

Resolution - HPTE #223

Authorizing the Issuance of Colorado High Performance Transportation Enterprise C-470 Express Lanes Senior Revenue Bonds, Series 2017; Approving the Form of a Loan Agreement with the United States Department of Transportation; Approving the Form of Preliminary Official Statement and Continuing Disclosure Undertaking; Approving the Forms of a Master Trust Indenture, a First Supplemental Trust Indenture, a Second Supplemental Trust Indenture, a Bond Purchase Agreement, and Other Related Documents; and Approving Certain Other Matters in Connection Therewith

WHEREAS, pursuant to Part 8 of Article 4 of Title 43, Colorado Revised Statutes, as amended (“FASTER”), and particularly Section 43-4-806, C.R.S., the General Assembly of the State of Colorado (the “State”) created the Colorado High Performance Transportation Enterprise (“HPTE”) as a government-owned business within the Colorado Department of Transportation (“CDOT”); and

WHEREAS, HPTE 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; and

WHEREAS, Sections 43-4-806(6)(c) and 43-4-807, C.R.S. provide, in part, that HPTE may issue revenue bonds for the purpose of completing surface transportation infrastructure projects; 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, HPTE is authorized by FASTER (a) to impose user fees, the proceeds of which, together with other revenues received by HPTE, are required by FASTER to be deposited into the Transportation Enterprise Special Fund; (b) to issue bonds and incur other secured obligations payable from the Transportation Enterprise Special Fund for the purpose of financing costs of the Project; (c) to pledge all or a portion of the Transportation Enterprise Special Fund for the payment of bonds and other secured obligations; and (d) to enter into contracts or agreements that are necessary or incidental to the exercise of its powers and performance of its duties, including trust indentures between HPTE and any commercial bank or trust company with full trust powers; and

WHEREAS, pursuant to and in accordance with FASTER, HPTE has determined to issue its Colorado High Performance Transportation Enterprise C-470 Express Lanes Senior Revenue Bonds, Series 2017 in an aggregate principal amount not to exceed \$188,000,000 (the “Series 2017 Bonds”) pursuant to a 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”), to finance a portion of the cost of the Project; and

WHEREAS, pursuant to and in accordance with FASTER, HPTE has determined to borrow an amount not to exceed \$108,000,000, without regard to the possible compounding of interest which is added to such principal amount (the “2017 TIFIA Loan”) from the United States Department of Transportation, acting through the Executive Director of the Build America Bureau (the “TIFIA Lender”), pursuant to a TIFIA Loan Agreement (the “2017 TIFIA Loan Agreement”) to be entered into between HPTE and the TIFIA Lender, and 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 dated as of March 1, 2017 (the “Second Supplemental Indenture”) between HPTE and the Trustee (the Master Trust Indenture, as supplemented by the First Supplemental Indenture and the Second Supplemental Indenture, the “Master Indenture”), to finance a portion of the cost of the Project; and

WHEREAS, (a) the Series 2017 Bonds and the 2017 TIFIA Bond, when issued, will be special, limited obligations of HPTE, payable solely from and secured solely by the Trust Estate (as defined in the Master Indenture), and will not, and shall not be deemed to, constitute an obligation, moral or otherwise, of CDOT or the State, any other agency, instrumentality or political subdivision of the State (other than the Transportation Enterprise, to the extent provided in the Master Indenture), or any official, board member, director, officer, employee, agent or representative of any of the foregoing, and neither the full faith and credit of HPTE, CDOT or the State nor the taxing power of the State or any other agency, instrumentality or political subdivision of the State will be pledged to the payment of the principal or redemption price of or interest on the Series 2017 Bonds or the 2017 TIFIA Bond; (b) neither the registered owners of the Series 2017 Bonds nor the TIFIA Lender may look to any revenues of HPTE, CDOT or the State for repayment of the Series 2017 Bonds or the 2017 TIFIA Bond other than as provided in the Master Indenture; (c) the Series 2017 Bonds and the 2017 TIFIA Bond will not constitute a debt of CDOT or the State or a multiple-fiscal year obligation of CDOT or the State within the meaning of any provisions of the State Constitution or the laws of the State; (d) the payment of the Series 2017 Bonds and the 2017 TIFIA Bond will not be secured by any encumbrance, mortgage, or other pledge of property of HPTE, CDOT or the State, other than the Trust Estate; and (e) no property of HPTE, CDOT or the State, subject to such exception, will be liable to be forfeited or taken in payment of the Series 2017 Bonds or the 2017 TIFIA Bond; and

