



Date: March 16, 2017

To: Colorado Transportation Commission / High Performance Transportation Enterprise Board

From: Nicholas Farber, HPTE Operations Manager; Brent Butzin, HPTE General Counsel

Subject: Adding Zions Bank to CDOT, HPTE TIFIA C-470 Project Direct Agreement

Purpose

The purpose of this memo is to summarize the reasoning behind adding Zions Bank (trustee) as a party between CDOT, TIFIA, and HPTE in the Direct Agreement regarding the financing of the C-470 Express Lanes Project (Project) and to recommend its approval.

Action

The Board and TC are asked to adopt a resolution that supports the staff recommendation to approve amended Direct Agreement adding Zions Bank as a party to the Direct Agreement.

Project Background

The C-470 Express Lanes Project (the Project) is located along 12.5 miles of C-470, between Interstate 25 (I-25) and Wadsworth Boulevard. The Project includes reconstructing existing pavement, adding auxiliary lanes, improving on and off ramps as well as the construction of new express lanes both westbound and eastbound. The total cost of the Project is \$276 million. \$39 million is being contributed between CDOT and local stakeholders and HPTE will borrow the remainder of the Project cost through a TIFIA loan and toll revenue backed bonds. HPTE aims to close on the TIFIA Loan and the toll revenue backed bonds sometime in April and needs approval of this documents to move forward with financial close. HPTE came to you in last month regarding the Direct Agreement, but in that time, Underwriter's Counsel asked that Zions Bank, acting as trustee on the TIFIA Loan and Bonds be added as party to the Direct Agreement.

Direct Agreement Details

After the February Board and Commission meetings the Underwriter's Counsel approached the HPTE and TIFIA asking that Zions Bank, HPTE's trustee, be added as a party to the Direct Agreement. They felt the Direct Agreement, as previously written, gave the subordinated lender (TIFIA) more rights than the senior lender (the Bond holders) if CDOT failed to construct the project or operate and maintain it according to terms of the IAA (see the February 16, 2017 Direct Agreement memorandum for CDOT's full list of obligations). The amended Direct Agreement now gives both TIFIA and the bond holders privity of contract with CDOT.

Key Benefits

- The amended Direct Agreement give TIFIA and the Bond Holders direct contractual privity and the ability to enforce certain rights against CDOT.
- CDOT's obligations to TIFIA and the Trustee are already obligations CDOT has to HPTE under the IAA.

Options/Decision Matrix

- 1) **Staff Recommendation:** Approve the amended Direct Agreement. CDOT and HPTE will execute the IAA, and will close on the TIFIA loan sometime in early to mid-April.
- 2) Review but do not approve the amended Direct Agreement. Provide instructions on changes or revisions. Project financing would be delayed by at least one or two months.

Recommendations

The staff recommends that the Board approve a resolution authorizing the execution of the IAA and the Direct Agreement.

Attachments

Attachment A: Direct Agreement between the Colorado Department of Transportation, the Colorado High Performance Transportation Enterprise and the United States Department of Transportation