



TO: THE TRANSPORTATION COMMISSION
FROM: DAVID SPECTOR, DIRECTOR, HIGH PERFORMANCE TRANSPORTATION ENTERPRISE
CC: JEFF SUDMEIER, CHIEF FINANCIAL OFFICER,
DATE: MARCH 15, 2018
SUBJECT: APPROVAL OF THE FISCAL YEAR 2018-19 SCOPE OF WORK/FEE FOR SERVICE INTRA-AGENCY AGREEMENT BETWEEN HPTE AND CDOT

Purpose:

To present the Transportation Commission (TC) with the Fiscal Year (FY) 2018-19 Fee for Service Intra-Agency Agreement (IAA), including the FY 2018-19 Scope of Work (SOW), between the High Performance Transportation Enterprise and the Colorado Department of Transportation (CDOT).

Requested Action:

HPTE staff is seeking TC approval of the resolution authorizing the IAA and proposed SOW between HPTE and CDOT for FY 2018-19.

Background:

In recognition of the specialized nature of the expertise and services HPTE provides to CDOT, CDOT pays HPTE through a fee for service IAA. This IAA documents the terms of the overall business relationship between CDOT and HPTE. It includes the scope of work CDOT wishes HPTE to provide in FY 2018-19, the value being compensated for key areas of work and the process by which HPTE charges CDOT for the fair market value of the services HPTE provides to CDOT. The value of services provided must correspond with the HPTE fee for service budget that the Transportation Commission (TC) will be asked to approve in March 2018.

Overview of the Fiscal Year 2018-19 CDOT-HPTE Scope of Work:

Under the FY 2018-19 IAA and Scope of Work HPTE will:

- Lead the Express Lanes Master Plan development process. The ELMP will serve as a comprehensive long-term strategic road map for the prioritization, planning and development of future express lane projects.
- Provide Central 70 Traffic Demand Management (TDM) services for residents, businesses and commuters in order to reduce travel demand along the I-70 corridor during construction of the Central 70 Project.
- Oversee all toll operations and services for Express Lanes in operation including I-25 North US36 to 120th (Segment II) and the I-70 Mountain Express Lanes (MEXL).
- Lead the development and implementation of tolling strategies on Express Lane corridors projects currently under construction and development including I-25 North 120th to E-470/Northwest Parkway (Segment III), C-470 and Central 70.
- Explore innovative financing options for projects in development, such as the I-25 South "Gap" project and provide strategic advising for potential future P3 projects.
- Partner with CDOT to assess the financial feasibility of rapid speed technologies, researching innovative finance affordable housing alternatives in hard-to-fill maintenance areas, finalizing the parking study and performing a multi-jurisdictional transportation financing feasibility analysis.

More details can be found in the FY 2018-19 Scope of Work included as Exhibit A to Attachment B.

Key Policy Considerations:

- The fee for service model describes the business relationship between HPTE and CDOT and enables HPTE to recoup the fair market value of its services to CDOT in an exchange transaction.
- The fee for service TABOR enterprise model has been validated by the Colorado Attorney General's Office in a legal opinion discussing the hospital provider fee.
- Documents the necessary contractual obligations between CDOT and HTPE
- Approval of the IAA will reinforce the mutually beneficial partnership between CDOT and HTPE and fairly compensates HPTE for the value it provides to CDOT.

Commission Options/Decision Matrix

1. Review and approve the final scope of work and IAA for FY 2018-19. **Staff Recommendation.**
2. Review the scope of work and IAA, but with instructions to add scope of work for particular projects or programs. Staff would make the necessary revisions and return with a revised scope and increased budget supplement at the beginning of the next fiscal year.
3. Review the scope of work and IAA, but with instructions to eliminate scope of work for particular projects or programs. Staff would make the necessary revisions and return with a revised scope and revised budget at the beginning of the next fiscal year.

Next Steps

- HPTE budget staff will coordinate with the Office of Financial Management and Budget (OFMB) to ensure that the approved FY 2018-19 fee for service amount is distributed appropriately and available for use at the beginning of the fiscal year.
- HPTE program staff will provide a mid-year update to the CDOT and the Transportation Commission on the progress being made to complete the activities outlined in the approved FY 2018-19 SOW.

