i-25 nORTH EXPRESS LANES PROJECT
INTRA-AGENCY AGREEMENT

THIS I-25 NORTH EXPRESS LANES PROJECT INTRA‑AGENCY AGREEMENT (this “**Agreement**”) is made this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 2023 by and between the STATE OF COLORADO for the use and benefit of the COLORADO DEPARTMENT OF TRANSPORTATION (“**CDOT**”) and the COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE, a government-owned business and a division of CDOT (“**HPTE**”). CDOT and HPTE are hereinafter referred to individually as a “Party” and collectively as the “Parties.” Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the hereinafter-defined Master Trust Indenture.

RECITALS

A. CDOT is an agency of the State of Colorado (the “**State**”) authorized pursuant to Colorado Revised Statutes (**“C.R.S.”**) Section 43-1-105 to plan, develop, construct, coordinate, and promote an integrated transportation system in cooperation with federal, regional, local and other state agencies.

B. The Transportation Commission of Colorado (the “**Transportation Commission**”) is the budgetary and policy making body for CDOT with all powers and duties granted by the Colorado General Assembly pursuant to C.R.S. Section 43-1-106.

C. HPTE was created pursuant to C.R.S. Section 43-4-806 as a government-owned business within CDOT and a division of CDOT to pursue innovative means of completing important surface transportation projects that (i) will improve the safety, capacity, and accessibility of the surface transportation system, (ii) can feasibly be commenced in a reasonable amount of time, and (iii) will allow more efficient movement of people, goods, and information throughout Colorado.

D. HPTE is authorized pursuant to C.R.S. Section 43-4-806(2)(c)(I) to impose user fees on the traveling public for the privilege of using surface transportation infrastructure, and is further authorized pursuant to C.R.S. Section 43-4-806(2)(c)(III) to contract with any governmental or non-governmental source of funding for loans to be used in support of HPTE’s functions.

E. CDOT, in partnership with HPTE, is working to complete, implement and operate certain transportation infrastructure projects in the I‑25 North Corridor (collectively, the “**I‑25 North Corridor** **Project**”), which corridor comprises six segments (each, a “**Segment**”) of Interstate 25 north of the U.S. Highway 36 interchange (“**I‑25 North**”). Such projects include, among other components, completion of a tolled express lane in each direction (collectively, the “**Express Lanes**”) and completion of the general purpose lanes adjacent to the Express Lanes (collectively, the “**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**”).

F. CDOT and HPTE have completed the planning, designing, engineering, acquisition, installation, construction, repair, reconstruction of the components of the I-25 North Corridor Project consisting of 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.

G. 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 HPTE entered into that certain I‑25 North Express Lanes Project (Segment 2) Intra-Agency Agreement dated as of August 2, 2016 (the “**2016 Segment 2 Intra-Agency Agreement**”), pursuant to which, among other things, CDOT and HPTE defined their respective roles in cooperating to operate and maintain Express Lanes and General Purpose Lanes in Segment 2, and to allocate the costs related thereto.

H. Funding for the Segment 3 Express Lanes Project was provided by certain federal, State and local funds contributed for such purpose, as well as from the proceeds of a loan (the “**2016 Segment 3 Loan**”) made by Bank of America, N.A. (“**BANA**”) to HPTE pursuant to a Loan Agreement dated as of February 24, 2016 between BANA and HPTE (as amended pursuant to the First Amendment to Loan Agreement dated as of January 29, 2021, the “**2016 Segment 3 Loan Agreement**”) to finance a portion of the Segment 3 Express Lanes Project costs.

I. In connection with the execution and delivery of the 2016 Segment 3 Loan Agreement, CDOT and HPTE entered into that certain I‑25 North Express Lanes Project (Segment 3) Intra-Agency Agreement dated as of February 24, 2016 (the “**2016 Segment 3 Intra-Agency Agreement**”), pursuant to which, among other things (i) CDOT and HPTE defined their respective roles in cooperating to operate and maintain Express Lanes and 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 HPTE with respect to the HPTE’s payment obligations with respect to the operation and maintenance of the Segment 3 Express Lanes and with respect to the 2016 Segment 3 Loan.

J. On November 22, 2023, HPTE exercised its option to prepay the 2016 Segment 3 Loan and on such date advanced $24,070,194.08 to BANA to effect such prepayment from HPTE revenues (the “**HPTE** **Segment 3 Advance**”).