WHEREAS, the Series 2017 Bonds will be sold to J.P. Morgan Securities LLC, as representative (the “Representative”) of the underwriters (the “Underwriters”) of the Series 2017 Bonds, pursuant to a Bond Purchase Agreement to be dated the date of pricing of the Series 2017 Bonds between HPTE and the Representative (the “Bond Purchase Agreement”); and

WHEREAS, in connection with the marketing and sale of the Series 2017 Bonds by the Underwriters, there has been prepared a Preliminary Official Statement (the “Preliminary

Official Statement”) describing the Series 2017 Bonds, the Master Indenture, the 2017 TIFIA Loan Agreement, HPTE, and the Project, among other matters; and

WHEREAS, the Board of Directors of HPTE (“the “Board”) has been presented the forms of the Master Trust Indenture, the First Supplemental Indenture, including the form of the Series 2017 Bonds, the Second Supplemental Indenture, the 2017 TIFIA Loan Agreement, including the form of the 2017 TIFIA Bond, the Bond Purchase Agreement and the Preliminary Official Statement; and

WHEREAS, the Board desires to authorize and approve the documents described above and to authorize the use and distribution of the Preliminary Official Statement.

NOW THEREFORE BE IT RESOLVED, pursuant to and in accordance with the Constitution and laws of the State, including particularly Section 43-4-806(6)(c), C.R.S. and Section 43-4-807, C.R.S., the Board hereby approves and authorizes the issuance of the Series 2017 Bonds and the 2017 TIFIA Bond by HPTE to finance a portion of the cost of the Project and ratifies, approves and confirms all action, not inconsistent with the provisions of this Resolution, heretofore taken by the Board and the officers, employees and agents of HPTE directed toward the financing of the Project and the issuance and sale of the Series 2017 Bonds and the 2017 TIFIA Bond. HPTE hereby elects to apply the Colorado Supplemental Public Securities Act, Part 2 of Article 57 of Title 11, Colorado Revised Statutes, as amended (the “Supplemental Securities Act”), to the issuance of the Series 2017 Bonds and the 2017 TIFIA Bond.

BE IT FURTHER RESOLVED, to defray a portion of the cost of the Project, there is hereby authorized and created an issue of revenue bonds designated “Colorado High Performance Transportation Enterprise C-470 Express Lanes Senior Revenue Bonds, Series 2017” in an aggregate principal amount of not to exceed \$188,000,000. The Series 2017 Bonds shall be issuable as fully registered bonds in Authorized Denominations (as defined in the Master Indenture), shall be dated as of the date of their issuance and shall bear interest from their date until payment of the principal has been made or provided for, payable on each June 30 and December 31, commencing June 30, 2017, except as otherwise provided in the Master Indenture. The Series 2017 Bonds shall be sold to the Underwriters at a private sale pursuant to the Bond Purchase Agreement.

The Series 2017 Bonds shall be payable, shall be subject to redemption prior to maturity, and shall be in substantially the form provided in the First Supplemental Indenture. Pursuant to the election to apply the Supplemental Securities Act to the issuance of the Series 2017 Bonds, the Board hereby delegates to the HPTE Director the power to make the following determinations with respect to the Series 2017 Bonds, without any requirement that the Board approve such determinations:

(a) The aggregate principal amount of the Series 2017 Bonds; provided that such amount shall not exceed \$188,000,000.

(b) The rates of interest to be borne by the Series 2017 Bonds; provided that no Series 2017 Bond shall bear interest at a rate exceeding 5.50% per annum and that the true interest cost of the Series 2017 Bonds shall not exceed 5.35% per annum.

(c) The price at which the Series 2017 Bonds will be sold to the Underwriters; provided that such purchase price for the Series 2017 Bonds (including underwriting discount and original issue discount and original issue premium) shall not be less than 95% of the aggregate principal amount of the Series 2017 Bonds.

(d) The amount of principal of the Series 2017 Bonds maturing, or subject to mandatory sinking fund redemption, in any particular year; provided that the principal amount of the Series 2017 Bonds maturing, or subject to mandatory sinking fund redemption, in any particular year shall not exceed \$23,000,000.

(e) The years in which the principal of the Series 2017 Bonds shall mature; provided that no Series 2017 Bond shall mature later than December 31, 2057.

(f) The years in which, and the prices at which, the Series 2017 Bonds will be subject to optional redemption; provided that the Series 2017 Bonds will first be subject to optional redemption not later than December 31, 2032 and that no optional redemption price shall exceed 103% of the principal amount of the Series 2017 Bonds redeemed plus accrued interest to the redemption date.

