

Resolution #TC-17-3-29

Approving an Amended Direct Agreement between the Colorado Department of Transportation, the High Performance Transportation Enterprise, the USDOT, acting through the Build America Bureau (TIFIA), and Zions Bank, a division of ZB, National Association, acting as Trustee, in regards to the C-470 Express Lanes Project.

Approved by the Transportation Commission on March 16, 2017.

WHEREAS, pursuant to Section 43-1-106(8), C.R.S, the Transportation Commission is responsible 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 General Assembly created the Colorado High Performance Transportation Enterprise (“HPTE”), pursuant to Section 43-4-806, C.R.S., as a government-owned business within CDOT to pursue innovative means of more efficiently financing important surface transportation projects that will improve the safety, capacity, and accessibility of the surface transportation system; and

WHEREAS, HPTE is authorized, pursuant to Section 43-4-806(2)(c)(I), C.R.S., to impose user fees on the travelling public for the privilege of using surface transportation infrastructure, and 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; and

WHEREAS, CDOT and HPTE are currently working in cooperation on the planning, financing, construction, implementation and operation of the first phase of an approved project, generally consisting of the completion of two new tolled express lanes on State Highway 470 (“C-470”) westbound from Interstate 25 to Colorado Boulevard; one new tolled express lane on C-470 westbound from Colorado Boulevard to Wadsworth Boulevard; and one new tolled express lane on C-470 eastbound from Wadsworth Boulevard to Interstate 25 (collectively, the “Project”) and may in the future construct Segment 1, Phase 2 and Segment 2 of the Project if funding becomes available; and

WHEREAS, in an effort to assist CDOT with financing the Project, HPTE intends to enter into certain financing agreements on or about April 2017, pursuant to which HPTE will pledge all amounts received by HPTE from tolls, rates and other user fees imposed by HPTE pursuant to Section 43-4-806(2)(C)(I), C.R.S. for the privilege of traveling on the Project; and

WHEREAS, HPTE’s financing will include the issuance of senior toll revenue bonds under a master trust indenture (the “Senior Bonds”), as well as a loan of additional funds under a loan agreement (the “TIFIA Loan”, which together with

the Senior Bonds constitutes the "Financing") with the U.S. Department of Transportation, by and through the Executive Director of the Build America Bureau ("TIFIA"), which Financing, to consist of one or more closings, will fund the payment of certain costs and expenses of the planning, design, engineering, acquisition, installation or construction of the Project, and other lawful expenses and costs related thereto; and

WHEREAS, because the Project is a joint effort between CDOT and HPTE, and because HPTE as borrower under the Financing does not have the responsibility to either construct the Project or operate or maintain the Project, TIFIA has required as a condition to closing that CDOT, HPTE, and TIFIA enter into a direct agreement for the Project (the "Direct Agreement"); and

WHEREAS, on February 16, 2017, the Transportation Commission approved a resolution authorizing the CDOT Executive Director to execute a Direct Agreement with HPTE and TIFIA; and

WHEREAS, since the previous approval the Senior Bonds underwriters have requested Zions Bank, a division of ZB, National Association, acting as trustee for the Senior Bonds (the "Trustee"), be added as a party to the Direct Agreement (the "Amended Direct Agreement") in order to enjoy the same rights, and receive the same covenants and representations from CDOT, as the subordinate TIFIA lender with regard to the Project; and

WHEREAS, the Transportation Commission has reviewed the Amended Direct Agreement and a memo on the Amended Direct Agreement prepared by staff.

NOW THEREFORE BE IT RESOLVED, the Transportation Commission approves the Amended Direct Agreement between CDOT, HPTE, TIFIA and the Trustee, and authorizes the CDOT Executive Director or his delegee to execute the Amended Direct Agreement with such changes therein and additions thereto, not inconsistent with this Resolution, as are approved by the CDOT Executive Director or his delegee (whose signature thereon shall constitute conclusive evidence of such approval).

Herman F. Stockinger II
Herman Stockinger, Secretary
Transportation Commission of Colorado

3-16-17
Date