

Resolution — HPTE #357

Authorizing the Execution of a Loan Agreement with Bank of America, N.A. and Delivery of the Note related thereto, Execution of a Loan Agreement with JP Morgan Chase Bank, N.A. and Delivery of the Note related thereto, Execution of an Indenture of Trust with Zions Bank, a division of ZB, National Association, as trustee, and Approving an Intra-Agency Agreement and Lease with the Colorado Department of Transportation for the Burnham Yard Project

WHEREAS, pursuant to C.R.S. § 43-4-806, *et seq.*, the General Assembly of the State of Colorado ("**State**") created the Colorado High Performance Transportation Enterprise ("**HPTE**") 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 receives less than 10% of its annual revenue in grants, as such term is used in Article X, Section 20 of the State Constitution, from the State government and local governments in the State, combined; and

WHEREAS, C.R.S. § 43-4-806(2)(c)(III) provides that HPTE may contract with any governmental or nongovernmental source of funding for loans to be used to support HPTE's functions; and

WHEREAS, C.R.S. § 43-4-806 authorizes HPTE to issue revenue bonds for the purpose of completing surface transportation infrastructure projects and C.R.S. § 43-4-803(2) defines "bond" to mean any bond, note, interim certificate, commercial paper, contract, or other evidence of indebtedness; and

WHEREAS, as a means of pursuing its statutory charge, HPTE is specifically authorized pursuant to C.R.S. § 43-4-806(6) to acquire any and all rights-of-way, lands, and buildings necessary or convenient for its authorized purposes; to enter into agreements with CDOT pursuant to which HPTE provides, on behalf of CDOT, services or property in connection with a surface transportation project; and to sell, lease, lease with an option to purchase, or dispose of real or personal property without restriction or limitation; and

WHEREAS, in July 2019, the Union Pacific Railroad ("**UPRR**") released a Request for Qualifications for the Burnham Yard Redevelopment, the purpose of which was to identify qualified teams and solicit interest in the purchase of an approximately 60-acre parcel of land beginning at 13th Avenue at its northernmost point to roughly 4th Avenue at its southernmost point (referred to herein as the "**Burnham Yard**" or the "**property**"), in the City and County of Denver, Colorado ("**Denver**"); and

WHEREAS, at the same time, CDOT was conducting the I-25 Central Planning and Environmental Linkage Study (the "**PEL**"), which sought to identify causes of congestion and consider options to improve safety, travel time reliability, decrease congestion, and provide improved cross-connectivity on Interstate 25 between Santa

Fe Drive and 20th Street in Denver, and which included alternatives contemplating the realignment of the Consolidated Mainline (the “**CML**”) freight tracks from their current alignment adjacent to I-25 to a new alignment through the Burnham Yard; and

WHEREAS, on August 7, 2019, CDOT submitted a proposal to the UPRR to purchase the Burnham Yard, which proposal was subsequently accepted by the UPRR; and

WHEREAS, following its determination to purchase the Burnham Yard, CDOT revenues declined as a result of the COVID-19 pandemic and, as a result, the SB 267 highway funds initially identified by CDOT for the purchase of Burnham Yard were no longer available; and

WHEREAS, subsequently, CDOT requested that HPTTE pursue alternative means to acquire the Burnham Yard from UPRR on CDOT’s behalf, including seeking out opportunities for innovative and efficient means of financing the purchase that are otherwise unavailable to CDOT; and

WHEREAS, with the completion of the PEL, CDOT now plans to initiate an Environmental Impact Study for the I-25 Central corridor, which will study the right-of-way needed for potential improvements to I-25, enhanced mobility options through expanded transit, and potential Front Range Passenger Rail, including identification of the right-of-way needed for surface transportation purposes on the Burnham Yard; and

WHEREAS, the Southwest Chief & Front Range Passenger Rail Commission, which is charged with facilitating the development of passenger rail that serves Front Range communities from Pueblo to Fort Collins (“**Front Range Passenger Rail**”), in partnership with CDOT, is also conducting an alternatives analysis, which includes alternatives that would utilize an alignment for Front Range Passenger Rail through the Burnham Yard; and

