ATTACHMENT A:

I-25 NORTH EXPRESS LANES (SEGMENT 2)

INTRA-AGENCY AGREEMENT

THIS INTRA-AGENCY AGREEMENT (this "Agreement") is made this ___ day of May, 2016 by and between the STATE OF COLORADO for the use and benefit of the COLORADO DEPARTMENT OF TRANSPORTATION ("CDOT") 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 of Colorado authorized pursuant to Section 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. The Transportation Commission of Colorado (the "Transportation Commission") is the budgetary and policy making body for CDOT with all powers and duties granted by the Colorado General Assembly pursuant to Section 43-1-106, C.R.S.

C. HPTE was created pursuant to Section 43-4-806(2), C.R.S. as a government-owned business within CDOT to pursue innovative means of completing important surface transportation projects that will improve the safety, capacity, and accessibility of the surface transportation system, can feasibly be commenced in a reasonable amount of time, and will allow more efficient movement of people, goods, and information throughout Colorado.

D. CDOT and HPTE are currently working in cooperation on the implementation and operation of a transportation infrastructure project generally consisting of the completion of one new tolled express lane in each direction on I-25 from US 36 to the Wagon Wheel Park-n-Ride at 120th Avenue (the "I-25 North Express Lanes Project (Segment 2)" or the "Segment 2 Project").

E. HPTE is authorized pursuant to Section 43-4-806(2)(c)(I), C.R.S. to impose user fees on the traveling public for the privilege of using surface transportation infrastructure, and is further authorized pursuant to Section 43-4-806(2)(c)(III), C.R.S. to contract with any governmental or non-governmental source of funding for loans to be used in support of HPTE's functions.

F. CDOT has requested HPTE's involvement in the Segment 2 Project for the variety of benefits CDOT will receive from implementing tolling on the I-25 North Express Lanes Project (Segment 2), including, but not limited to, allowing CDOT to better manage

congestion over the long term on the portion of the Interstate 25 where the Segment 2 Project is located ("I-25 Segment 2") and providing the traveling public with the choice of a new travel lane with more reliable and efficient travel times.

G. HPTE entered into that certain *Intergovernemntal Agreement for the Interstate 25 North Express Lanes Extension and Express Bus Project* with the Regional Transportation District ("RTD"), dated November 22, 2014, (the "RTD IGA"), which provided, *inter alia*, that RTD would pay HPTE up to $375,000 in calendar years 2014 and 2015, for a total contribution of up to $750,000 for the Segment 2 Project, in consideration of which HPTE agreed to ensure that RTD vehicles using the Segment 2 Project receive toll-free travel, and meet certain RTD Express Lane Requirements that facilitate more reliable and efficient transit service, as set forth in the "Tolling and Use Policy" incorporated as Exhibit A to the RTD IGA, and attached hereto and incoroporated herein as **Exhibit A**.

H. On August [ ], 2015, HPTE and CDOT entered into a Letter Agreement pursuant to which HPTE agreed to transfer the $750,000 it received from RTD under the RTD IGA to CDOT, which CDOT recognized as a contribution from HPTE toward its obligations with regard to the completion of the Segment 2 Project.

I. CDOT and HPTE further acknowledge that any payments made by RTD to HPTE did not constitute a grant of money from RTD to HPTE pursuant to Section 24-77-102(7), C.R.S., but rather, moneys paid by a governmental entity in exchange for HPTE's completion of the Segment 2 Project in accordance with Section 43-4-803(13)(b)(IV), C.R.S.

J. Pursuant to Section 43-4-806(4), C.R.S., 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.

K. In consideration of the various terms, covenants, and conditions set forth herein, including the benefits that CDOT will receive as a result of the Segment 2 Project, CDOT and HPTE have agreed to enter into this Agreement, pursuant to which HPTE can request financial support from the Transportation Commission to assist HPTE in fulfilling its obligations with respect to HPTE O&M Obligations (as such term is hereinafter defined) in the event user fee revenues are insufficient, or projected to be insufficient, to satisfy HPTE's obligations.