Attachments:

Attachment A: Resolution Approving the Fiscal Year 2018-19 Fee for Service Intra-Agency Agreement between CDOT and HPTE

Attachment B: Fiscal Year 2018-19 Fee for Service Intra-Agency Agreement

Attachment A:

Resolution #TC

Approving the Fiscal Year 2018-19 Fee for Service Intra-Agency Agreement between CDOT and HPTE

WHEREAS, the Transportation Commission is responsible, pursuant to Section 43-1-106(8), C.R.S., for formulating the general policy with respect to the management, construction and maintenance of public highways and other transportation systems in the State; and

WHEREAS, the Transportation Commission promulgates and adopts all budgets for the Colorado Department of Transportation (“CDOT”) and state transportation programs; and

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

WHEREAS, HPTE and CDOT previously entered into prior year Fee for Service Intra-Agency Agreements in which CDOT acknowledged that HPTE possesses expertise and legal powers unavailable to CDOT, and agreed to compensate HPTE for the fair market value of certain services to be provided to CDOT during those fiscal years; and

WHEREAS, for the upcoming fiscal year, HPTE has prepared a new scope of work describing the services CDOT has requested HPTE to provide CDOT during the 2018-19 fiscal year (the “Services”), which is attached hereto and incorporated herein as Exhibit A (the “Scope of Work”) to the Fiscal Year 2018-19 Fee for Service Intra-Agency Agreement (the “Agreement”); and

WHEREAS, the Transportation Commission has reviewed the FY 2018-19 Scope of Work attached as Exhibit A to the Agreement, and finds the compensation amounts set forth to constitute fair and reasonable compensation for the specific Services to be provided by HPTE to CDOT during the 2018-19 fiscal year as detailed in the Scope of Work; and

WHEREAS, the Transportation Commission has reviewed the Agreement and by this Resolution accepts and confirms the findings and statements contained in the recitals.

NOW THEREFORE BE IT RESOLVED, the Transportation Commission hereby approves the Agreement in substantially the form presented and authorizes the CDOT Executive Director to execute the Agreement with such changes therein and additions thereto, including revisions or modifications to the FY 2018-19 Scope of Work, as the CDOT Executive Director may determine to be necessary or appropriate.

Herman Stockinger, Secretary
Transportation Commission of Colorado

Date

ATTACHMENT B

**FISCAL YEAR 2018-19
FEE FOR SERVICE
INTRA-AGENCY AGREEMENT**

THIS AGREEMENT (the “**Agreement**”) is made this ____ day of _____, 2018 by and between the STATE OF COLORADO for the use and benefit of the COLORADO DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the “**Department**” or “**CDOT**,” and the COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE, a government-owned business and a division of CDOT, hereinafter referred to as the “**Enterprise**” or “**HPTE**.” CDOT and HPTE are referred to herein individually each as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. CDOT is an agency of the State of Colorado authorized pursuant to § 43-1-105, C.R.S. to plan, develop, construct, coordinate, and promote an integrated transportation system in cooperation with federal, regional, local and other state agencies.

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

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

D. 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.

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

F. The business purpose of HPTE, as provided for in § 43-4-806(2)(c), C.R.S. 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 § 43-4-806(6)(f), C.R.S.

G. On September 30, 2013, CDOT and HPTE entered into a Memorandum of Understanding, which set forth each Party’s operating roles and responsibilities as they relate to their respective missions and provided, in relevant part, that HPTE is to be reimbursed by CDOT for personal goods or services procured by HPTE.

H. 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; and

I. CDOT and HPTE previously entered into Fee for Service Intra-Agency Agreements, dated September 9, 2015, (the “**FY 2015-16 Agreement**”), October 14, 2016, as subsequently amended on January 12, 2017 (the “**FY 2016-17 Agreement**”), and June 19, 2017 (the “**FY 2017-18 Agreement**”), as subsequently amended on October 27, 2017 in which CDOT agreed to compensate HPTE for the fair market value of certain services to be provided to CDOT during those fiscal years.

J. The Parties agree and acknowledge that the Services to be provided by HPTE to CDOT (for purposes of this recital, as such term was defined in the FY 2016-17 Agreement and subsequently modified by mutual agreement of the Parties over the course of the fiscal year) are anticipated to be provided in their entirety prior to the conclusion of the fiscal year, with such satisfactory completion to be documented in the final progress report to be submitted no later than July 15, 2018.