WHEREAS, each of the proposed potential projects, including improvements to I-25, relocation of the CML, implementation of Front Range Passenger Rail, future expansion of the Regional Transportation District (“**RTD**”) light rail lines that also traverse the Burnham Yard, and other related mobility and transit improvements (together, the “**Transportation Projects**”) are expected to benefit CDOT and the State by, among other things, improving the safety, capacity, and accessibility of the surface transportation system and allowing more efficient movement of people and goods throughout Colorado; and

WHEREAS, HPTTE intends to enter into two loan agreements (collectively, the “**Bank Loan Agreements**”) with Bank of America, N.A. (“**BANA**”) and JP Morgan Chase Bank, N.A. (“**JP Morgan**”) and, with BANA, the “**Lenders**”), pursuant to which the Lenders will loan to HPTTE a total principal amount not to exceed \$50 million (the “**Purchase Loans**”), the proceeds of which HPTTE will use to fund a portion of the cost of acquisition of Burnham Yard (the “**Acquisition**”); and

WHEREAS, in connection with the Purchase Loans, HPTE intends to execute an Indenture of Trust (the "**Indenture**") with Zions Bank, a division of ZB, National Association ("**Zions Bank**"), pursuant to which Zions Bank will serve as the trustee under the Indenture; and

WHEREAS, in connection with the Purchase Loans, HPTE intends to execute and deliver Colorado High Performance Transportation Enterprise Revenue Notes (Burnham Yard Project), Series 2021, to each Lender, the form of which is appended to the Bank Loan Agreements, in an approximate principal amount not to exceed \$50 million (the "**Notes**"); and

WHEREAS, concurrently with HPTE's purchase of Burnham Yard from UPRR, CDOT expects to enter into a lease with HPTE (the "**Lease**"), under which CDOT will have access to the Burnham Yard for a period of 30 years, in exchange for lease payments to be made by CDOT to HPTE, the first five years of which will be pre-paid by CDOT, on a non-refundable basis, to HPTE (such five period, the "**Hold Period**"); and

WHEREAS, CDOT's pre-paid lease payments, totaling \$15 million, will be used by HPTE to fund (i) a portion of the cost of the Acquisition totaling \$10 million, and (ii) up to \$5 million in additional expenditures to be made by HPTE during the Hold Period for preliminary work relating to the use and disposition of the Burnham Yard property, including without limitation, undertaking a Small Area Planning process, in partnership with Denver, determining specific mobility needs, advancing land use planning, visioning for the future of the Burnham Yard, obtaining and undertaking entitlements, environmental, and other property-related diligence (such expenditures, the "**Additional Property Expenditures**"); and

WHEREAS, under the Bank Loan Agreements, HPTE has agreed to pledge to the Lenders, for payment of the principal of and interest on and any other amounts that are owing to the Lenders from time to time under the Bank Loan Agreements (collectively, the "**Bank Loan Obligations**"), all amounts received by HPTE, except the amount received for Additional Property Expenditures, under the Lease (the "**Lease Payments**"), except to the extent otherwise provided for in the Bank Loan Agreements, all amounts received from CDOT as CDOT Back-up Loans and Top-Off Payments received by HPTE pursuant to the Intra-Agency Agreement described below, proceeds of the sale or lease of some or all of the Burnham Yard property, and certain funds and accounts established pursuant to an Indenture of Trust between HPTE and Zions Bank, as trustee (the "**Trustee**"); and

WHEREAS, in order to finalize the Loan Agreements, HPTE has requested that CDOT enter into the Burnham Yard Acquisition Intra-Agency Agreement with HPTE ("**Intra-Agency Agreement**") pursuant to which HPTE can request a transfer of money from the Colorado State Transportation Commission (the "**Transportation Commission**") from the state highway fund to assist HPTE in fulfilling its payment obligations under the Bank Loan Agreements and in operating and maintaining the Burnham Yard Project in the event the Lease revenues or the proceeds of the disposition of the

Remnant Property (the “**Disposition Proceeds**”) are insufficient or projected to be insufficient to satisfy such obligations or in the event of a default under one or both of the Bank Loan Agreements; and