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

M. CDOT and HPTE further desire to enter into this Agreement to define their respective roles and responsibilities with respect to cooperation on the operation and maintenance of the Segment 2 Project and the adjacent I-25 general purpose lanes, and to allocate the costs related thereto.

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

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 TO THIS AGREEMENT HEREBY AGREE AS FOLLOWS:

TERMS AND CONDITIONS

I. CONSTRUCTION OF THE PROJECT

1. Project Budget. CDOT has been primarily responsible for the capital costs of the Segment 2 Project. Notwithstanding the foregoing, in consideration of the various benefits CDOT receives by implementing a user fee system on the I-25 North Express Lanes Project (Segment 2), including, but not limited to, congestion management on I-25 Segment 2, CDOT agrees that HPTE's contributions prior to the effective date of this Agreement satisfy any obligations HPTE might have with respect to construction of the Segment 2 Project.

2. Project Responsibilities. Except as otherwise specifically identified as a responsibility of HPTE, CDOT shall remain responsible for the construction of the Segment 2 Project. HPTE is solely responsible for the contracting necessary to implement a user fee system, including paying for the costs of single occupancy vehicle transponders and all tolling equipment, software and related installation, including, but not limited to, any obligations to the E-470 Public Highway Authority ("E-470") related to the implementation and operation of the user fee system for the Segment 2 Project under the Managed Lanes Tolling Services Agreement between HPTE and E-470, dated May 7, 2015, as may be amended from time to time (the "TSA").

II. OPERATIONS AND MAINTENANCE OF THE PROJECT

1. Overview and Costs. The I-25 North Express Lanes Project (Segment 2) is being constructed adjacent to the I-25 general purpose lanes (within I-25 Segment 2, referred to herein as the "I-25 General Purpose Lanes"), and the Parties recognize the need to cooperate in carrying out the related operations and maintenance for the Segment 2 Project and adjacent 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-25 North Express

Lanes Project (Segment 2) (including contracting for tolling services and tolling enforcement), and CDOT shall be responsible for operating and maintaining the I-25 General Purpose Lanes.

2. Operational Responsibility. It is the intent of the Parties that, except as specifically provided otherwise herein, CDOT shall perform the operations and maintenance of both the I-25 North Express Lanes (Segment 2) and the I-25 General Purpose Lanes, subject to reimbursement from HPTE for HPTE's proportionate share of the overall operations and maintenance expenses, as further described herein. CDOT recognizes HPTE has certain oblgiations to RTD under the RTD IGA, as further set forth in the Tolling and Use Policy in **Exhibit A**. CDOT agrees that in the course of its operation of the Segment 2 Project it will utilize reasonable efforts to monitor RTD bus speeds on I-25 Segment 2 and will notify HPTE immediately upon becoming aware of the occurance of a Bus Delay Event (as such term is defined in **Exhibit A**).

3. HPTE License. In consideration of the various benefits CDOT will receive as a result of the Segment 2 Project, CDOT hereby provides to HPTE a perpetual, non-exclusive, non-terminable license over, under, upon, and in the site of the Segment 2 Project (the "License") for HPTE to operate the I-25 North Express Project (Segment 2). CDOT acknowledges and agrees that HPTE may sublicense the License as needed to fulfill its obligations hereunder. Subject to the License, CDOT reserves the right of use, occupancy and ownership over, under, upon and in the lands comprised of the I-25 North Express Lanes Project (Segment 2).

