

Resolution – HPTE #414

Approving the Execution and Delivery of a Master Trust Indenture, a First Supplemental Trust Indenture, a TIFIA Loan Agreement, a TIFIA Bond, an Intra-Agency Agreement and a Direct Agreement and Such Other Matters for the 1-25 North Express Lanes Project.

WHEREAS, the General Assembly created the Colorado High Performance Transportation Enterprise (“CTIO”), pursuant to § 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, CTIO 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 CTIO’s functions; and

WHEREAS, CDOT, in partnership with CTIO, is working to complete, implement and operate certain transportation infrastructure projects in the I-25 North Corridor, which currently comprises six segments (each, a “Segment”) of Interstate 25 North commencing at the U.S. Highway 36 interchange (“I-25 North”). Such project includes, among other components, completion of a tolled express lane in each direction (collectively, “Express Lanes”) and completion of the general purpose lanes adjacent to the Express Lanes (collectively, “General Purpose Lanes”), which Express Lanes and General Purpose Lanes are located in: (i) an approximately 6-mile segment of I-25 North between the U.S. Highway 36 interchange and the State Highway 128 (120th Avenue) interchange (“Segment 2”); (ii) an approximately 6-mile segment of I-25 North between the State Highway 128 (120th Avenue) interchange and the E-470/Northwest Parkway interchange (“Segment 3”); (iii) an approximately 7-mile segment of I-25 North between the State Highway 66 interchange and the State Highway 56 interchange (“Segment 5”); (iv) an approximately 5-mile segment of I-25 North between the State Highway 56 interchange and the State Highway 402 interchange (“Segment 6”); (v) an approximately 7-mile segment of I-25 North between the State Highway 402 interchange and the State Highway 392 interchange (“Segment 7”); and (vi) an approximately 7-mile segment of I-25 North between the State Highway 392 interchange and the State Highway 14 interchange (“Segment 8”);and

WHEREAS, CDOT and CTIO have completed the planning, design, engineering, acquisition, installation, construction, repair, and reconstruction of the components of the I-25 North Express Lanes Project consisting of the Express Lanes located in Segments 2 and 3 (the “Segment 2 Express Lanes Project” and the “Segment 3 Express Lanes Project,” respectively), and said Express Lanes in such Segments are currently open for tolled traffic; and

WHEREAS, CDOT has requested CTIO's involvement in the planning, design, engineering, acquisition, installation, construction, repair, and reconstruction of the components of the I-25 North Express Lanes Project consisting of the Express Lanes located in Segments 5, 6, 7 and 8 (collectively, the "Segments 5-8 Express Lanes Project" and, collectively with the Segment 2 Express Lanes Project and the Segment 3 Express Lanes Project, the "I-25 North Express Lanes Project") to provide for the variety of benefits CDOT will receive from CTIO through the implementation of tolling on such Express Lanes, including, but not limited to, allowing CDOT to better manage congestion over the long term on I-25 North and providing the traveling public with the choice of a new travel lane with more reliable and efficient travel times; and

WHEREAS, consistent with CTIO's statutory purpose as a government-owned business and enterprise for purposes of Article X, Section 20 of the Colorado Constitution, and in order to finance the I-25 North Express Lanes Project, CTIO intends to enter into certain Financing Agreements (as hereinafter defined) pursuant to which CTIO will pledge all amounts received by CTIO from tolls, rates, and other user fees imposed by CTIO pursuant to C.R.S. § 43-4-806(2)(C)(I) for the privilege of traveling on the Express Lanes completed as components of the I-25 North Express Lanes Project; and

WHEREAS, CTIO intends to finance a portion of the costs of the I-25 North Express Lanes Project with the proceeds of a loan to be provided by the U.S. Department of Transportation, acting by and through the Executive Director of the Build America Bureau (as so acting, "TIFIA Lender"), pursuant to the Transportation Infrastructure Finance and Innovation Act ("TIFIA") program ("TIFIA Loan" or "Financing"); and

WHEREAS, the TIFIA Loan will fund the payment of certain costs and expenses of: (i) the planning, design, engineering, acquisition, installation, construction, repair, reconstruction of the Segment 3 Express Lanes Project and the Segments 5-8 Express Lanes Project, and other lawful expenses and costs related thereto; and (ii) associated transaction costs; and

WHEREAS, to effect the Financing, CTIO will enter into a Master Trust Indenture ("MTI"), by and between CTIO and Zions Bancorporation, National Association, as trustee ("Trustee"), a First Supplemental Trust Indenture ("First Supplement"), by and between CTIO and the Trustee, and a TIFIA Loan Agreement ("TLA"), by and between CTIO and the TIFIA Lender, and will issue a bond ("TIFIA Bond") to the TIFIA Lender pursuant to the MTI, the First Supplement and the TLA, that will evidence CTIO's obligation to repay the TIFIA Loan. The MTI, the First Supplement, the TLA and the TIFIA Bond are referred to hereinafter collectively as the "Financing Agreements"; and

WHEREAS, CDOT has entered into a CM/GC Construction Project Contract dated July 3, 2019 ("Segment 5/6 Construction Contract") with RLW/SEMA, a Joint Venture, L.P. ("Segment 5/6 General Contactor") for the construction of the components of the I-25 North Express Lane Project located in Segments 5 and 6, which Segment 5/6 Construction Contract establishes, among other things, minimum insurances to be provided by the Segment 5/6 General Contactor during the construction period, certain

required parent guarantees and payment and performance bonds, and sets forth liquidated damages to be assessed by CDOT in the event such components of the I-25 North Express Lane Project are not completed within the timeframes set forth in the Segment 5/6 Construction Contract; and

