

Resolution #TC-2024-01-09

Authorizing the Execution and Delivery of an Intra-Agency Agreement between the Colorado Department of Transportation and the Colorado High Performance Transportation Enterprise in connection with the I-70 Mountain Express Lanes Project

Approved by the Transportation Commission on January 18, 2024.

Whereas, pursuant to Colorado Revised Statutes (“**C.R.S.**”) Section 43-1-106(8), the Transportation Commission of Colorado (“**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 of Colorado (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 C.R.S Section 43-4-806, the General Assembly of the State created the Colorado High Performance Transportation Enterprise (“**HPTE**”), as a government-owned business within the CDOT and a division of CDOT; and

Whereas, the purpose of HPTE is 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, can feasibly be commenced in a reasonable amount of time, and will allow more efficient movement of people, goods, and information throughout Colorado and

Whereas, C.R.S. Section 43-4-806(2)(c)(I) provides that HPTE may impose user fees on the travelling public for the privilege of using surface transportation infrastructure; and

Whereas, HPTE, in partnership with CDOT, has completed and is operating a transportation infrastructure project in the I-70 Mountain Corridor that consists of, among other components, widened shoulder lanes that operate as tolled express lanes during peak periods, located on (i) eastbound I-70 between the U.S. Highway 40 Interchange (mile point 230) and the Veterans Memorial Tunnels (mile point 244), and (ii) westbound I-70 between the Veterans Memorial Tunnels (mile point 242) and the U.S. Highway 40 Interchange (mile point 230.5) (collectively, the “**I-70 MEXL Project**”);

Whereas, the Transportation Commission supports the I-70 MEXL Project and recognizes the benefits it provides to the State, which include, among others, improving travel times, managing congestion in the I-70 Mountain Corridor, enhancing the improvements made to the Veterans Memorial Tunnels, and providing travelers with a choice of new travel lanes; and

Whereas, in 2014, HPTE entered into a loan agreement (“**2014 Loan Agreement**”) with Banc of America Preferred Funding Corporation, pursuant to which said lender made a loan to HPTE (“**2014 Loan**”), the proceeds of which were used to fund a portion of the eastbound

segment of the I-70 MEXL Project (referred to in the 2014 Loan Agreement as the I-70 Peak Period Shoulder Lane Project) and pay other lawful expenses and costs related thereto; and

Whereas, C.R.S. Section 43-4-806(4) provides that the Transportation Commission may transfer moneys 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 constitutes 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, in connection with the execution and delivery of the 2014 Loan Agreement, HPTE and CDOT entered into an Intra-Agency Agreement (the “**2014 Intra-Agency Agreement**”), pursuant to which HPTE, in accordance with C.R.S. Section 43-4-806(4), was authorized to request a transfer of moneys from the Transportation Commission from the state highway fund to assist HPTE in fulfilling its payment obligations under the 2014 Loan Agreement and in operating and maintaining the eastbound lanes of the I-70 MEXL Project in the event the user-fee revenues collected by HPTE from the eastbound lanes of the I-70 MEXL Project were insufficient or projected to be insufficient to satisfy such obligations; and

Whereas, in 2019, in connection with operation and maintenance of the westbound segment of the I-70 MEXL Project, HPTE and CDOT entered into an Intra-Agency Agreement (the “**I-70 West Intra-Agency Agreement**”), pursuant to which HPTE, in accordance with C.R.S. Section 43-4-806(4), was authorized to request a transfer of moneys from the Transportation Commission from the state highway fund to assist HPTE in operating and maintaining the westbound lanes of the I-70 MEXL Project in the event the user-fee revenues collected by HPTE from the westbound lanes of the I-70 MEXL Project were insufficient or projected to be insufficient to satisfy such obligations; and

Whereas, on January 29, 2021, HPTE entered into a Loan Agreement (as amended, modified, supplemented or restated, the “**2021 Loan Agreement**”) with Wells Fargo Municipal Capital Strategies, LLC (as lender under the 2021 Loan Agreement, the “**2021 Lender**”) dated as of January 1, 2021, pursuant to which the 2021 Lender made a loan to HPTE in the principal amount of \$25,205,000 (“**2021 Loan**”) for the purpose of prepaying the 2014 Loan and paying certain costs associated with entering into the 2021 Loan Agreement; and

Whereas, at the time HPTE entered into the 2021 Loan Agreement, it issued its Colorado High Performance Transportation Enterprise Toll Revenue Note (I-70 West Peak Period Shoulder Lanes Projects), Series 2021 (the “**2021 Note**”) to the 2021 Lender, which evidences HPTE’s obligation to pay the 2021 Lender the principal of and interest on the 2014 Loan and such other amounts due and payable by HPTE under the 2014 Loan Agreement; and

Whereas, in connection with the execution and delivery of the 2021 Loan Agreement, CDOT and HPTE entered into that certain Colorado High Performance Transportation Enterprise I-70 Mountain Express Lanes Project Intra-Agency Agreement (the “**2021 Intra-Agency Agreement**”), pursuant to which, among other things (i) HPTE, in accordance with

C.R.S. Section 43-4-806(4), is authorized to request a transfer of moneys from the Transportation Commission from the state highway fund to assist HPTE in fulfilling its payment obligations under the 2014 Loan Agreement and in operating and maintaining both the eastbound and westbound lanes of the I-70 MEXL Project in the event the user-fee revenues collected by HPTE from the I-70 MEXL Project are insufficient or projected to be insufficient to satisfy such obligations, and (ii) CDOT and HPTE agreed to terminate the 2014 Intra-Agency Agreement and I-70 West Intra-Agency Agreement; and