4. Cost Allocation. Except as otherwise provided herein, the Parties agree to allocate costs based on a proportion of the total number of vehicles using all lanes within I-25 Segment 2, with HPTE's portion being calculated to include all vehicles obligated to pay a user fee within the Segment 2 Project, whether or not such user fee is actually collected, as well as RTD vehicles, and CDOT's portion being calculated to include all other vehicles within I-25 Segment 2, including, for certainty, high-occupancy vehicles (the "Pro-Rata O&M Cost Calculation"). For illustrative purposes only, if the total cost of operating and maintaining the portion of I-25 constituting Segment 2 is $100,000 per month, and 20% of the total vehicle count consisted of vehicles obligated to pay a user fee, HPTE would be responsible for $20,000 of such operations and maintenance costs. The Pro-Rata O&M Cost Calculation shall apply to CDOT's costs incurred with respect to: (i) snow and ice removal services; (ii) courtesy patrol; (iii) pavement resurfacing, life-cycle and capital maintenance, to the extent such activities reasonably include both the Segment 2 Project and the I-25 General Purpose Lanes; (iv) lane striping and lane sweeping/cleaning; and (v) any other operations and maintenance expense CDOT and HPTE agree in good faith is most fairly allocated utilizing the Pro-Rata O&M Cost Calculation method.

5. CDOT O&M Obligations. The Pro-Rata O&M Cost Calculation shall not apply to those operations and maintenance costs existing and regularly funded by CDOT prior to the implementation of the I-25 North Express Lanes Project (Segment 2), and for which the addition of the I-25 North Express Lanes Project (Segment 2) results in a *de minimus* impact on overall operations and maintenance expenses with I-25 Segment 2. Such costs include, but are not

limited to, CDOT's costs incurred with respect to: (i) repair and replacement of guardrail; (ii) repair and replacement of lighting fixtures; (iii) contracts with the State Patrol for safety enforcement within the corridor (but exclusive of additional enforcement contracted by HPTE for toll evasion enforcement); and (iv) pavement maintenance on the I-25 General Purpose Lanes.

6. HPTE O&M Obligations. 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 State Patrol or other law enforcement entity; (iv) pavement maintenance in the I-25 North Express Lanes Project (Segment 2); and (v) HPTE overhead and administrative costs related to the operations and maintenance of the I-25 North Express Lanes Project (Segment 2). Such costs, together with those costs attributable to HPTE under the Pro-Rata O&M Cost Calculation, shall constitute the "HPTE O&M Obligations."

7. Invoicing. 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.

8. Reconciliation; O&M Shortfall; Performance. CDOT shall submit to HPTE on or before January 15 and July 15 of each year an invoice describing the HPTE O&M Obligations due to CDOT with respect to the I-25 North Express Lanes Project (Segment 2) for the prior six month period. HPTE will then cause such amounts to be remitted within 45 days of receipt of CDOT's invoice. To the extent user fee revenues are inadequate in any fiscal year to cover the HPTE O&M Obligations, HPTE may request a CDOT Backup Loan to fund such shortfall. Notwithstanding such shortfall in the availability of user fee revenues to cover the HPTE O&M Obligations, CDOT agrees that it shall continue to perform operations and maintenance of both the I-25 North Express Lanes Project (Segment 2) and the I-25 General Purpose Lanes.

III. CDOT BACKUP LOAN OBLIGATIONS

1. 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 the HPTE O&M Obligations 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 Section 43-4-806(4), C.R.S. (a "CDOT Backup Loan"). HPTE shall notify the 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 O&M Obligations in excess of the amount of user fee revenues anticipated to be generated by the I-25 North Express Lanes Project (Segment 2) 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.

2. HPTE may also, at any time during any fiscal year, notify the Executive Director in writing that HPTE desires that CDOT make CDOT Backup Loans for projected HPTE O&M 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 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 Executive Director pursuant to this Section.

3. 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 O&M Obligations as they become due.

4. 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 Section 43-4-806(4), C.R.S., 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 Section 24-77-102, C.R.S.;

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; and

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.

5. Any CDOT Backup Loans made to HPTE in support of HPTE O&M Obligations shall be authorized by and subject to a separate Transportation Commission Resolution and shall be evidenced by one or more loan agreements in substantially the form attached hereto as **Exhibit B** (a "CDOT Backup Loan Agreement"), with terms consistent with the terms contained herein. The Parties agree to cooperate in good faith to determine a reasonable repayment schedule for each CDOT Backup Loan.

IV. DEFAULTS, TERMINATION AND REMEDIES

1. 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. 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 Paragraph 3 of this Section IV prior to any termination becoming effective.