WHEREAS, CDOT has entered into a Design/Build Contract dated February 13, 2018 (“Segment 7/8 D-B Contract” and, collectively with the Segment 5/6 Construction Contract, “Construction Contracts”), with Kraemer/IHC Joint Venture (“Segment 7/8 Design Builder” and, collectively with the Segment 5/6 General Contractor, “Construction Contractors”) for the design and construction of the components of the I-25 North Express Lane Project located in Segments 7 and 8, which Segment 7/8 D-B Contract establishes, among other things, minimum insurances to be provided by the Segment 7/8 Design Builder during the construction period, certain required parent guarantees and payment and performance bonds, and sets forth liquidated damages to be assessed by CDOT in the event such components of the I-25 North Express Lanes Project are not completed within the timeframe set forth in the Segment 7/8 D-B Contract; and

WHEREAS, funding for the Segment 2 Express Lanes Project was provided by certain federal, State and local funds contributed for such purpose. In connection therewith, CDOT and CTIO entered into that certain I-25 North Express Lanes Project (Segment 2) Intra-Agency Agreement dated as of August 2, 2016 (“2016 Segment 2 Intra-Agency Agreement”), pursuant to which, among other things, CDOT and CTIO defined their respective roles in cooperating to operate and maintain the Express Lanes and the General Purpose Lanes in Segment 2, and to allocate the costs related thereto; and

WHEREAS, in connection with the Segment 3 Express Lanes Project, CDOT and CTIO entered into that certain I-25 North Express Lanes Project (Segment 3) Intra-Agency Agreement dated as of February 24, 2016 (“2016 Segment 3 Intra-Agency Agreement”), pursuant to which, among other things (i) CDOT and CTIO defined their respective roles in cooperating to operate and maintain the Express Lanes and the General Purpose Lanes in Segment 3, and to allocate the costs related thereto, and (ii) CDOT agreed to provide (solely at its discretion as set forth therein) financial support to CTIO with respect to the CTIO’s payment obligations with respect to the operation and maintenance of the Segment 3 Express Lanes; and

WHEREAS, in connection with the Segments 5-8 Express Lanes Project, CDOT and CTIO desire to enter into an updated Intra-Agency Agreement (which will supersede and replace the 2016 Segment 2 Intra-Agency Agreement and the 2016 Segment 3 Intra-Agency Agreement) (“2023 IAA”) to define their respective roles and responsibilities with respect to (i) funding the I-25 North Express Lanes Project, specifically Segments 5, 6, 7, and 8, and (ii) operating and maintaining the I-25 North Express Lanes and adjacent General Purpose Lanes, and to allocate the costs related thereto; and

WHEREAS, as a condition of the TIFIA Lender providing the TIFIA Loan to CTIO, the TIFIA Lender requires CTIO, CDOT and the TIFIA Lender to enter into a Direct Agreement (“Direct Agreement”), which provides the TIFIA Lender certain assurances and agreements with respect to the TLA, the Construction Contracts and the 2023 IAA; and

WHEREAS, the Board desires to reaffirm that any payment made by the Transportation Commission to CTIO under the 2023 IAA 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 CTIO and shall not be considered a grant for purposes of Section 20(2)(d) of Article X of the State Constitution; and

WHEREAS, there is on file with the Board forms of the following documents:

- (a) the MTI;
- (b) the First Supplement;
- (c) the TLA
- (d) the TIFIA Bond
- (e) the 2023 IAA, and
- (f) the Direct Agreement; and

and the Board has reviewed the terms and conditions of the MTI, the First Supplement, the TLA, the TIFIA Bond, the 2023 IAA and the Direct Agreement and the obligations of CTIO contained therein; and

WHEREAS, the Board desires to authorize and approve the incurrence of the TIFIA Loan and the execution, delivery and issuance (as applicable) of the MTI, the First Supplement, the TLA, the TIFIA Bond, the 2023 IAA and the Direct Agreement; and

NOW THEREFORE BE IT RESOLVED, the Board hereby approves the incurrence of the TIFIA Loan and the issuance of the TIFIA Bond for the purposes described in this Resolution, provided that the principal amount of the TIFIA Loan and the TIFIA Bond shall not exceed \$501 million; and

BE IT FURTHER RESOLVED, the Board hereby approves the MTI, the First Supplement, the TLA, the TIFIA Bond, the 2023 IAA and the Direct Agreement in substantially the respective forms filed with the Board prior to the meeting of the Board at which this Resolution is adopted, and authorizes and directs the Director of CTIO (“CTIO Director”), or any other officer of CTIO duly appointed by the CTIO Director, to execute and deliver each of the MTI, the First Supplement, the TLA, the TIFIA Bond, the 2023 IAA and the Direct Agreement on behalf of CTIO, in substantially the respective forms filed with the Board prior to the meeting of the Board at which this Resolution is adopted, with such changes therein and additions thereto, not inconsistent with this Resolution, as are approved by the CTIO Director or the person(s) executing the same on behalf of CTIO (whose signature(s) thereon shall constitute conclusive evidence of such approval).

BE IT FURTHER RESOLVED, the Board hereby finds, declares and determines that CTIO 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 TIFIA Lender that so long as the TIFIA Bond remains outstanding, CTIO will maintain its “enterprise” status within such meaning.

BE IT FURTHER RESOLVED, the Board hereby authorizes and directs the CTIO Director to take all action and execute and deliver for and on behalf of CTIO any and all certificates, documents and other papers, and to perform all other acts that the CTIO Director deems necessary or appropriate in order to implement the financing of the I-25 North Express Lanes 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 Financing Agreement, the IAA and the Direct Agreement.

Signed as of April 19, 2023

Simon Logan
Secretary, CTIO Board