K. HPTE has prepared a new scope of work describing the services CDOT has requested HPTE to provide CDOT during the 2018-19 fiscal year (the “**Services**”), which is attached hereto and incorporated herein as **Exhibit A** (the “**Scope of Work**”).

L. 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 and legal powers to provide the Services, in exchange for which CDOT agrees to compensate HPTE in the amounts set forth in the Scope of Work.

M. HPTE shall continue to be an enterprise for purposes of Section 20 of Article X of the Colorado Constitution (“**TABOR**”), so long as it receives less than ten percent (10%) of its total revenues in grants from all Colorado state and local governments combined.

N. Pursuant to §§ 24-77-102(7)(b) and 43-4-803(13)(b), C.R.S., grants do not include revenues or income derived from any authorized rate, fee, assessment, or other charge imposed by an enterprise for the provision of goods or services by such enterprise.

O. On March 11, 1997, in Opinion No. 97-01, the Colorado Attorney General also concluded, *inter alia*, that a designated enterprise may continue to qualify as an enterprise under TABOR, even though it receives a direct appropriation of monies, so long as the appropriation constitutes revenues resulting from the provision of goods or services pursuant to § 24-77-102(7)(b)(II), C.R.S.

P. Citing *Nicholl v. E-470 Public Highway Authority*, 896 P.2d 859 (Colo. 1995), the Colorado Attorney General further noted that the very concept of an enterprise under TABOR envisions an entity that is owned by a government institution, but is financially distinct from it, and also, that the financial affairs of the enterprise must be those of a self-supporting business-like activity that provides goods and services for a fee.

Q. On February 29, 2016, in Opinion 16-01, the Colorado Attorney General also concluded, *inter alia*, that an enterprise must charge a fee in exchange for a government service, and a fee for service arrangement – broadly construed – is nearly synonymous with enterprise status;

R. HPTE engaged Stifel, Nicolaus & Company, Incorporated to prepare an analysis of the market value of the services HPTE could provide to CDOT, based on a review of costs incurred by comparable agencies for similar services (the “**Stifel Report**”); and

S. The Stifel Report concluded that HPTE provides the necessary benefit to CDOT for CDOT to support compensation for the Services as contemplated in this Agreement;

T. Based on the findings of the Stifel Report and their own examinations of the benefit CDOT receives for HPTE’s services, the Parties find and agree that the amounts CDOT intends to compensate HPTE for fiscal year 2019, as set forth in the Scope of Work, are reasonable and represent the fair market value of the specific Services to be provided.

U. CDOT and HPTE each hereby affirm that, consistent with Colorado law, moneys paid by CDOT to HPTE under this Agreement are not grants of money from CDOT to HPTE, but rather, payment for the Services to be provided by HPTE to CDOT as more particularly set forth in the Scope of Work.

V. 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 Services set forth in Exhibit A over a one year period, commencing on July 1, 2018, and ending on June 30, 2019, which comprises the 2018 fiscal year.

b. No later than January 15th and July 15th of the fiscal year, HPTE shall submit to CDOT a progress report. The progress report is to include a narrative summary of HPTE’s activities during the previous six months, as well as a detailed report on the progress being made in the performance of the Services. The submissions 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.

c. 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 estimated value of the Services to be provided under this Agreement. Any such modifications shall be

specifically identified, and their estimated values reconciled, in the progress report submitted by HPTE 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 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 on July 1, 2018, CDOT shall provide payment in the amount of Five Million One Hundred Ninety Four Thousand Five Hundred Dollars (\$5,194,500) to HPTE for the provision of the Services in fiscal year 2018-19 under this Agreement (the “**Payment Amount**”).