2. 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: (i) terminate its commitment to consider making future CDOT Backup Loans hereunder; (ii) declare the entire principal amount of all CDOT Backup Loans then outstanding immediately due and payable; or (iii) take any other appropriate action available at law or in equity. 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.

3. 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 Director of the CDOT Office of Major Project Development 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.

V. GENERAL PROVISIONS

1. Effective Date; Term. This Agreement shall be effective as of the date of the date first written above and shall continue until the earlier of (i) the useful life of the project; (ii) the date HPTE no longer operates the I-25 North Express Lanes Project (Segment 2); and (iii) the Parties mutually agree to terminate the Agreement.

2. 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.

3. 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.

4. 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:	If to HPTE:
Brett J. Johnson, Director	David I. Spector, Director
CDOT, OMPD	HPTE
4201 E. Arkansas Ave. Room 158	4201 E. Arkansas Ave. Room 230
Denver, CO 80222	Denver, CO 80222
Email: brett.j.johnson@state.co.us	Email: david.spector@state.co.us

5. Maintenance of Records. Each Party shall maintain all books, documents, papers, accounting records and other evidence pertaining to the Segment 2 Project including, but not limited to, any costs incurred during the construction, operation and maintenance of the Segment 2 Project, and make such materials available to the other Party upon reasonable request.

6. 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.

7. 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 any other third person.

8. 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, Sections 24-10-101, *et seq.*, C.R.S., or the Federal Tort Claims Act, 28 U.S.C. 2671, *et seq*, as applicable, as now or hereafter amended.

9. 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.

10. 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.

11. 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.

[Signature Pages Follow.]

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

By: _____
SHAILEN P. BHATT
Executive Director
DEPARTMENT OF TRANSPORTATION

COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE

By: _____
DAVID I. SPECTOR
HPTE Director

APPROVED:

CYNTHIA H. COFFMAN
Attorney General

By: _____
ASSISTANT ATTORNEY GENERAL

[Signature Page to I-25 North Express Lanes Project (Segment 2) Intra-agency Agreement.]

EXHIBIT A

Tolling and Use Policy

Exhibit A to Intergovernmental Agreement between HPTE and RTD Regarding the I-25 North Express Lanes Project (Segment 2)

EXHIBIT A

TOLLING AND USE POLICY

1. **Definitions**

Terms defined in the agreement to which this Exhibit A is attached have the same meanings in this Exhibit A. Other terms used in this Exhibit A have the following meanings:

1.1 **Average Travel Time** has the meaning provided in Section 5.

1.2 **Bus Delay Event means a failure to meet the RTD Express Lane Requirement**.

1.3 **Express Service** means RTD Bus routes that provide limited stops and either begin or terminate at Denver Union Station and terminate or begin at the Wagon Road Park-n-Ride.

1.4 **ILEVs** means a motor vehicle with a hybrid propulsion system that uses an alternative fuel by operating on both an alternative fuel, including electricity, and a traditional fuel or an inherently low-emission vehicles, in all cases to the extent such vehicle has received the applicable permit

1.5 **Motor Vehicle** means all motor vehicles, including vehicles with more than two axles, and motorcycles.

1.6 **Non-Tolled Vehicles** means those Motor Vehicles described in paragraph .3.

1.7 **Passenger Car Equivalents** means a Motor Vehicle with up to three axles including Motor Vehicles with two axles towing a trailer with a single axle.

1.8 **Peak Period** means 6:45 A.M. to 8:45 A.M. Denver, Colorado time, and 4:30 P.M. to 6:00 P.M., Denver, Colorado time, in all instances only on Business Days

1.9 **RTD Bus** means RTD's scheduled transportation buses, ADA vehicles, and RTD contractor operated buses and ADA vehicles available to the general public over designated routes with specified stops, provided however, in each case such vehicle is equipped with a Transponder at no cost to RTD pursuant to the terms of paragraph 3.2.

1.10 **RTD Change Event** has the meaning provided in Section 5.

1.11 **RTD Express Lane Requirement** means that the Average Travel Time of RTD Buses providing Express Service on the I-25 North Express Lanes during Peak Periods must be not less than the travel time from the Northbound and Southbound points specified in Section 5.

