for Repayment. The Borrower’s obligation to pay the principal and interest on the Loan and any other amounts payable by the Borrower hereunder (the “*Loan Obligations*”) are extraordinary limited obligations of the Borrower payable solely from revenues generated by the I-70 MEXL Project; provided that any such Loan Obligations shall be repaid no earlier than the date on which all payment obligations under the 2021 Loan Agreement are satisfied or, if the 2021 Loan

Agreement has been refinanced, the date on which all payment obligations under the 2021 Loan Agreement are satisfied.

Section 2.07. Repayment Schedule. The Borrower shall make equal installments of \$[Payment Amount] to the Lender each [Payment Period] beginning on the sooner to occur of (i) [December 15] following the date on which all payment obligations under the 2021 Loan Agreement are satisfied, the commitment to fund thereunder has been terminated by the Bank, or the 2021 Loan Agreement has been refinanced or (ii) [First Payment Due Date]; and continuing each [Payment Period] thereafter for [Number of Payments] consecutive [Payment Periods].

Section 2.08. Remittance. All loan payments shall be made payable to the Colorado Department of Transportation, and sent to the Lender's accounting branch at 2829 W. Howard Place, Denver, Colorado 80204, or to such other place or person as may be designated by the Lender in writing.

ARTICLE III

DEFAULT AND TERMINATION

Section 3.01. Event of Default. Borrower default ("*Event of Default*") is governed by Sections II and III of the I-70 MEXL Intra-Agency Agreement.

Section 3.02. Remedies. Lender's remedies in upon the occurrence of an Event of Default are governed by Section III of the I-70 MEXL Intra-Agency Agreement.

Section 3.03. Remedies Neither Exclusive Nor Waived. No remedy under Section 3.02 hereof is intended to be exclusive, and each such remedy shall be cumulative and in addition to the other remedies. No delay or failure to exercise any remedy shall be construed to be a waiver of an Event of Default.

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

ARTICLE IV

TERMINATION

Section 4.01. Subject to the terms of the I-70 MEXL Intra-Agency Agreement, this Agreement may be terminated as follows:

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

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

[Remainder of page intentionally left blank; signature page to follow]

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

STATE OF COLORADO
[GOVERNOR], Governor
DEPARTMENT OF TRANSPORTATION

COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE

By: _____
Executive Director

By: _____
HPTE Director

APPROVED:
[ATTORNEY GENERAL]
Attorney General

By: _____
Assistant Attorney General

ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER

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

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

*[Signature page to CDOT Backup Loan Agreement
(I-70 Mountain Express Lanes Project)]*

Attachment 1

NOTE

\$ _____

For VALUE RECEIVED, THE COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE (the "Maker") subject to and in accordance with a Loan Agreement dated the [__] day of [__] 20[__] (the "Loan Agreement"), by and between the Colorado Department of Transportation, as lender (the "Holder") and the Maker, as borrower, promises to pay to the Holder the principal sum of \$_____ with interest from date at the rate of _____% per annum on the balance from time to time remaining unpaid. The said principal and interest shall be payable in lawful money of the United States of America at 2829 W. Howard Place, Denver, Colorado 80204 or at such place as may hereafter be designated by written notice from the Holder to the Maker hereof, on the date and in the manner following:

The Maker shall make equal installments of \$_____ to the Lender each _____ beginning on the sooner to occur of (i) [December 15] following the date on which all payment obligations under the 2021 Loan Agreement are satisfied, the commitment to fund thereunder has been terminated by the Bank, or the 2021 Loan Agreement has been refinanced or (ii) _____; and continuing each _____ thereafter for _____ consecutive _____. [Or replace by reference to the agreed repayment schedule].

Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement.

COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE

By: _____
HPTE Director

Attest: _____