HPTE intends to record the full Payment Amount as deferred revenue, and recognize revenue on a pro-rata basis as Services are performed during the course of the fiscal year. HPTE will conduct a “true-up” of balances at both mid-year and at the end of the fiscal year, to coincide with the Services actually provided, in conjunction with the preparation and submittal of the progress reports described in Section 1.

b. The Services to be provided, and the Payment Amount therefor, are for the full fiscal year covered by this Agreement, as may be amended from time to time. Milestone deadlines contained in the Scope of Work are for informational and work progress tracking purposes only and are not binding on HPTE. Services provided by HPTE within the fiscal year shall be compensated as part of the Payment Amount provided for herein. No deductions shall be made for Services completed outside the timeframes set forth in the Scope of Work, provided such Services are completed within the current fiscal year.

c. Any Services not completed within the term of this Agreement shall be reflected in the progress report submitted by HPTE on July 15th following the close of the prior fiscal year. In the event the value of the Services actually completed during the fiscal year is less than was estimated in the Scope of Work, HPTE may be required to reimburse CDOT for the value of Services not completed. The value of the uncompleted portion of the Services, if any, shall reflect the fair market value of the same, and shall be mutually agreed upon and set forth in writing by the Parties in an amendment to this Agreement.

3. Term. The term of this Agreement shall be from July 1, 2018, through June 30, 2019, unless the Parties mutually agree in writing to an earlier termination.

4. Amendment; Renewal.

a. It is expressly contemplated that the Parties intend to extend this Agreement for additional one-year terms for services to be provided by HPTE to CDOT in future fiscal years. Such extensions shall be documented by formal written

amendment, and shall include an updated scope of the services to be provided in the subsequent fiscal years.

b. HPTE agrees to provide CDOT a proposed draft scope of services for the following fiscal year no later than November 2018.

c. If the scope of services and payment amount for the following fiscal year are deemed acceptable by CDOT, the same shall be set forth in a written amendment executed and approved by the Parties.

d. If during its budget approval process for the following fiscal year, the Transportation Commission allocates funds for HPTE in the full amount included in the proposed scope of services submitted by HPTE, such proposed scope of services shall be deemed approved by CDOT, notwithstanding any failure of the Parties to execute a written amendment prior to the July 1 start of the subsequent fiscal year. The Parties shall thereafter execute a written amendment for such subsequent fiscal year, the terms and conditions of which shall not be inconsistent with the budget action taken by the Transportation Commission.

e. If the scope of services and payment amount to be provided by HPTE are approved by CDOT as provided for in this Section 4, CDOT agrees that it shall pay HPTE the agreed upon payment amount for the following fiscal year on July 1, which date represents the first day of the fiscal year in which the proposed services are anticipated to be provided.

f. If the Parties are unable to agree upon a scope of services and payment amount for the following fiscal year prior to June 30 of any year, this Agreement shall terminate and be of no further force and effect for the subsequent fiscal year.

5. 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.

6. 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.

7. 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 which are or have been undertaken pursuant to this agreement.

8. 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.

9. 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.

10. 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 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 9 prior to any termination becoming effective. In the event of termination, including voluntary termination by the Parties under Section 3, HPTE shall be required to reimburse CDOT for the value of the Services not yet completed as of the date of termination.

11. 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 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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
4201 E. Arkansas Ave.
Denver, CO 80222
Email: joshua.laipply@state.co.us

If to HPTE:

David Spector, Director
HPTE
Colorado Department of Transportation
4201 E. Arkansas Ave.
Denver, CO 80222
Email: david.spector@state.co.us

21. 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
HPTE Scope of Work for FY 2018-19

(Attached)

Colorado High Performance Transportation Enterprise Scope of Work

Fiscal Year 2018-19

1. Organizational Overview

In order to accelerate the development and delivery of critical transportation infrastructure projects through the use of innovative financing, the Colorado Department of Transportation (CDOT) utilizes the expertise and legal power of the High Performance Transportation Enterprise (HPTE). In 2009, the HPTE was created under 43-4-806 C.R.S., known as FASTER, in order to accelerate critical surface transportation infrastructure projects throughout the state. To achieve this objective the HPTE was given the power to enter into public-private partnerships, impose user fees on surface transportation projects, issue revenue bonds and enter into private commercial loan agreements. HPTE is also the Colorado tolling entity (the successor to the Colorado Tolling Enterprise), managing Colorado's network of tolled Express Lanes. By law, HPTE is required to "aggressively" pursue innovative finance solutions to improving Colorado's surface transportation infrastructure.