(g) The existence and amount of any debt service reserve fund for the Series 2017 Bonds; provided that the amount of such debt service reserve fund shall not exceed the lesser of: (i) maximum annual debt service of the Series 2017 Bonds calculated as of the date of issuance of the Series 2017 Bonds; (ii) 125% of average annual principal of, including any mandatory sinking fund payments, and interest on the Series 2017 Bonds calculated as of the date of issuance of the Series 2017 Bonds; or (iii) 10% of the aggregate principal amount of the Series 2017 Bonds upon original issuance thereof.

(h) The existence and amount of any capitalized interest on the Series 2017 Bonds; provided that the amount of such capitalized interest shall not exceed the amount of interest accruing on the Series 2017 Bonds for a period of three years from the date of issuance of the Series 2017 Bonds.

(i) Whether the Series 2017 Bonds shall be secured by any "assurance of payment" as described in Section 11-57-207(2) of the Supplemental Securities Act, including any policy of bond insurance, letter of credit or other similar form of credit enhancement, and the terms of any agreement with the third party providing such "assurance of payment."

Such determinations shall be evidenced by the execution of the First Supplemental Indenture and the Bond Purchase Agreement by the HPTE Director, the dates of which shall not be more than one year from the date of adoption of this Resolution.

BE IT FURTHER RESOLVED, to defray a portion of the cost of the Project, there is hereby authorized and created an issue of revenue bonds designated "Colorado High

Performance Transportation Enterprise C-470 Express Lanes Project TIFIA Bond.” The 2017 TIFIA Bond shall be issued to the TIFIA Lender to evidence the obligation of HPTE to repay the 2017 TIFIA Loan. The 2017 TIFIA Bond shall be issued as a single bond in a principal amount equal to the aggregate amount of all disbursements made by the TIFIA Lender to HPTE but not to exceed \$108,000,000; provided that interest on the 2017 TIFIA Loan that is compounded and added to the Outstanding TIFIA Loan Balance (as defined in the 2017 TIFIA Loan Agreement) pursuant to the 2017 TIFIA Loan Agreement shall be treated as principal of the 2017 TIFIA Loan and the 2017 TIFIA Bond for purposes of the Master Indenture. The principal of and interest on the 2017 TIFIA Bond shall be payable on June 30 and December 31 of each calendar year, beginning on the Debt Service Payment Commencement Date, as provided in the 2017 TIFIA Loan Agreement and as further provided in Exhibit G to the 2017 TIFIA Loan Agreement, as such Exhibit G may be modified from time to time in accordance with the 2017 TIFIA Loan Agreement. The 2017 TIFIA Bond is subject to prepayment as provided in the 2017 TIFIA Loan Agreement.

BE IT FURTHER RESOLVED, pursuant to the election to apply the Supplemental Securities Act to the issuance of the 2017 TIFIA Bond, the Board hereby delegates to the HPTE Director the power to make the following determinations with respect to the 2017 TIFIA Bond, without any requirement that the Board approve such determinations:

(a) The principal amount of the 2017 TIFIA Bond; provided that such amount shall not exceed \$108,000,000, without regard to the possible compounding of interest which is added to such principal amount pursuant to the 2017 TIFIA Loan Agreement.

(b) The rate of interest to be borne by the 2017 TIFIA Bond; provided that the 2017 TIFIA Bond shall not bear interest at a rate exceeding 4.00% per annum.

(c) The amount of principal of the 2017 TIFIA Bond maturing in any particular year; provided that the principal amount of the 2017 TIFIA Bond maturing in any particular year shall not exceed \$10,000,000.

(d) The years in which the principal of the 2017 TIFIA Bond shall mature; provided that the 2017 TIFIA Bond shall not mature later than December 31, 2057.

Such determinations shall be evidenced by the execution of the 2017 TIFIA Loan Agreement by the HPTE Director, the date of which shall not be more than one year from the date of adoption of this Resolution.

BE IT FURTHER RESOLVED, the forms, terms and provisions of the Master Trust Indenture, the First Supplemental Indenture, the Second Supplemental Indenture, the 2017 TIFIA Loan Agreement, and the Bond Purchase Agreement are hereby approved in substantially the form presented to the Board prior to the meeting at which this Resolution is adopted, with such changes thereto, not inconsistent with this Resolution, as may be approved by both the HPTE Director and the office of the Colorado Attorney General. The HPTE Director is hereby authorized to execute and deliver the Master Trust

Indenture, the First Supplemental Indenture, the Second Supplemental Indenture, the 2017 TIFIA Loan Agreement and the Bond Purchase Agreement.