1.12 **Support Vehicles** means RTD, CDOT, and HPTE maintenance and incident support vehicles, including by contractors engaged by such party, but only to the extent they are servicing vehicles in the Express Lanes.

1.13 **Toll** means a user fee established by HPTE for the privilege of using the I-25 North Express Lanes.

1.14 **Toll and Penalty Schedule** has the meaning provided for in paragraph 2.2.

1.15 **Tolled Vehicles** means Motor Vehicles that are not expressly described as "Non-Tolled Vehicles" in paragraph 3.

1.16 **Transponder** means a device that receives a radio signal and automatically transmits a different signal, or any supplemental or replacement device that communicated with the then applicable Vehicle Recognition System.

1.17 **Vehicle Recognition System** means an electronic, automated system enabling the electronic toll collection system to recognize the Motor Vehicle by means other than imagery, including Transponders

1.18 **Year** means a period of twelve (12) months commencing on July 1, provided that:

(a) The first Year shall be the period commencing on the date of this IGA and ending on the immediately following June 30.

2. **Tolls and Civil Penalties**

2.1 Tolls and civil penalties shall be imposed in accordance with an HPTE's toll and penalty schedule.

2.2 HPTE will provide written notice to RTD of any toll and civil penalty schedule changes at least 30 days in advance. RTD shall provide written notice to HPTE if there are any changes to the RTD Express fare at least 30 days in advance of such change. RTD will not require HPTE to increase Peak Period tolls based on RTD fares more than once per year.

3. **Non-Tolled Vehicles**

3.1 The following categories of Motor Vehicles are "Non-Tolled Vehicles" and are exempt from all Tolls in the Express Lanes:

(a) Prior to the RTD change event, HOV 2+ Vehicles

~~(b)~~ On and after the HOV change event, HOV 3+ Vehicles ~~or changes in tolling;~~

(c) Motorcycles;

(d) ILEVs;

(e) RTD Buses;

(f) Support Vehicles; and

(g) All public safety and emergency vehicles with jurisdiction, as applicable, and in all cases when engaged in the delivery of public safety or emergency services.

3.2 HPTE shall provide RTD with devices that communicate with the Vehicle Recognition System for RTD Buses and shall provide RTD with devices that communicate with the Vehicle Recognition System for Support Vehicles at no cost to RTD.

4. **Peak Period Minimum Tolls**

4.1 The minimum Toll during Peak Periods for Tolled Vehicles driving (in either direction) in the I-25 North Express Lanes shall not be less than the then existing fare for the lowest publically available adult fare Express Service from the Wagon Road Park-n-Ride to Denver Union Station.

4.2 Fares for Express Service may be changed by RTD providing written notice to HPTE no more often than once per Year.

5. **RTD Change Event**

5.1 Upon the occurrence of the following:

(a) The number of Bus Delay Events exceeds two (2) per week in the same Peak Period (morning or evening) in each of three (3) consecutive weeks, or one (1) per week in the same Peak Period in four of six consecutive weeks.

A Bus Delay Event shall have occurred when the Average Travel Time in either direction of travel within the I-25 North Express Lanes during Peak Periods, measured over a 15 minute interval, is more than 9 minutes measured on RTD's automatic vehicle locator system from the points described below;

(i) **NORTHBOUND:** Measured from intersection of US-36/I-25 (Point 1, Latitude 39 degrees 49 minutes 39.68 seconds North; Longitude 104 degrees 58 minutes 58.84 seconds West) to point of divergence on I-25 (Point 2, coordinates Latitude 39 degrees 54 minutes 34.96 seconds North; Longitude 104 degrees 59 minutes 26.18 seconds West).

(ii) **SOUTHBOUND:** Measured from point of merge on I-25 (Point 3, Latitude 39 degrees 54 minutes 38.67 seconds North; Longitude 104 degrees 59 minutes 27.24 seconds West) to intersection of US-36/I-25 (Point 4, Latitude 39 degrees 49 minutes 2.48 seconds North; Longitude 104 degrees 58 minutes 59.72 seconds West).