Due to Taxpayer Bill of Rights (TABOR) restrictions, CDOT cannot exercise these powers. Although a division of CDOT, HPTE is an independent, government owned business and TABOR enterprise, which exempts it from certain TABOR restrictions. The powers given to the HPTE through statute provide a direct benefit to CDOT and the traveling public by accelerating infrastructure projects that ordinarily would not be undertaken due to a constrained fiscal environment.

HPTE manages and leads the development of many surface transportation projects. These projects are in key corridors around the state that when completed, will increase choice, may promote carpooling, expand capacity, and assist with traffic demand management. By contracting with HPTE to perform certain services, CDOT is able to relieve congestion and accelerate surface transportation infrastructure projects.

2. Fiscal Year Services to be Provided

For the 2018-19 fiscal year, HPTE will oversee work in five core areas: 1) serve as the tolling entity (the successor to the Colorado Tolling Enterprise) managing the network of express lanes corridors both in operation and under construction 2) use its statutory authority to manage current public private partnerships (P3) and explore other future surface transportation related P3 opportunities; 3) serve as innovative think tank for CDOT by exploring the possibility of using innovative finance to accelerate other needed projects; 4) manage public outreach and communications work for all express lanes corridors; and 5) participate in industry events such as conferences to educate, train and facilitate innovative surface transportation projects being delivered in Colorado.

2.1. Tolling Operations

As the tolling entity at CDOT, HPTE will manage day-to-day operations for existing Express Lane corridors including I-25 North US36 to 120th (Segment II) and the I-70 Mountain Express Lanes (MEXL) as well as oversee the implementation of tolling systems on corridors under construction. HPTE will provide in-house expertise through its Tolling Services Specialist and Major Projects Manager as well as contract with outside industry expertise for operations related issues as need. Key tasks include overseeing the installation of tolling equipment and software, the development of Standard Operating Procedures (SOPs), Traffic Incident Management Plans (TIMs), and analysis of toll rate adjustment sensitivity. These activities will require close and ongoing coordination with the Federal Highway Administration (FHWA), E470 Public Highway Authority and CDOT regional staff.

With toll commencement expected on C470 and I-25 North 120th to E-470/Northwest Parkway (Segment III), in the summer of 2019, the HPTE Board will have to approve toll rate schedules during the FY 2018-19 timeframe. The HPTE's Transparency Policy suggests staff bring a draft toll rate schedule to the Board three months prior to tolling commencement. HPTE will work with CDOT, our tolling advisory consultant, and financial advisors to develop a tolling strategy for both corridors.

Under the loans for I-25 North Segment 3 and the Mountain Express Lane, HPTE has covenants it must comply with. HPTE will use in-house expertise, financial and legal advisors (the Attorney General's office and other contract attorneys) to ensure we stay in compliance.

Total Budget for Tolling Operations: \$761,730

2.2 Public-Private Partnerships

As P3 authority and contracting entity within the Department, HPTE will continue to oversee and manage the concession agreements for US36 and Central 70 Project. Key tasks for US36 will include: working with Region 1 maintenance staff and the CDOT budget team to develop the annual budget request for routine maintenance and snow and ice removal costs on corridor by September 15, 2018 as required by the US 36 CDOT/HPTE Intra-Agency Agreement (IAA), providing oversight of the contract as well as working closely with Plenary Roads Denver (PRD) and CDOT Region 1 to address any operational issues. Key tasks on the Central 70 Project will include: guiding the litigation strategy on the Sierra Club lawsuit, working with the Project on setting up an oversight framework for the developer on the corridor and funding transportation demand management services for residents, businesses, and commuters to reduce travel demand along the corridor during construction. On an ongoing basis, HPTE will continue to provide in-house expertise on necessary corridor development work and general advising on ongoing and future P3 project development, which includes costs for on-call P3 financial advising.

On both US 36 and Central 70, HPTE will coordinate with CDOT Region 1 staff and CDOT's Communications Office on all stakeholder outreach efforts.

Total Budget for Public-Private Partnerships: \$1,525,770

2.3 Innovative Finance and Project Development

On non-P3 Express Lane corridors that have been financed and are still under construction, (C470 and I-25 North 120th to E-470/Northwest Parkway (Segment III)), HPTE's Major Projects Manager will continue to monitor construction progress to ensure schedules communicated to lenders remain accurate. HPTE will also provide input on any material change orders, including changes to the project schedule, changes affecting lenders, changes that have the potential to affect revenue generation, affect tolling on the corridor, or are above 10 percent of the total cost of the project.