Whereas, HPTE has determined that it is necessary, desirable and in the best interest of HPTE to prepay the 2021 Note (and the related 2021 Loan); and

Whereas, HPTE will enter into a loan agreement (the “**2024 Loan Agreement**”) with Wells Fargo Municipal Capital Strategies, LLC (as lender under the 2024 Loan Agreement, the “**2024 Lender**”), pursuant to which the 2024 Lender will make a loan to HPTE in the principal amount not to exceed \$27 million (the “**2024 Loan**”) and HPTE will use the proceeds of the 2024 Loan to (i) prepay the 2021 Note (and the related 2021 Loan), and (ii) pay certain costs associated with entering into the 2021 Loan Agreement; and

Whereas, in connection with the 2024 Loan, HPTE will issue, and deliver to the 2024 Lender, its Colorado High Performance Transportation Enterprise Toll Revenue Note (I-70 Mountain Express Lanes Project), Series 2024, in a principal amount not to exceed \$27 million (the “**2024 Note**”), which will evidence HPTE’s obligation to pay the 2024 Lender the principal of and interest on the 2024 Loan and such other amounts due and payable by HPTE under the 2024 Loan Agreement; and

Whereas, the 2024 Note (and the related 2024 Loan) will be payable from and secured by a pledge of, on a first lien basis, the user-fee revenues to be collected by HPTE from the I-70 MEXL Project (net of any toll collection expenses), as further detailed in the 2024 Loan Agreement, and certain funds and accounts established pursuant to the 2024 Loan Agreement and certain other amounts as described in the 2024 Loan Agreement; and

Whereas, similar to the financial support provided by CDOT to HPTE pursuant to the 2021 Intra-Agency Agreement in connection with the execution and delivery of the 2021 Loan Agreement and the incurrence of the 2021 Loan (and, prior to the execution and delivery of the 2021 Intra-Agency Agreement, pursuant to the 2014 Intra-Agency Agreement and the I-70 West Intra-Agency Agreement), HPTE has requested that CDOT enter into a new Intra-Agency Agreement with HPTE (the “**2024 Intra-Agency Agreement**”), pursuant to which (i) HPTE, in accordance with C.R.S. Section 43-4-806(4), would be allowed to request a transfer of moneys from the Transportation Commission from the state highway fund to assist HPTE in fulfilling its payment obligations under the 2024 Loan Agreement and the 2024 Note and in operating and maintaining the I-70 MEXL Project in the event the user-fee revenues to be collected by HPTE from the I-70 MEXL Project are insufficient or projected to be insufficient to satisfy such obligations, and (ii) the 2021 Intra-Agency Agreement would be terminated; and

Whereas, any financial support that CDOT provides HPTE under the 2024 Intra-Agency Agreement shall be in the form of a loan from the Transportation Commission to HPTE pursuant to C.R.S. Section 43-4-806(4); and

Whereas, the Transportation Commission will not be required by the 2024 Intra-Agency Agreement to make any such loan, and that any determination by the Transportation Commission to make, and allocate funds for, any such loan shall be in the sole discretion of the Transportation Commission; 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

Whereas in the event the Transportation Commission elects, in its sole and absolute discretion, to make a loan to HPTE to satisfy any of the payment obligations under the 2024 Loan Agreement, CDOT can, but is not required to, fund such a loan using Federal-aid highway funds to assist HPTE in fulfilling its payment obligations under the 2024 Loan Agreement, but CDOT may not use Federal-aid highway funds to satisfy any expenses related to the operations and maintenance of the I-70 MEXL Project; and

Whereas, there is on file with the Transportation Commission a form of the 2024 Intra-Agency Agreement (including a form of the 2024 Loan Agreement appended thereto); and

Now Therefore Be It Resolved, the Transportation Commission hereby approves and authorizes CDOT to enter into the 2024 Intra-Agency Agreement with HPTE, in substantially the form filed with the Transportation Commission prior to the meeting of the Transportation Commission at which this Resolution is adopted, and authorizes the Executive Director of CDOT (the “**CDOT Executive Director**”) or her delegee to execute the 2024 Intra-Agency Agreement with such changes therein and additions thereto, not inconsistent with this Resolution, as are approved by the CDOT Executive Director or her delegee (whose signature thereon shall constitute conclusive evidence of such approval); and

Be It Further Resolved, the Transportation Commission approves and authorizes appending to the 2024 Intra-Agency Agreement the 2024 Loan Agreement (in substantially the form appended to the form of the 2024 Intra-Agency Agreement filed with the Transportation Commission prior to the meeting of the Transportation Commission at which this Resolution is adopted) approved by the HPTE Board of Directors, with such changes therein and additions thereto, not inconsistent with this Resolution, as are approved by the CDOT Executive Director or her delegee, which changes can include an increase or decrease in the principal amount of the 2024 Note (and the related 2024 Loan) so long as such principal amount does not exceed \$27 million; and

Be It Further Resolved, the Transportation Commission hereby authorizes the CDOT Executive Director, the Chief Financial Officer of CDOT, or any other officer of CDOT to execute and deliver such certificates and other documents and take such other actions as may be necessary or convenient to the accomplishment of the purposes of this Resolution, including, without limitation, the delivery of all closing certificates and other documents required to be delivered by the provisions of the 2024 Loan Agreement.

Herman Stockinger, Secretary
Transportation Commission of Colorado