RTD will prepare quarterly reports summarizing travel time data unless RTD claims in the interim that a change event has occurred in which case an interim report will be prepared. All backup data requested by CDOT/HPTE will be made available.

(b)

Then an RTD Change Event shall have occurred. HPTE shall adopt a toll and penalty schedule or change the HOV requirements to ensure RTD Express Lanes Requirements are met. The Parties will meet and confer on the circumstances and existing toll rates, and HPTE will either promptly submit a revised toll and penalty schedule or take such other appropriate action as is necessary and reasonably expected to bring the I-25 North Express Lanes into compliance with the RTD Express Lanes Requirement.

EXHIBIT B

Form of CDOT Backup Loan Agreement
for Payment of HPTE O&M Obligations

THIS LOAN AGREEMENT, made this __ day of _____, 20___ by and between the State of Colorado for the use and benefit of THE COLORADO DEPARTMENT OF TRANSPORTATION (referred to herein as "CDOT" or the "Lender") and the COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE (referred to herein as "HPTE" or the "Borrower") entered into pursuant to the I-25 North Express Lanes Project (Segment 2) Intra-Agency Agreement, dated as of January __, 2016, between Lender and Borrower (the "Segment 2 Intra-Agency Agreement").

RECITALS

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

C. The Transportation Commission of Colorado is the budgetary and policy-making body of the Lender and may, pursuant to Section 43-4-806(4), C.R.S. 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 Section 43-4-806(4), C.R.S. constitute a loan and shall not be considered a grant for purposes of Section 20(2)(d) of Article X of the State Constitution.

D. The Borrower has requested a loan from the Lender in the amount of $[Requested Amount] to satisfy the HPTE O&M Obligations (as defined in the Intra-Agency Agreement) because [description].

E. 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.

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

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

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

ARTICLE I
LOAN AND CLOSING

Section 1.01. Loan and Promissory Note. Pursuant to the terms of the Segment 2 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 of the loan, plus interest on the terms described herein (collectively, the "Loan"). The Borrower's obligation to pay the Lender the principal of and interest on the Loan is evidenced by a promissory note (the "Note") in the form attached hereto as Attachment 1.

Section 1.02. Closing. The Lender shall deliver the principal amount of the Loan 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 of the Loan 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").

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 days before the next scheduled payment is due.

Section 2.03. Interest. Interest shall accrue on the principal amount of the Loan 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 Colorado 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.

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 Project.

Section 2.07. Repayment Schedule. The Borrower shall make equal installments of $[Payment Amount] to the Lender each [Payment Period] beginning on [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 4201 East Arkansas Avenue, Room 212, Denver, CO 80222, 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 Section IV of the Segment 2 Intra-Agency Agreement.

Section 3.02. Remedies. Lender's remedies against a Borrower Event of Default are governed by Section IV of the Segment 2 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 Segment 2 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.

[Signature Page Follows.]

STATE OF COLORADO
JOHN W. HICKENLOOPER, Governor

By: _____
SHAILEN P. BHATT
Executive Director
DEPARTMENT OF TRANSPORTATION

COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE

By: _____
DAVID I. SPECTOR
HPTE Director

APPROVED:

CYNTHIA H. COFFMAN
Attorney General

By: _____
ASSISTANT ATTORNEY GENERAL

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

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

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By:_____

Date:_____

[Signature page to CDOT Backup Loan Agreement for Payment of HPTE O&M Obligations.]

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 [Date], promises to pay to the Colorado Department of Transportation (the "Holder") the principal sum of $[Principal Amount], with interest from date at the rate [Interest Rate]% 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 4201 East Arkansas Avenue, Rm. 212, Denver, CO 80222 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 $[Payment Amount] to the Lender each [Payment Period] beginning on [First Payment Due Date] and continuing each [Payment Period] thereafter for [Number of Payments] consecutive [Payment Periods]. [*Or replace by reference to the agreed repayment schedule*].

COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE

By: _____

Its: _____

Attest: _____