

## **Resolution #BTE-2024-03-04**

Approving Certain Matters with Respect to the Colorado Bridge and Tunnel Enterprise Senior Infrastructure Revenue Bonds, Series 2024A.

**Approved by the Bridge and Tunnel Enterprise Board of Directors on March 21, 2024.**

**Whereas**, the Colorado General Assembly originally created the Colorado Statewide Bridge and Tunnel Enterprise (the “Enterprise”) as the “Colorado Statewide Bridge Enterprise” pursuant to the Funding Advancements for Surface Transportation and Economic Recovery Act of 2009, title 43, article 4, part 8, Colorado Revised Statutes, as amended (as so amended, “FASTER”), as a government-owned business within the Colorado Department of Transportation (“CDOT”), with the original purpose of accelerating the repair and reconstruction of deficient bridges further defined as structures that are “poor” (referred to in FASTER as “Designated Bridges”), and, to finance expenditures relating thereto, with the authority to impose a Bridge Surcharge (as defined in FASTER); and

**Whereas**, in furtherance of such statutory purpose, the Enterprise entered into a Master Trust Indenture dated as of December 15, 2010 (the “2010 Master Indenture”) with Wells Fargo Bank, N.A., as trustee (as succeeded by Zions Bancorporation, National Association, in such capacity, the “2010 Indenture Trustee”), and: (a) a 2010 Supplemental Trust Indenture dated as of December 15, 2010 between the Enterprise and the 2010 Indenture Trustee, pursuant to which the Enterprise issued its Revenue Bonds, Senior Taxable Build America Series 2010A; (b) a 2017 Supplemental Trust Indenture dated as of December 21, 2017 between the Enterprise and the 2010 Indenture Trustee, pursuant to which the Enterprise issued its First Tier Subordinate Revenue Note (Central 70 Project) and made certain amendments to the 2010 Master Indenture; and (c) a 2019 Supplemental Trust Indenture dated as of December 3, 2019 between the Enterprise and the 2010 Indenture Trustee, pursuant to which the Enterprise issued its Senior Revenue Refunding Bonds, Series 2019A (the 2010 Master Indenture, the supplemental trust indentures referred to above in this recital, and any future supplemental trust indentures executed pursuant to the 2010 Master Indenture are referred to herein collectively as the “2010 Indenture,” and the obligations of the Enterprise referred to above in this recital and any additional obligations issued by the Enterprise pursuant to the 2010 Indenture are referred to collectively herein as the “2010 Indenture Obligations”); and

**Whereas**, subsequent to the original enactment of FASTER, the Colorado General Assembly has enacted certain amendments to FASTER, including in SB 21-260 and HB 23-1276, pursuant to which the Enterprise was renamed as the “Colorado Statewide Bridge and Tunnel Enterprise,” and its lawful purposes were expanded to include the completion of Preventative Maintenance Bridge Projects and Tunnel Projects in addition to Designated Bridge Projects (as each such term is defined in FASTER); and

**Whereas**, to fund such additional statutory mandate, said amendments authorized the Enterprise to impose Bridge and Tunnel Impact Fees and Bridge and Tunnel Retail Delivery Fees (as each such term is defined in FASTER) in addition to Bridge Surcharges; and

**Whereas**, on April 27, 2022, plaintiffs filed litigation styled *Americans for Prosperity v. State of Colorado*, Case No. 2022CV30971 (referred to herein as the “AFP Lawsuit”) challenging the validity of SB 21-260 and the expansion of the powers of the Enterprise made thereby, including the authorization of the Enterprise to impose the Bridge and Tunnel Impact Fees and Bridge and Tunnel Retail Delivery Fees, under certain Colorado constitutional and statutory provisions; and

**Whereas**, as a means to fulfilling the Enterprise’s expanded statutory mandate, the Board of Directors of the Enterprise (the “Enterprise Board”) desires that the Enterprise enter into a new Master Trust Indenture (the “IRB Master Indenture”) with Zions Bancorporation, National Association (in such capacity, the “Trustee”) for the purpose of authorizing the issuance of “infrastructure revenue bonds” (the “Bonds”) in one or more series for the purpose of financing Designated Bridge Projects, Preventative Maintenance Bridge Projects and Tunnel Projects (collectively, “IRB Projects”), as well as refunding outstanding such Bonds, 2010 Indenture Obligations or other financial obligations of the Enterprise; and