K. Subsequent to the execution and delivery of the 2016 Segment 2 Intra-Agency Agreement 2016 and the Segment 3 Intra-Agency Agreement, CDOT and HPTE undertook a review of the process for allocation of operation and maintenance expenses set forth in the 2016 Segment 2 Intra-Agency Agreement, the 2016 Segment 3 Intra-Agency Agreement and in similar intra-agency agreements relating to other corridors operated by CDOT and HPTE. Following such review, CDOT and HPTE agreed to modify such allocation process with respect to Segments 2 and 3 and each of such other corridors as set forth in an Interagency Agreement effective as of June 21, 2021 (referred to by the parties as the “Tolling Operations and Maintenance IAA”; referred to herein as the “**Tolling Operations and Maintenance IAA**”), which Tolling Operations and Maintenance Interagency Agreement superseded the 2016 Segment 2 Intra-Agency Agreement and the 2016 Segment 3 Intra-Agency Agreement with respect to the process of allocating such operation and maintenance expenses. The current term of the Tolling Operations and Maintenance IAA expires at the end of the State’s current fiscal year (“**Fiscal Year**”) on June 30, 2023, and the Parties currently expect and intend to enter into a new one-year term thereof or successor such agreement prior to such date for the Fiscal Year ending June 30, 2023, and thereafter for each subsequent Fiscal Year so long as this Agreement remains in effect (together with each such successor term or agreement to be executed in each such Fiscal Year the “**TOMs IAA**”)

L. CDOT has requested HPTE’s involvement in the planning, designing, engineering, acquisition, installation, construction, repair, reconstruction of the components of the I-25 North Corridor Project consisting of 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 implementing 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.

M. Consistent with HPTE’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, HPTE intends to enter into certain Financing Agreements (as hereinafter defined) pursuant to which HPTE will pledge all amounts received by HPTE from tolls, rates and other user fees imposed by HPTE pursuant to C.R.S. Section 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 (the “**Gross Revenues**”).

N. HPTE currently intends to finance a portion of the costs of the costs of the I‑25 North Express Lanes Project with the proceeds of a loan of funds from the U.S. Department of Transportation, acting by and through the Executive Director of the Build America Bureau (as so acting, the “**TIFIA Lender**”), pursuant to the Transportation Infrastructure Finance and Innovation Act (“**TIFIA**”) program (the “**TIFIA Loan**” or the “**Financing**”). The TIFIA Loan will fund the payment of certain costs and expenses of: (i) the planning, designing, engineering, acquisition, installation, construction, repair, reconstruction of the Segments 5-8 Express Lanes Project, and other lawful expenses and costs related thereto; (ii) the reimbursement to HPTE of a $[\_\_\_\_\_\_\_\_\_\_] portion of the costs of the components of the I-25 North Corridor Project consisting of Express Lanes located in Segment 3 which was advanced by HPTE as [a portion of] the HPTE Segment 3 Advance (the “**Segment 3 Reimbursement Project**”) ; (iii) the acquisition and installation of certain replacement tolling equipment for Segments 2 and 3 to replace certain of the existing tolling equipment currently in use for such Segments; and (iv) associated transaction costs. To effect the Financing, HPTE will enter into that certain Master Trust Indenture dated as of [•], 2023 (the “**Master Trust Indenture**”), as supplemented by a First Supplemental Trust Indenture dated as of [•], 2023 (the “**First Supplemental Indenture**”), each between HPTE and Zions Bancorporation, National Association, as trustee (the “**Trustee**”), and will also enter into that certain TIFIA Loan Agreement dated as of [•], 2023 (the “**TIFIA Loan Agreement**”) with the TIFIA Lender, which loan will be evidenced by a bond (the “**TIFIA Bond**”) issued by HPTE to the TIFIA Lender pursuant to the Master Trust Indenture, as supplemented by First Supplemental Trust Indenture. The Master Trust Indenture, the First Supplemental Trust Indenture, the TIFIA Loan Agreement and the TIFIA Bond are referred to hereinafter collectively as the “Financing Agreements.”

O. CDOT has entered into that certain CM/GC Construction Project Contract dated July 3, 2019 (the “**Segment 5/6 Construction Contract**”) with RLW/SEMA, a Joint Venture, L.P. (the “**Segment 5/6 General Contactor**”) for the construction of the components of the I-25 North Corridor 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 Corridor Project are not completed within the timeframe set forth in the Segment 5/6 Construction Contract.

