

Resolution #TC-17-2-7

Approving an Amended and Restated Intra-Agency Agreement between the Colorado Department of Transportation and the Colorado High Performance Transportation Enterprise and a Direct Agreement between the Colorado Department of Transportation, the High Performance Transportation Enterprise and TIFIA for the C-470 Express Lanes Project.

Approved by the Transportation Commission on Feb. 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 Transportation Commission promulgates and adopts all budgets for the Colorado Department of Transportation (“CDOT”) and state transportation programs; 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, the CDOT has requested HPTE’s involvement in the Project for a variety of benefits that CDOT will receive from implementing tolling on the

Project, including, but not limited to, allowing CDOT to better manage congestion over the long term on C-470 and providing the traveling public with the choice of a new travel lane with more reliable and efficient travel times; and

WHEREAS, 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

WHEREAS, the Transportation Commission approved Resolution #TC 16-9-8 in September 2016 supporting the Project and approving an Intra-Agency Agreement (“IAA”) between CDOT and HPTE for the Project; and

WHEREAS, since the approval of the original IAA in September 2016, an Amended and Restated Intra-Agency Agreement (“Amended and Restated IAA”) has been prepared and the Transportation Commission has reviewed the Amended and Restated IAA along with a memo prepared by staff outlining the substantive changes from the original IAA and summarizing the details and benefits of the Amended and Restated IAA; and

WHEREAS, one important change between the two versions of the IAA is that in the Amended and Restated IAA is that (1) HPTE commits to contribute no less than \$210,000 million in available TIFIA Loan and Senior Bond proceeds available for the design, acquisition and construction of the Project; (2) CDOT agrees and acknowledges that HPTE’s \$210 million contribution is expected to be sufficient to complete the Project and that such amount shall be in full satisfaction of any obligations HPTE might have with respect to the financing the design, acquisition and the construction of the Project; and (3) if costs to complete the Project exceed the funding available, CDOT, and not HPTE, shall be solely responsible for identifying and obtaining additional funding sources to cover any shortfalls; and

WHEREAS, CDOT and HPTE further desire to enter into the Amended and Restated IAA and the Direct Agreement to define their respective roles and responsibilities with respect to funding the construction of the Project and cooperation on the operation and maintenance of the Project and adjacent general purpose lanes, and to allocate the costs related thereto; and

WHEREAS, in an effort to assist CDOT with financing the Project, HPTE intends to enter into certain financing agreements on or about March 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 with the U.S. Department of

Transportation, by and through its Transportation Infrastructure Finance and Innovation Act (“TIFIA”) Joint Program Office (the “TIFIA Loan”, which together with the Senior Bonds constitutes the “Financing”), 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 does not have the responsibility to either construct the Project or operate or maintain the Project, TIFIA has insisted that CDOT, HPTE, and TIFIA enter into a direct agreement for the Project (“Direct Agreement”); and

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

WHEREAS, the Direct Agreement requires CDOT to covenant to certain provision in the TIFIA Loan, including provisions concerning operations and maintenance responsibilities, construction of the Project, and insurance; and

WHEREAS, any payment made by CDOT under its obligations outlined in the Direct Agreement or any loan that CDOT provides HPTE pursuant to the Amended and Restated IAA shall, notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, 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; and

WHEREAS, the Transportation Commission recognizes and respects the legal principle that it cannot bind future Transportation Commissions with respect to budgetary and policy decisions, recognizes it cannot agree, in advance, to allocate and transfer state highway funds for a loan to HPTE, and agrees that any decision as to whether or not to allocate and transfer such funds for such purposes shall be made by the Transportation Commission, in its sole discretion, in the year in which the HPTE request occurs; and

NOW THEREFORE BE IT RESOLVED, the Transportation Commission approves the Amended and Restated Intra-Agency Agreement between CDOT and HPTE and instructs that the Amended and Restated IAA should supersede and replace in its entirety the Intra-Agency Agreement that was approved by the Transportation Commission through Resolution #TC 16-9-8, and authorizes the CDOT Executive Director or his delegee to execute the C-470 Amended and Restated Intra-Agency 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).

BE IT FURTHER RESOLVED, the Transportation Commission approves the Direct Agreement CDOT, HPTE and TIFIA and authorizes the CDOT Executive Director or his delegee to execute the 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 Stockinger

Herman Stockinger
Transportation Secretary

2-16-17

Date of Approval