**Whereas**, the IRB Master Indenture pledges to the Trustee the trust estate established thereby (the “IRB Trust Estate”), including without limitation (a) Bridge Surcharge revenues and other amounts transferred by the 2010 Indenture Trustee to the Trustee that are not required to pay debt service with respect to the 2010 Indenture Obligations (as further defined in the IRB Master Indenture, the “2010 Indenture Surplus Revenues”), and (b) upon the rendering of a final, nonappealable favorable judgment with respect to the Enterprise in the AFP Lawsuit, revenues from the Bridge and Tunnel Impact Fees and Bridge and Tunnel Retail Delivery Fees; and

**Whereas**, the 2010 Master Indenture permits the execution and delivery of supplemental trust indentures supplementing the 2010 Indenture to effect any change that, in the reasonable judgment of the Enterprise, does not materially adversely affect the rights of the registered owners of the 2010 Indenture Obligations; and

**Whereas**, in accordance therewith, the Enterprise Board desires to enter into a supplemental trust indenture supplementing the 2010 Indenture (the “2010 Indenture 2024 Supplemental Indenture”) for the purposes of (a) prohibiting the issuance or incurrence of further 2010 Indenture Obligations other than for purposes of refunding other outstanding 2010 Indenture Obligations for debt service savings, (b) excluding the accounts established by the IRB Master Indenture from the lien of the 2010 Indenture, and (c) making an irrevocable direction to the State Treasurer to transfer the 2010 Indenture Surplus Revenues to the IRB General Account established by the IRB Master Indenture; and

**Whereas**, to finance costs of certain IRB Projects, the Enterprise Board desires to issue the “Colorado Bridge and Tunnel Enterprise Senior Infrastructure Revenue Bonds, Series 2024A” (the “Series 2024A Bonds”) pursuant to the IRB Master Indenture and the 2024A Supplemental

Trust Indenture (the “2024A Supplemental Indenture”) between the Enterprise and the Trustee; and

**Whereas**, the Enterprise Board desires that the Series 2024A Bonds be sold pursuant to a Bond Purchase Agreement (the “Bond Purchase Agreement”) between the Enterprise and BofA Securities, Inc. as representative of the underwriting group composed of itself and Wells Fargo Bank, National Association, Piper Sandler & Co., Loop Capital Markets LLC and Drexel Hamilton, LLC (collectively, the “Underwriters”); and

**Whereas**, in connection with the marketing and sale of the Series 2024A Bonds, the Underwriters have requested that the Enterprise approve the distribution and use of a preliminary official statement and final official statement with respect to the Series 2024A Bonds (the “Preliminary Official Statement” and the “Official Statement,” respectively); and

**Whereas**, in connection with the issuance of the Series 2024A Bonds, the Enterprise will be required to enter into a continuing disclosure undertaking (the “Continuing Disclosure Undertaking”), pursuant to which the Enterprise will be required to file certain financial and operating information with respect to the Enterprise and CDOT on an annual basis, and notice of the occurrence of certain enumerated events, with the Municipal Securities Rulemaking Board; and

**Whereas**, the Series 2024A Bonds, when issued, will be special, limited obligations of the Enterprise, payable solely from and secured solely by a senior pledge and lien on the IRB Trust Estate, and will not create, and shall not be deemed or construed as creating, a debt or multiple fiscal year direct or indirect debt or other financial obligation of CDOT or the State of Colorado (the “State”); and

**Whereas**, there is on file with the Enterprise Board forms of the IRB Master Indenture, the 2024A Supplemental Indenture (including the form of the Series 2024A Bonds appended thereto), the 2010 Indenture 2024 Supplemental Indenture, the Bond Purchase Agreement and the Continuing Disclosure Undertaking (collectively, the “Bond Documents”), and a form of the Preliminary Official Statement with respect to the Series 2024A Bonds; and

**Whereas**, the Enterprise Board desires to authorize and approve the issuance of the Series 2024A Bonds, the execution and delivery of the Bond Documents, the use and distribution of the Preliminary Official Statement, and the execution, use and distribution of the Official Statement; and

**Whereas**, the Enterprise receives less than 10% of its annual revenue in grants, as such term is used in Article X, Section 20 of the Constitution of the State, from the State government and local governments in the State, combined.

