

Resolution – HPTE #345

Approving an Intra-Agency Agreement with the Colorado Department of Transportation for the I-70 Mountain Express Lanes Project

WHEREAS, the General Assembly created the Colorado High Performance Transportation Enterprise (“HPTE”), pursuant to Colorado Revised Statutes (“C.R.S”). § 43-4-806, 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 C.R.S. § 43-4-806(2)(c)(I) to impose user fees on the traveling 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 that consists of, among other components, widening the shoulder lanes, and operating such lanes as tolled express lanes during peak periods, located in (i) an approximate 13-mile segment of eastbound I-70 between the U.S. Highway 40 Interchange (from mile point 230) and through the Veterans Memorial Tunnels to Idaho Springs (from mile point 244) within CDOT’s existing right-of-way, and (ii) an approximate 12-mile segment of westbound I-70 between the Veterans Memorial Tunnels (from mile point 242) and the U.S. Highway 40 Interchange (from mile point 230.5) within CDOT’s existing right-of-way (collectively, the “I-70 MEXL Project”); and

WHEREAS, the HPTE Board of Directors (the “Board”) supports the I-70 MEXL Project and recognizes the benefits it provides to the State, which include, among others, improving travel times, managing congestion in the I-70 Mountain Corridor, enhancing the improvements made to the Veterans Memorial Tunnels, and providing travelers with a choice of new travel lanes; and

WHEREAS, in 2014, HPTE entered into a loan agreement (“2014 Loan Agreement”) with Banc of America Preferred Funding Corporation (the “2014 Lender”) pursuant to which the 2014 Lender made a loan to HPTE in the principal amount of \$25,000,000 (“2014 Loan”), the proceeds of which were used to fund a portion of the eastbound segment of the I-70 MEXL Project (referred to in the 2014 Loan Agreement as the I-70 Peak Period Shoulder Lane Project) and pay other lawful expenses and costs related thereto; and

WHEREAS, at the time HPTE entered into the 2014 Loan Agreement, it issued its Colorado High Performance Transportation Enterprise Toll Revenue Note (I-70 West Peak Period Shoulder Lanes Projects), Series 2014 (the “2014 Note”) to the 2014 Lender, which evidences HPTE’s obligation to pay the 2014 Lender the principal of and interest on the 2014 Loan and such other amounts due and payable by HPTE under the 2014 Loan Agreement; and

WHEREAS, C.R.S. § 43-4-806(4) provides that the Transportation Commission may transfer moneys 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, in connection with the execution and delivery of the 2014 Loan Agreement and the issuance of the 2014 Note (and the related incurrence of the 2014 Loan), HPTE and CDOT entered into an Intra-Agency Agreement (the “2014 Intra-Agency Agreement”), pursuant to which HPTE, in accordance with C.R.S. § 43-4-806(4), can request a transfer of moneys from the Transportation Commission from the state highway fund to assist HPTE in fulfilling its payment obligations under the 2014 Loan Agreement and the 2014 Note and in operating and maintaining the eastbound lanes of the I-70 MEXL Project in the event the user-fee revenues collected by HPTE from the eastbound lanes of the I-70 MEXL Project are insufficient or projected to be insufficient to satisfy such obligations; and

WHEREAS, HPTE has determined that it is necessary, desirable and in the best interest of HPTE to prepay the 2014 Note (and the related 2014 Loan); and

WHEREAS, HPTE will enter into a loan agreement (the “2021 Loan Agreement”) with Wells Fargo Municipal Capital Strategies, LLC (a wholly owned subsidiary of Wells Fargo Bank, National Association) (the “2021 Lender”), pursuant to which the 2021 Lender will make a loan to HPTE in the principal amount not to exceed \$27 million (the “2021 Loan”) and HPTE will use the proceeds of the 2021 Loan to (i) prepay the 2014 Note (and the related 2014 Loan), and (ii) pay certain costs associated with entering into the 2021 Loan Agreement; and

WHEREAS, in connection with the 2021 Loan, HPTE will issue, and deliver to the 2021 Lender, its Colorado High Performance Transportation Enterprise Toll Revenue Note (I-70 Mountain Express Lanes Project), Series 2021, in a principal amount not to exceed \$27 million (the “2021 Note”), which will evidence HPTE’s obligation to pay the 2021 Lender the principal of and interest on the 2021 Loan and such other amounts due and payable by HPTE under the 2021 Loan Agreement; and

WHEREAS, similar to the financial support provided by CDOT to HPTE pursuant to (a) the 2014 Intra-Agency Agreement with respect to the 2014 Note (and the related 2014 Loan) and the 2014 Loan Agreement, and the operation and maintenance of the eastbound section of the I-70 MEXL Project, and (b) the I-70 West Intra-Agency Agreement with respect to the operation and maintenance of the westbound section of the I-70 MEXL Project, in connection with the execution and delivery of the 2021 Loan Agreement and the issuance of the 2021 Note (and the related incurrence of the 2021 Loan), HPTE has requested that CDOT terminate the 2014 Intra-Agency Agreement and the I-70 West Intra-Agency Agreement and enter into a new Intra-Agency Agreement with HPTE that incorporates the entire I-70 MEXL Project (the “2021 Intra-Agency

Agreement”), pursuant to which HPTE, in accordance with C.R.S. § 43-4-806(4), would be allowed to request a transfer of moneys from the Transportation Commission from the state highway fund to assist HPTE in fulfilling its payment obligations under the 2021 Loan Agreement and the 2021 Note and in operating and maintaining the I-70 MEXL Project in the event the user-fee revenues to be collected by HPTE from the I-70 MEXL Project are insufficient or projected to be insufficient to satisfy such obligations; and

WHEREAS, any financial support that CDOT provides HPTE under the 2021 Intra-Agency Agreement shall be in the form of a loan from the Transportation Commission to HPTE pursuant to C.R.S. § 43-4-806(4); and

WHEREAS, HPTE acknowledges that the Transportation Commission is not required by the 2021 Intra-Agency Agreement to make any such loan, and that any determination by the Transportation Commission to make, and allocate funds for, any such loans shall be in the sole discretion of the Transportation Commission; and

WHEREAS, there is on file with the Board a form of the 2021 Intra-Agency Agreement; and

WHEREAS, the Board desires to authorize and approve the execution and delivery of the 2021 Intra-Agency Agreement; and

NOW THEREFORE BE IT RESOLVED, that the Board hereby approves the 2021 MEXL Intra-Agency Agreement with CDOT in substantially the form filed with the Board prior to the meeting of the Board at which this Resolution is adopted and authorizes the HPTE Director to execute the 2021 Intra-Agency Agreement with such revisions or modifications, not inconsistent with this Resolution, as the HPTE Director may determine to be necessary or appropriate.

Signed as of January 20, 2021

Simon Logan
Secretary, HPTE Board of Directors