HPTE will oversee the disbursements process on the C470 TIFIA Loan starting in July 2018. The process for disbursement includes coordinating proper documentation with the Project staff, the Region, and the FHWA Division Office. Disbursements will continue throughout the fiscal year and HPTE will also work closely with the C470 Project team to ensure the monthly construction progress report are filed with TIFIA and the bondholders on the last business day of the month as per required in the TIFIA loan and bond indenture.

The C470 TIFIA Loan requires that we maintain an investment grade rating on the loan and the bonds. This requires yearly surveillance by the rating agencies (Fitch and DBRS) and HPTE will ensure that the surveillance process is completed.

HPTE has covenants it must comply with under the loans for I-25 North 120th to E-470/Northwest Parkway (Segment III) and the I-70 Mountain Express Lane. HPTE will use in-house expertise, financial and legal advisors (the Attorney General's office and other contract attorneys) to ensure HPTE and CDOT stay in compliance. On the I-25 North Johnstown to Ft. Collins project, HPTE will begin to develop plans to engage with lenders to finance a portion of that project.

The Express Lanes Master Plan will continue to examine the development of express lane related projects to efficiently deliver the overall statewide program based on: 1) mobility; 2) system connectivity; 3) financial planning; 4) revenue generation; 5) coordination with the Region and stakeholders; and 6) public input. Key tasks for the Express Lanes Master Plan will include: managing the consultant's work and ensuring deliverables are met, managing the working groups, and overseeing the technical advisors providing oversight of the study's outputs.

HPTE will continue to provide strategic advisory work, including with the RoadX program and assessing financial feasibility of rapid speed technologies, researching innovative finance of affordable housing alternatives in hard to fill maintenance areas, finalizing the parking study with the Division of Transit and Rail, performing a multi-jurisdictional transportation financing analysis and providing critical document management services for large P3 and innovative finance projects.

Total Budget for Innovative Finance and Project Development: \$2,429,000

2.4 Public Outreach and Communications

To ensure comprehensive public outreach and education for Express Lanes, Public-Private Partnerships (P3) projects including US36 and Central 70, and to comply with the US 36 Legislative Audit, CDOT tasks HPTE with the following key areas of work:

- Conduct telephone town halls as required by the Transparency Policy
- Conduct surveys to gauge public sentiment and attitude towards Express Lanes
- Conduct public meetings and stakeholder outreach as required by the Transparency Policy
- Maintain current and updated information on project websites regarding project status and public participation activities and events.
- Produce Annual Report to Colorado General Assembly as required by 43-4-806 C.R.S.
- Coordinate with the CDOT Public Information Office on updating transponder and HOV policy, motorcycle transponder policy, and HOV carpooling technology.
- Conduct ongoing outreach for Express Lanes
- Conduct training for internal staff and for local stakeholders
- Conduct legislative outreach

Total Budget for Public Outreach and Communications: \$460,000

2.5 Out of State Travel

To comply with the training requirement from the US 36 Legislative Audit and to promote HPTE's projects to the infrastructure finance industry, HPTE will travel to conferences, trainings, and project related meetings. The Out of State Travel (OOST) plan is approved annually as part of HPTE budget and any changes to OOST will be discussed with CDOT. Please see Exhibit A for a full list of out of state travel that HPTE is contemplating starting on July 1, 2018.

Total Budget for Out of State Travel: \$18,000

3. Terms and Conditions

3.1 Scope of Work Duration

This scope of work documents the duties and tasks that CDOT directs the HPTE to manage, oversee, and implement for fiscal year 2018-19. This scope of work outlines services that will be provided by HPTE over a one-year period that will commence on July 1, 2018 and end on June 30, 2019.

3.2 Payment for Services

Associated costs for specific areas of work are outlined below. In exchange for completing the tasks outlined under this scope of work, CDOT will compensate HPTE with an upfront payment for its services. In order to receive pre-payment for services, HPTE will submit an invoice to CDOT at the beginning of each fiscal year on July 1st.