P. CDOT has entered into that certain Design/Build Contract dated February 13, 2018 (the “**Segment 7/8 D-B Contract**” and, collectively with the Segment 5/6 Construction Contract, the “**Construction Contracts**”), with Kraemer/IHC Joint Venture (the “**Segment 7/8 Design Builder**” and, collectively with the Segment 5/6 General Contractor, the “**Construction Contractors**”) for the design and construction of the components of the I-25 North Corridor 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 Corridor Project are not completed within the timeframe set forth in the Segment 7/8 D-B Contract.

Q. HPTE has entered into that certain Managed Lanes Tolling Services Agreement dated May 17, 2015, as amended by the First Amendment to Managed Lanes Tolling Services Agreement dated December 14, 2017 (such agreement, as so amended, or any successor or replacement agreement, the “**TSA**”) with the E‑470 Public Highway Authority (“**E‑470**”), or any successor counterparty, pursuant to which E‑470 provides tolling related services for HPTE’s tolling facilities, including, but not limited to, toll collection and adjudication services, conditioned upon payment by HPTE to E‑470 of E‑470’s Expenses, including Transaction Costs, Reimbursable Costs, and/or costs per dollar of Gross Toll Revenue (each as defined in the TSA), all in accordance with the TSA.

R. HPTE entered into that certain Agreement for Next Generation Lane Toll System Implementation and Maintenance dated as of August 18, 2020 (such agreement, or any successor or replacement agreement, the “**ETC Contract**”) with Electronic Transaction Consultants LLC (“**ETC**”), or any successor counterparty, pursuant to which ETC provides certain equipment and software to permit dynamic pricing for tolls on the Express Lanes.

S. Pursuant to C.R.S. Section 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.

T. In consideration of the various terms, covenants, and conditions set forth herein, including the benefits that CDOT will receive as a result of the Financing and the I‑25 North Express Lanes Project, CDOT and HPTE have agreed to enter into this Agreement pursuant to which HPTE may request financial support from the Transportation Commission to assist HPTE in fulfilling its obligations with respect to HPTE O&M Obligations (as such term is hereinafter defined) in the event Net Revenues (as defined hereinafter), together with any available reserves, are insufficient, or projected to be insufficient, to satisfy HPTE O&M Obligations.

U. HPTE recognizes and acknowledges that any such financial support shall be in the form of a CDOT Backup Loan (as defined and further described in Section III below) from CDOT, acting through the Transportation Commission, to HPTE pursuant to C.R.S. Section 43-4-806(4). The Transportation Commission may, in its sole and absolute discretion, but is not obligated to, elect to make a CDOT Backup Loan.

V. Notwithstanding the foregoing, the parties desire that CDOT’s obligation to consider making any such CDOT Backup Loan to HPTE may be terminated by the parties as provided hereinafter, but only following the achievement of certain metrics as set forth in this Agreement and the agreement of CDOT and HPTE to any such termination.

W. CDOT and HPTE further desire to enter into this Agreement to define their respective roles and responsibilities with respect to funding the I‑25 North Express Lanes Project and cooperation on the operation and maintenance of Express Lanes and adjacent General Purpose Lanes, and to allocate the costs related thereto.

X. As a condition to consummating the Financing, CDOT and HPTE will also enter into that certain Direct Agreement with the TIFIA Lender and the Trustee, in which the Parties will provide certain additional assurances and agreements to both the TIFIA Lender and the Trustee (the “**Direct Agreement**”).

Y. The Parties intend that the 2016 Segment 2 Intra-Agency Agreement and the 2016 Segment 3 Intra-Agency Agreement shall be superseded and replaced in their entireties by this Agreement as of the effective date hereof and hereby deem both such agreements to be terminated and of no further effect (other than those provisions that, by the express terms of either such agreement, survive the termination of such agreement) by the signing of this Agreement.