**Now Therefore Be It Resolved**, pursuant to and in accordance with the Constitution and laws of the State, including, without limitation, FASTER and the Supplemental Public Securities Act, title 11, article 57, part 2, Colorado Revised Statutes, as amended (the “Supplemental Securities Act”), the Enterprise Board hereby approves and authorizes the issuance of the Series 2024A

Bonds by the Enterprise, and the execution and delivery of the same on behalf of the Enterprise by the Director of the Enterprise (the "Enterprise Director") or any member of the Enterprise Board, in a maximum principal amount not to exceed \$150,000,000 and with a final maturity not later than December 31, 2054, in substantially the form appended to the 2024A Supplemental Indenture, with such changes therein and additions thereto, not inconsistent with this Resolution, as are approved by the person(s) executing the same (whose signature(s) thereon shall constitute conclusive evidence of such approval). The Enterprise Board hereby elects to apply all of the provisions of the Supplemental Securities Act to the issuance of the Series 2024A Bonds and, pursuant to the provisions of the Supplemental Securities Act, hereby delegates to the Enterprise Director or any member of the Enterprise Board (for such purpose, the "Sale Delegate") the determination of those terms of the Series 2024A Bonds provided for in Section 11-57-205, Colorado Revised Statutes, as amended (subject to the maximum principal amount and maximum final maturity set forth above and the provisions of the following paragraph regarding Credit Facilities (as defined below)).

**Be It Further Resolved**, the Sale Delegate is hereby authorized and directed to solicit Assured Guaranty Municipal Corporation and Build America Mutual Assurance Company to submit bids to issue a bond insurance policy (as used in the IRB Master Indenture and the 2024A Supplemental Indenture, a "Credit Facility") insuring the payment of the principal of and interest on any all maturities of the Series 2024A Bonds. In the event that the Sale Delegate determines that the acceptance by the Enterprise of a commitment to issue such a Credit Facility (a "Commitment") is advantageous to the Enterprise, the Sale Delegate may, at his or her discretion, accept the Commitment of whichever such bidder shall provide the lowest such bid for which the Commitment is not conditioned upon compliance by the Enterprise or CDOT with conditions deemed unacceptable by the Sales Delegate. In the event that the Sale Delegate shall accept a Commitment as described in the preceding sentence, the Series 2024A Bonds shall be insured by the Credit Facility, and the Sale Delegate shall be authorized to make such changes and additions to the Bond Documents, not inconsistent herewith, as shall be required by such Commitment; provided that notwithstanding the provisions of this paragraph, if the Sale Delegate determines that neither such Commitment is advantageous to the Enterprise or that both such Commitments are conditioned upon the compliance by the Enterprise or CDOT with conditions deemed unacceptable by the Sale Delegate, then neither Commitment shall be accepted and none of the Series 2024A Bonds shall be insured.

**Be It Further Resolved**, the Enterprise Board hereby approves the Bond Documents and authorizes and directs the Enterprise Director or any member of the Enterprise Board to execute and deliver each of the Bond Documents on behalf of the Enterprise, in substantially the respective forms filed with the Enterprise Board prior to the meeting of the Enterprise Board at which this Resolution is adopted, with such changes therein and additions thereto, not inconsistent with this Resolution, as are approved by the person(s) executing the same on behalf of the Enterprise (whose signature(s) thereon shall constitute conclusive evidence of such approval).

**Be It Further Resolved**, the Enterprise Board hereby (a) approves and authorizes the distribution and use by the Underwriters, in connection with the marketing and sale of the Series 2024A Bonds, of the Preliminary Official Statement, in the form thereof filed with the Enterprise Board prior to the meeting of the Enterprise Board at which this Resolution is adopted, with such changes therein and additions thereto, not inconsistent with this Resolution, as are approved by the Enterprise Director, any member of the Enterprise Board or other duly authorized officer of the Enterprise, (b) authorizes the Enterprise Director, any member of the Enterprise Board or other duly authorized officer of the Enterprise to deem said form of Preliminary Official Statement, with said changes therein and additions thereto, final for purposes of Securities and Exchange Commission Rule 15c2-12 (17 C.F.R. § 240.15c2-12), and (c) approves and authorizes the distribution and use by the Underwriters in connection with the marketing and sale of the Series 2024A Bonds, and the execution thereof by the Enterprise Director any member of the Enterprise Board or other duly authorized officer of the Enterprise, of a final Official Statement, in substantially the form of the Preliminary Official Statement, with such changes therein and additions thereto, not inconsistent with this Resolution, as are approved by the person(s) executing the same on behalf of the Enterprise (whose signature(s) thereon shall constitute conclusive evidence of such approval).