3.3 Progress Reporting

On the 15th of January and July of each fiscal year, HPTE will submit a progress report that includes a summary of its activities for the previous six months as well as a status report on the progress being made to accomplish the tasks outlined in this scope of work. The submission of the semi-annual reports will be used by HPTE and CDOT to recognize revenue and expenses, respectively.

EXHIBIT A: FY 2018-19 Out of State Travel Plan

Conference	Travel Dates	Location	Person	Source	Cost Estimate	Description
ARTBA P3 Conference (Annual)	7/18-7/20	DC	Director	537	\$2,000.00	HPTe is member of ARTBA P3 Board of Directors; conference planning; speaking
IBTTA Summit on Policy, Finance and VMT	7/22-7/24	Portland OR	Finance director/Toll Ops	537	\$1,500.00	
P3 Hub West	9/13-9/14	Santa Monica	Operations Manager	537	\$1,000.00	
AASHTO Annual Meeting	9/20-9/24	Atlanta	Ops manager	537	\$1,500.00	
TRB Workshop on Managed Lanes	9/25-9/27	Bellevue WA	Toll manager	537	\$1,250.00	
NGA P3 Training				537	\$0.00	Asked to go by Governor's Office in 2016/cost free trip/A41 compliant
AMOTIA Annual Conference	10/1-10/3	Sarasota FL	Major projects manager	537	\$1,500.00	Director spoke at FY18 event
NCPPP P3 Connect Conference	TBD	TBD		537	\$1,500.00	HPTe Board member attended in FY18
IBTTA Annual Meeting & Exhibition	10/14-10/16	Baltimore MD	Toll ops manager	537	\$1,500.00	HPTe spoke at FY18 meeting
US Infrastructure Law Forum	October	DC	Director	537	\$2,000.00	HPTe spoke at FY18 meeting
CG/LA North American Infrastructure Leadership F	October	TBD	Director	537	\$2,000.00	Annual conference/HPTe has spoken each year for past 3 years/presents our projects to market
Bond Buyer/Governing P3 Conference	November (expected)	TBD	Finance director	537	\$500.00	Annual P3 meeting for each organization
Annual NCPPP conference	November	Toronto	Director	537	\$1,750.00	Annual NCPPP P3 conference
TRB Annual Meeting	January 2019	DC	Operations/Major Projets	537	\$1,750.00	Annual Meeting
IBTTA - Communications Workshop	March 2019	Tampa	Communications Manager	537	\$1,750.00	HPTe has attended and spoken for past 2 years
P3C Conference	March 2019	Dallas	Operations Manager	537	\$1,500.00	Annual conference/HPTe has spoken each year for past 2 years
WASHTO Emerging Leaders	March 2019	TBD	Operations Manager	537	\$500.00	Leadership training
JPM Trans & Utility Investor Forum	April 2019	NY	Finance Manager	537	\$2,000.00	HPTe/OMPD spoke at conference in 2016
IBTTA Managed Lanes / AET	April 2019	TBD	Toll Manager	537	\$1,250.00	
Infraday	May 2019 (expected)	New York	Director	537		Invited to speak in FY2018
BAML Investor Forum	May 2019 (expected)	San Francisco	Finance Director	537		
P3 Hub West / NCPPP P3 Bootcamp	May 2019 (expected)	Illinois/Arizona?	Major projects manager	537	\$1,000.00	HPTe has spoken at P3 Bootcamp & P3 Hub
TRB Revenue & Finance Committee Mid-Year Mtg	June 2019 (expected)	TBD	Operations Manager	537	\$1,200.00	
IBTTA Maintenance & Roadway Ops	June 2019 (expected)	New Orleans	Toll ops manager	537	\$1,500.00	
TRB Int'l Trans & Economic Dev Conference	June 2019 (expected)	DC	Operations Manager	537	\$1,500.00	
InfraAmericas	June 2019 (expected)	NY	Director	537	\$2,000.00	National P3 Infrastructure Forum
AIAI Workshop	TBD	TBD	TBD	537	\$1,000.00	
WASHTO Annual Meeting	June 2019 (expected)	AZ	Operations Manager	537	\$1,250.00	Annual Meeting
Total (estimated)					\$18,000.00	
Project Trips - not from OOST budget						
Potential travel: particular FY19 travel will depend on HPTe plan and program, but will not exceed total budget						
Not offered every year						