

Resolution Number #TC-3216

A Resolution of the Colorado State Transportation Commission Approving the Intra-Agency Agreement between the Colorado Department of Transportation and the Colorado High Performance Transportation Enterprise for the I-70 Peak Period Shoulder Lanes Project

Approved by the Transportation Commission on December 18, 2014

WHEREAS the Colorado State Transportation Commission (“Transportation Commission”) is responsible, pursuant to Section 43-1-106(8), C.R.S., 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 specifically authorized, pursuant to Section 43-4-806(c)(I), C.R.S., to impose user fees on the travelling public for the privilege of using surface transportation infrastructure; and

WHEREAS HPTE, in partnership with CDOT, is working to complete, implement and operate a transportation infrastructure project in the I-70 Mountain Corridor along a 13 mile segment of eastbound I-70 within CDOT’s existing right-of-way that is known as the I-70 Peak Period Shoulder Lanes Project (“I-70 PPSL Project”); and

WHEREAS the I-70 PPSL Project consists of widening an existing shoulder that will operate as a tolled express lane during peak travel period; and

WHEREAS the Transportation Commission supports the I-70 PPSL Project and recognizes the benefits it provides to the State, which include, but are not limited to, improving travel times, enhancing recent improvements made to the Veterans Memorial Tunnels, and providing travelers with a choice of a new travel lane; and

WHEREAS HPTE will enter into a loan agreement with Banc of America Preferred Funding Corporation (“I-70 PPSL Loan Agreement”) pursuant to which HPTE will borrow money to fund the payment of the lawful expenses and costs of planning, designing, engineering, acquisition, installation or construction of the I-70 PPSL Project and other lawful expenses and costs related thereto (“I-70 PPSL Loan”); and

WHEREAS in connection with the I-70 PPSL Loan, HPTE will pledge to Banc of America Preferred Funding Corporation the user-fee revenues collected by HPTE from the I-70 PPSL Project as further detailed in the I-70 PPSL Loan Agreement; and

WHEREAS in order to finalize the I-70 PPSL Loan Agreement, HPTE has requested that CDOT enter into an Intra-Agency Agreement with HPTE for the I-70 PPSL Project (“Intra-Agency Agreement”) pursuant to which HPTE can request a transfer of money from the Transportation Commission from the state highway fund to assist HPTE in fulfilling its payment obligations under the I-70 PPSL Loan Agreement and in operating and maintaining the I-70 PPSL Project in the event the user-fee revenues are insufficient or projected to be insufficient to satisfy such obligations; 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, 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 any financial support that CDOT provides HPTE under the Intra-Agency Agreement shall be in the form of a loan from the Transportation Commission to HPTE pursuant to Section 43-4-806(4), C.R.S.; and

WHEREAS the Transportation Commission may, in its sole and absolute discretion, but is not obligated to, provide loans to HPTE under the Intra-Agency Agreement; 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 I-70 PPSL 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 I-70 PPSL 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 PPSL Project.

NOW THEREFORE BE IT RESOLVED, the Transportation Commission hereby approves and authorizes CDOT to enter into the Intra-Agency Agreement with HPTE in substantially the form presented to the Transportation Commission and authorizes the CDOT Executive Director or his delegee to execute the 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); and

BE IT FURTHER RESOLVED, the Transportation Commission approves and authorizes appending to the Intra-Agency Agreement the I-70 PPSL Loan Agreement 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 his delegee, which changes can include an increase or decrease in (i) the initial interest rate charged so long as the initial interest rate does not exceed 3%, provided that such rate may increase under certain circumstance as provided in the I-70 PPSL Loan Agreement; and (ii) the principal amount being borrowed so long as such principal amount does not exceed \$25 million; and

BE IT FURTHER RESOLVED, the Transportation Commission hereby authorizes the CDOT Executive Director, the CDOT Chief Financial Officer, 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 I-70 PPSL Loan Agreement.

Herman F. Stockinger III

Herman Stockinger, Secretary
Transportation Commission of Colorado

1-12-15

Date

