

RESOLUTION # TC-2013

Approving the Master Intra-Agency Loan Agreement for O&M Expenses for US 36 Managed Lanes as Part of HPTE's TIFIA Loan Process

Approved by the Transportation Commission on: August 18, 2011

WHEREAS, the Transportation Commission is charged with 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 High Performance Transportation Enterprise (HPTE) was authorized and created pursuant to C.R.S. 43-4-806 as a government-owned business, a TABOR-exempt enterprise and a division of CDOT charged with aggressively pursuing innovative means of financing surface transportation projects; and

WHEREAS, HPTE has been pursuing, with the US DOT, a Transportation Infrastructure Finance and Innovation Act (TIFIA) loan for purposes of financing construction of the US 36 Managed Lanes Project; and

WHEREAS, a key issue for approval of a TIFIA loan for the project is providing assurance to US DOT that the US 36 Managed Lanes, once constructed, will be properly operated and maintained; and

WHEREAS, the primary source for payment of operation and maintenance (O&M) expenses for the US 36 Managed Lanes is the excess revenue generated by the I-25 Express Lanes; and

WHEREAS, the I-25 Express Lanes currently generate sufficient revenues to cover O&M expenses for the US 36 Managed Lanes but the US DOT requires a back-up source for O&M expenses if the I-25 Express Lanes revenues prove insufficient; and

WHEREAS, the US 36 Managed Lanes Project will not open for a number of years and HPTE will not know until some future date whether the I-25 Express Lanes revenues will be insufficient to pay O&M expenses; and

WHEREAS, C.R.S. 43-4-806(4) authorizes the Transportation Commission to transfer money from the state highway fund to HPTE to defray expenses of HPTE and provides that such a transfer shall be

treated as a loan and shall not be considered a grant for purposes of TABOR; and

WHEREAS, a Master Intra-Agency Loan Agreement has been developed which details a process among HPTE, CDOT and the Transportation Commission in the event HPTE needs to request an O&M loan, in the future, for the US 36 Managed Lanes; and

WHEREAS, the Transportation Commission has reviewed the Master Intra-Agency Loan Agreement and desires to state its intention, subject to the terms of this resolution and the Master Intra-Agency Loan Agreement, to approve the transfer of state highway funds, in future fiscal years, from CDOT to HPTE as a loan to cover US 36 Managed Lanes O&M expenses; 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 to the HPTE in future years and agrees that any decision as to whether or not to allocate and transfer such funds to the HPTE shall be made by the Transportation Commission, in its sole discretion, in the year in which the transfer is to occur.

NOW THEREFORE BE IT RESOLVED, the Transportation Commission of Colorado approves and authorizes CDOT entering into the Master Intra-Agency Loan Agreement for O&M Expenses for the US 36 Managed Lanes Project in substantially the form available at the meeting at which the resolution is being adopted, with such changes, not inconsistent with the resolution, as the CDOT Executive Director determines are necessary or desirable, it being expressly understood that the Master Intra-Agency Loan Agreement details a process for HPTE to seek future O&M Loans, and that any decision as to whether or not to allocate and transfer state highway funds to HPTE as a loan to cover future US 36 Managed Lanes O&M expenses shall be made by the Transportation Commission, in its sole discretion, in the year in which the loan is to be made.



Herman Stockinger, Secretary
Transportation Commission of Colorado