**Be It Further Resolved**, the Enterprise Board hereby finds, declares and determines that the Series 2024A Bonds, when issued, will be special, limited obligations of the Enterprise, payable solely from and secured solely by the IRB Trust Estate, and will not create, and shall not be deemed or construed as creating, a debt or multiple fiscal year direct or indirect debt or other financial obligation of CDOT or the State.

**Be It Further Resolved**, the Enterprise Board hereby finds, declares and determines that the Enterprise is an “enterprise” within the meaning of Article X, Section 20 of the Constitution of the State, and hereby covenants and agrees for the benefit of the registered owners of the Series 2024A Bonds that so long as any of the Series 2024A Bonds remain outstanding, the Enterprise will continue to qualify as an “enterprise” within such meaning; provided, however, after the Enterprise’s fiscal year ending June 30, 2024, the Enterprise Board may disqualify the Enterprise as an “enterprise” in any year in which the Enterprise Director certifies that said disqualification will not materially adversely affect the enforceability of the Series 2024A Bonds, any of the Bond Documents, the IRB Master Indenture, the 2024A Supplemental Indenture, or the 2010 Indenture 2024 Supplemental Indenture.

**Be It Further Resolved**, the Enterprise Board hereby finds, declares and determines that the execution and delivery of, and performance of its obligations under, the 2010 Indenture 2024 Supplemental Indenture does not materially adversely affect the rights of the Owners (as defined in the 2010 Master Indenture) of the 2010 Indenture Obligations because, *inter alia*, (a) the 2010 Master Indenture, pursuant to Section 4.01(e) thereof, permits the Enterprise to use the 2010 Indenture Surplus Revenues for any purpose for which the moneys in the Bridge Special Fund may be used under FASTER, (b) the use of the 2010 Indenture Surplus Revenues to pay the principal of and interest on the Bonds and as otherwise provided in the IRB Master Indenture, and the pledge of the 2010 Indenture Surplus Revenues to such payments and other uses, are purposes for which the moneys in the Bridge Special Fund may be used under

FASTER, (c) the 2010 Master Indenture, pursuant to Section 1.01(c) thereof, permits the accounts of the Bridge Special Fund established by the IRB Master Indenture to be excluded from the lien of the 2010 Master Indenture, and (d) the 2010 Indenture 2024 Supplemental Indenture's prohibition of the issuance or incurrence of further 2010 Indenture Obligations, other than for purposes of refunding other outstanding 2010 Indenture Obligations for debt service savings, does not materially adversely affect the rights of, and is to the benefit of, the Owners of the 2010 Indenture Obligations.

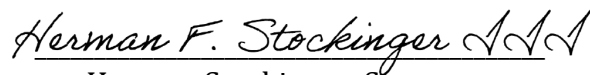
**Be It Further Resolved**, the Enterprise Board hereby authorizes the Enterprise Director, any member of the Enterprise Board or other duly authorized officer of the Enterprise, to execute and deliver such certificates and other documents (including, but not limited to, one or more tax compliance certificates or similar documents with respect to the Series 2024A Bonds) and take such other actions as may be necessary or convenient to the accomplishment of the purposes of this Resolution and the documents referred to herein, including, without limitation, the delivery of all certificates and other documents required to be delivered by the provisions of the Bond Purchase Agreement, the IRB Master Indenture, the 2024A Supplemental Indenture, and the Credit Facility and Commitment therefor (if any).

**Be It Further Resolved**, the Enterprise Board hereby ratifies and confirms any action previously taken by the Enterprise Director and any other officers and employees of the Enterprise and any delegations the Enterprise Director has made prior to the date hereof with respect to the issuance of the Series 2024A Bonds.

**Be It Further Resolved**, all prior acts, orders or resolutions, or parts thereof, of the Enterprise that are in conflict with this Resolution are hereby repealed, except that this repealer shall not be construed to revive an act, order or resolution, or part thereof, heretofore repealed.

**Be It Further Resolved**, if any section, paragraph, clause or provision of this Resolution or any of the documents referred to herein shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining sections, paragraphs, clauses or provisions of this Resolution.

**Be It Further Resolved**, this Resolution shall take effect immediately upon its introduction and passage and, following the issuance of the Series 2024A Bonds, shall be and remain irrevocable until all amounts due with respect to the Bonds shall be fully paid, satisfied and discharged and all other obligations of the Enterprise with respect to the Bonds shall have been satisfied as provided in the IRB Master Indenture.

  
Herman Stockinger, Secretary  
Transportation Commission of Colorado