BE IT FURTHER RESOLVED, the form, terms and provisions of the Continuing Disclosure Undertaking of HPTE, in substantially the form included in the Preliminary Official Statement, are hereby approved, with such changes thereto, not inconsistent with this Resolution, as may be approved by both the HPTE Director and the office of the Colorado Attorney General, and the HPTE Director is hereby authorized to execute and deliver such Continuing Disclosure Undertaking.

BE IT FURTHER RESOLVED, the form, terms and provisions of the Series 2017 Bonds, in substantially the form included in the First Supplemental Indenture, are hereby approved, with such changes to the Series 2017 Bonds as may be approved by both the HPTE Director and the office of the Colorado Attorney General, and the HPTE Director is hereby authorized to execute the Series 2017 Bonds, including by facsimile signature, and is authorized to deliver the Series 2017 Bonds.

BE IT FURTHER RESOLVED, the form, terms and provisions of the 2017 TIFIA Bond, in substantially the form included in the 2017 TIFIA Loan Agreement, are hereby approved, with such changes to the 2017 TIFIA Bond as may be approved by both the HPTE Director and the office of the Colorado Attorney General, and the HPTE Director is hereby authorized to execute the 2017 TIFIA Bond, by manual or facsimile signature, and is authorized to deliver the 2017 TIFIA Bond.

BE IT FURTHER RESOLVED, the Board hereby authorizes the distribution and use by the Underwriters in connection with the marketing and sale of the Series 2017 Bonds of the Preliminary Official Statement, in substantially the form presented to the Board prior to the meeting of the Board at which this Resolution is adopted, with such changes and additions thereto, not inconsistent with this Resolution, as may be approved by the HPTE Director; and hereby approves the distribution and use by the Underwriters in connection with the marketing and sale of the Series 2017 Bonds 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 and the documents hereby approved, as are approved by the HPTE Director; and the HPTE Director is hereby authorized to execute and deliver such final Official Statement.

BE IT FURTHER RESOLVED, the Board hereby finds, declares and determines that HPTE is an “enterprise” within the meaning of Article X, Section 20 of the Constitution of the State.

BE IT FURTHER RESOLVED, the Board hereby finds, declares and determines that: (a) the Series 2017 Bonds and the 2017 TIFIA Bond, when issued, will be special, limited obligations of HPTE, payable solely from and secured solely by the Trust Estate, and will not, and shall not be deemed to, constitute an obligation, moral or otherwise, of CDOT or the State (other than the Transportation Enterprise, to the extent provided in the Master Indenture), any other agency, instrumentality or political subdivision of the State, or any official, board member, director, officer, employee, agent or representative of any of the

foregoing, and neither the full faith and credit of HPTE, CDOT or the State nor the taxing power of the State or any other agency, instrumentality or political subdivision of the State will be pledged to the payment of the principal or redemption price of or interest on the Series 2017 Bonds or the 2017 TIFIA Bond; (b) neither the registered owners of the Series 2017 Bonds nor the TIFIA Lender may look to any revenues of HPTE, CDOT or the State for repayment of the Series 2017 Bonds or the 2017 TIFIA Bond other than as provided in the Master Indenture; (c) the Series 2017 Bonds and the 2017 TIFIA Bond will not constitute a debt of CDOT or the State or a multiple-fiscal year obligation of CDOT or the State within the meaning of any provisions of the State Constitution or the laws of the State; (d) the payment of the Series 2017 Bonds and the 2017 TIFIA Bond will not be secured by any encumbrance, mortgage, or other pledge of property of HPTE, CDOT or the State, other than the Trust Estate; and (e) no property of HPTE, CDOT or the State, subject to such exception, will be liable to be forfeited or taken in payment of the Series 2017 Bonds or the 2017 TIFIA Bond.

BE IT FURTHER RESOLVED, the Board hereby authorizes the HPTE Director or his designee 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 Bond Purchase Agreement or the 2017 TIFIA Loan Agreement or otherwise in connection with the issuance of the Series 2017 Bonds and the 2017 TIFIA Bond.

BE IT FURTHER RESOLVED, this Resolution shall take effect immediately upon its passage.

Signed as of February 15, 2017

Kari V. Grant
Secretary, HPTE Board