

Resolution – HPTE #222

Approving an Amended and Restated Intra-Agency Agreement with CDOT and a Direct Agreement with CDOT and the U.S. Department of Transportation, Build America Bureau (TIFIA) for the C-470 Express Lanes Project

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 the Colorado Department of Transportation (“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

WHEREAS, in an effort to assist CDOT with financing the Project, HPTE currently intends to pledge all amounts received by HPTE from tolls, rates and other user fees imposed by HPTE for the privilege of traveling on the Project, and will enter into that certain Master Trust Indenture dated as of March 1, 2017 (the “Master Trust Indenture”), as supplemented by a First Supplemental Trust Indenture dated as of March 1, 2017 (the “First Supplemental Indenture”), each between HPTE and Zions Bank, a division of ZB, National Association, as Trustee (the “Trustee”), and will also enter into that certain TIFIA Loan Agreement (the “TIFIA Loan Agreement”) with the USDOT, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender”), which loan will be evidenced by a bond (the “2017 TIFIA Bond”) issued to the TIFIA Lender pursuant to the Master Trust Indenture, as supplemented by a Second Supplemental Trust Indenture (the “Second Supplemental Indenture”) between HPTE and the Trustee (collectively, the “Financing Agreements”), which Financing Agreement will be considered by the HPTE Board of Directors (the “Board”) for approval by separate resolution; and

WHEREAS, on September 21, 2016, the Board approved HPTE Resolution #210 authorizing the HPTE Director to enter into that certain C-470 Express Lanes (Phase 1) Project Intra-Agency Agreement (the “C-470 IAA”), which provided, *inter alia*, that HPTE can request financial support from the Transportation Commission in the form of a CDOT Backup Loan to assist HPTE in fulfilling any operations and maintenance obligations,

including amounts payable to E-470, in the event revenues, together with any available reserves, are insufficient, or projected to be insufficient, to satisfy HPTE's obligations under the contemplated Financing Agreements; and

WHEREAS, the C-470 IAA expressly contemplated a future amendment that would set forth the HPTE's capital contribution to the construction of the Project and make any additional changes required following finalization of the Financing Agreements and negotiations with the TIFIA Lender; and

WHEREAS, CDOT and HPTE now desire to enter into this Amended and Restated C-470 Express Lanes Project Intra-Agency Agreement (the "Amended and Restated C-470 IAA"), which shall supersede and replace the C-470 IAA in its entirety as of its effective date; and

WHEREAS, the Amended and Restated C-470 IAA provides, *inter alia*, that HPTE shall contribute no less than \$210 million in available TIFIA loan and senior bond proceeds available for the design, acquisition and construction of the Project, and further provides that 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, because the Project is a joint effort between CDOT and HPTE, and HPTE does not have the responsibility to either construct the Project or operate or maintain the Project, the TIFIA Lender has required as a condition of the financing that CDOT, HPTE, and the TIFIA Lender enter into a direct agreement for the Project (the "Direct Agreement"); and

WHEREAS, the Board has reviewed the terms and conditions of the Direct Agreement and the obligations of HPTE contained therein; and

WHEREAS, the Board desires to reaffirm that any payment made by CDOT to HPTE under the Amended and Restated C-470 IAA and the Direct Agreement 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, HPTE and CDOT acknowledge that they may, at an undetermined future date, cooperate to complete all or a portion of an expansion of the Project, which at completion would consist of two tolled express lanes westbound on C-470 from I-25 to Lucent Boulevard; one tolled express lane westbound from Lucent Boulevard to Kipling Parkway; one tolled express lane eastbound from Kipling Parkway to Broadway; and two tolled express lanes from Broadway to I-25 (the "Phase 2 Project"), and also may, at an undetermined future date, cooperate to complete all or a portion of an extension of the Project to include one tolled express lane in each direction between Kipling Parkway and I-70 (the "Segment 2 Project"), and further acknowledge that should all or a portion of the

Phase 2 Project or the Segment 2 Project move forward, this Amended and Restated C-470 IAA may be further amended to incorporate terms and conditions applicable to such additional projects, consistent with the provisions of the Financing Agreements applicable to the same.

NOW THEREFORE BE IT RESOLVED, the Board hereby approves the Amended and Restated C-470 IAA with CDOT in substantially the form presented and authorizes the HPTE Director to execute the Amended and Restated C-470 IAA with such revisions or modifications, not inconsistent with this Resolution, as the HPTE Director may determine to be necessary or appropriate, whose signature thereon shall constitute conclusive evidence of such approval.

BE IT FURTHER RESOLVED, the Board hereby approves the Direct Agreement with CDOT and the TIFIA Lender in substantially the form presented and authorizes the HPTE Director to execute the Direct Agreement with such revisions or modifications, not inconsistent with this Resolution, as the HPTE Director may determine to be necessary or appropriate, whose signature thereon shall constitute conclusive evidence of such approval.

Signed as of February 15, 2017

Kari V. Grant
Secretary, HPTE Board