WHEREAS, HPTE intends to apply the Disposition Proceeds, in addition to any additional amounts payable to HPTE by CDOT upon a disposition of the property in accordance with the Inter-Agency Agreement (the “**Top-Off Payments**”) as further described in the Intra-Agency Agreement, to repay the amounts owed to the Lenders under the Bank Loan Agreements, in accordance with the terms thereof; and

WHEREAS, pursuant to C.R.S. § 43-4-806(4), 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 shall 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, following the Acquisition, CDOT intends to advance environmental studies related to the Transportation Projects to determine the exact quantity and location of the right-of-way that is to be retained by CDOT on the Burnham Yard for the Transportation Projects (the “**Retained Property**”); and

WHEREAS, concurrently, HPTE intends to advance a Small Area Planning process, in partnership with Denver, to determine specific mobility needs, as well as to advance land use planning, visioning for the future of the Burnham Yard, entitlements, environmental, and other property-related diligence, in contemplation of disposition to one or more developers or partnering state agencies of the portions of the Burnham Yard finally determined by CDOT not to be needed for the Transportation Projects (the “**Remnant Property**”); and

WHEREAS, in consideration of the various terms, covenants, and conditions set forth in this Resolution, including the benefits that CDOT will receive as a result of the acquisition of the Burnham Yard, HPTE intends to enter into the Intra-Agency Agreement pursuant to which HPTE can request financial support from the Transportation Commission to assist HPTE in fulfilling its Bank Loan Obligations (as hereinafter defined) in the event a disposition of the Remnant Property has not occurred (for any reason whatsoever, including, but not limited to, a failure by CDOT to timely identify the Retained Property) within the timeframe contemplated by the Intra-Agency Agreement, or if the Disposition Proceeds are insufficient, or projected to be insufficient, to satisfy HPTE’s Bank Loan Obligations in full; and

WHEREAS, HPTE recognizes and acknowledges that any financial support provided by the Transportation Commission pursuant to C.R.S. § 43-4-806(4), except as otherwise specifically provided for in the Inter-Agency Agreement, shall be in the form of a CDOT Backup Loan (as defined and further described in the Inter-Agency

Agreement) or as a payment for good and services provided or rendered to CDOT; and

WHEREAS, HPTE acknowledges that the Transportation Commission may, in its sole and absolute discretion, but is not required by the Intra-Agency Agreement to, make any CDOT Back-Up Loan, and that any determination by the Transportation Commission to make, and allocate funds for, any such loan shall be in the sole discretion of the Transportation Commission and if the Transportation Commission elects not to make a CDOT Backup Loan, such election shall not, in and of itself, result in a default of HPTE under the Bank Loan Agreements; and

WHEREAS, the HPTE Board of Directors ("**HPTE Board**") supports the Burnham Yard Project and recognizes the benefits it provides to the State, which include, but are not limited to, the Transportation Projects; and

WHEREAS, the HPTE Board has determined that it is necessary, desirable and in the best interest of HPTE to enter into the Bank Loan Agreements, the Indenture, the Lease and the Intra-Agency Agreement and to issue and deliver the Notes to the Lenders to facilitate the Acquisition.

NOW THEREFORE BE IT RESOLVED, all actions not inconsistent with the provisions of this Resolution heretofore taken by any HPTE staff members or the Director of HPTE (the "**HPTE Director**") and the efforts of HPTE directed toward the completion of the Acquisition, and the execution and delivery of the Bank Loan Agreements, the Indenture, the Notes, the Intra-Agency Agreement, the Lease and all transactions contemplated in connection therewith, including, without limitation, the preparation and transmittal of all required notices, all supporting documentation with respect to the Purchase Loans, the Bank Loan Agreements, the Indenture, the Notes, the Lease and the Intra-Agency Agreement shall be, and the same hereby are, ratified, approved and confirmed.

BE IT FURTHER RESOLVED, the HPTE Board hereby finds and determines that it is necessary, desirable and in the best interest of HPTE to finance lawful expenses and costs of planning, designing, engineering, acquisition, installation or construction of the Burnham Yard Project and other lawful expenses and costs related thereto.

BE IT FURTHER RESOLVED, the HPTE Board hereby approves in all respects the Bank Loan Agreements, the Indenture, the Notes, the Lease, and the Intra-Agency Agreement in substantially the forms filed with HPTE and authorizes and directs the HPTE Director to execute and deliver the Bank Loan Agreements, the Indenture, the Notes, the Lease and the Intra-Agency Agreement on behalf of HPTE, in substantially the forms filed with the HPTE Board prior to the meeting of the HPTE Board at which this Resolution is adopted, with such changes therein and additions thereto, not inconsistent with this Resolution, as are approved by the HPTE Director (whose signature thereon shall constitute conclusive evidence of such approval), which changes may include an increase or decrease in (i) the initial interest rate

charged in the Bank Loan Agreements for the Purchase Loans so long as the initial interest rate does not exceed 3.0%, provided that such rate may increase under certain circumstance as provided in the Bank Loan Agreements; and (ii) the principal amount of the Purchase Loans pursuant to the Notes and the Bank Loan Agreements so long as such principal amount does not exceed an aggregate principal amount of \$50 million.

BE IT FURTHER RESOLVED, the HPTE Board hereby pledges the Trust Estate, as described in the Indenture, to the extent that such Trust Estate constitutes a portion of the Transportation Special Fund, and the rights of HPTE to impose and receive the Revenues, as defined in the Indenture, to the payment of the Notes in accordance with C.R.S. § 43-4-807(1)(d), and the HPTE Board hereby waives the exemption from federal income taxation for interest on the Notes in accordance with C.R.S. § 43-4-807(4).

BE IT FURTHER RESOLVED, pursuant to and in accordance with the Constitution and laws of the State, including particularly C.R.S. § 43-4-806 and the Supplemental Public Securities Act, C.R.S. § 11-57-201 *et seq.*, the Board hereby approves and authorizes the execution of the Notes by HPTE to evidence the payment obligations of HPTE under the Notes and the Bank Loan Agreements, but only from the collateral pledged therefor pursuant to the terms of the Bank Loan Agreements and the Indenture, and the execution and delivery of the same on behalf of HPTE by the HPTE Director in substantially the form appended to the Bank Loan Agreements, with such changes therein and additions thereto, not inconsistent with this Resolution, as are approved by the HPTE Director (whose signature thereon shall constitute conclusive evidence of such approval), which changes can include an increase or decrease in (i) the initial interest rate charged for the Purchase Loans so long as the initial interest rate for the Purchase Loans does not exceed 3.0%, provided that such rate may increase under certain circumstance as provided in the Bank Loan Agreements; and (ii) the principal amount being borrowed so long as such principal amount does not exceed an aggregate principal amount of \$50 million. The Board hereby elects to apply all of the provisions of the Supplemental Public Securities Act to the Notes and, pursuant to the provisions of the Supplemental Public Securities Act, hereby delegates to the HPTE Director the determination of those terms of the Notes provided for in C.R.S. § 11-57-205 (subject to the principal amount and the interest rate parameters set forth above).

BE IT FURTHER RESOLVED, the HPTE Board hereby finds, declares and determines that HPTE is an "enterprise" within the meaning of Article X, Section 20 of the State Constitution, and hereby covenants and agrees for the benefit of the Lenders that so long as the Notes remain outstanding, HPTE will maintain its "enterprise" status within such meaning.

BE IT FURTHER RESOLVED, the Board hereby authorizes and directs the HPTE Director to take all action and execute and deliver for and on behalf of HPTE any and all certificates, documents and other papers, and to perform all other acts that

the HPTE Director deems necessary or appropriate in order to implement the financing and Acquisition of the Burnham Yard Project and to carry out the transaction and other matters authorized by this Resolution, including, without limitation, the execution and delivery of such certificates, documents and other papers and the performance of such acts as required by the Bank Loan Agreements or the Indenture.

Signed as of May 19, 2021

Simon Logan
Secretary, HPTE Board of Directors