Z. This Agreement is executed by HPTE under the authority of C.R.S. Sections 29-1-203 and 43-4-806(6)(h), and by CDOT under the authority of C.R.S. Sections 43-1-110 and 43-1-116.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS, AND THE VARIOUS TERMS, COVENANTS, AND CONDITIONS SET FORTH HEREIN, AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES TO THIS AGREEMENT HEREBY AGREE AS FOLLOWS:

TERMS AND CONDITIONS

1. CONSTRUCTION OF I-25 North express lanes PROJECT
	1. Segments 5-8 Express Lanes Project Budget. In consideration of the various benefits HPTE receives by implementing a user fee system on the Express Lanes, HPTE intends to contribute an amount not less than $[\_\_\_\_\_\_\_\_\_\_] from the proceeds of the Financing toward the design, acquisition and construction of the Segments 5-8 Express Lanes Project and the accomplishment of the Segment 3 Reimbursement Project. Notwithstanding the foregoing, and further notwithstanding any increase in the final amount that may be available from proceeds of the Financing to contribute toward the design, acquisition and construction of the Segments 5-8 Express Lanes Project, CDOT is primarily responsible for the capital costs of completing the Segments 5-8 Express Lanes Project. CDOT agrees and acknowledges that a $[\_\_\_\_\_\_\_\_\_\_] portion of HPTE’s contribution is expected to be sufficient to complete the Segments 5-8 Express Lanes Project, and that such amount shall be in full satisfaction of any obligations HPTE might have with respect to financing the Segments 5-8 Express Lanes Project. If costs to complete the Segments 5-8 Express Lanes Project exceed the funding available, CDOT, and not HPTE, shall be solely responsible for identifying and obtaining additional funding sources to cover any shortfalls. The manner in which both CDOT’s and HPTE’s respective contributions will be requisitioned for the payment of costs of the Segments 5-8 Express Lanes Project shall be set forth in the Financing Agreements.
	2. Delays in Segments 5-8 Express Lanes Project Completion
		1. CDOT hereby acknowledges that: (i) time is of the essence in the completion of the Segments 5-8 Express Lanes Project; (ii) HPTE intends to pledge Gross Revenues generated on the Segments 5, 6, 7 and 8 Express Lanes toward the repayment of the TIFIA Loan; and (iii) HPTE may incur costs in the event tolling does not commence within the timeframes contemplated in the respective Construction Contracts.
		2. CDOT shall be liable to HPTE for all lost Gross Revenues to be generated by the Segments 5, 6, 7 and 8 Express Lanes that arise as a result of construction delays, which the parties hereby agree shall be equal to the amount of such Gross Revenues projected by the “I-25 North Express Lanes Segments 2–8 Intermediate (Level 2) Traffic & Revenue Study” dated September 10, 2022 (or any successor study prepared by a third-party traffic and revenue consultant with respect to the I-25 North Express Lanes Project at the request of HPTE) during the pendency of such delay (the “**Projected Lost Gross Revenues**”), except to the extent any such delay in tolling commencement is caused by HPTE, E-470 or ETC, or any successor counterparty under the TSA or the ETC Contract, respectively, and is not attributable to the actions of CDOT or a Construction Contractor.
		3. HPTE shall, in the event of a delay described in clause b. of this Paragraph 2, present CDOT with a demand for the amount payable by CDOT pursuant to such clause b. CDOT shall include such amount in an amendment to its annual budget at a regular or special meeting of the Transportation Commission and, if such budget amendment is approved by the Transportation Commission, CDOT shall pay such amount to HPTE from legally available amounts on deposit in the State Highway Fund within 45 days of such approval.
		4. CDOT agrees and covenants that it shall: (i) undertake all actions necessary to enforce the provisions of the Construction Contracts; (ii) cause the Construction Contractors to seek recovery under any available delay in start-up or builders risk insurance policies; (iii) take all reasonable actions to recover amounts payable under the provisions of any surety or parent company guarantees provided to CDOT by the Construction Contractors; and (iv) in the event of delayed construction completion, enforce all liquidated damages provisions against the Construction Contractors and remit liquidated damages amounts received, notwithstanding any costs of liabilities of CDOT, first to HPTE in such amount as is necessary to reimburse HPTE for all Projected Lost Gross Revenues; provided that the amounts payable by CDOT as provided in this clause d. shall not exceed the amounts owed to CDOT in liquidated damages by the relevant Construction Contractor(s) for such delay.
		5. Notwithstanding the foregoing provisions of this Paragraph 2, but subject to the provisions of the TIFIA Loan Agreement and the Direct Agreement, HPTE may, but shall not be required to, waive its right to receive any or all of such liquidated damages amounts described this Paragraph 2; provided that any such waiver by HPTE shall not affect its right to later enforce the provisions of this Paragraph 2 with respect to any other such liquidated damages amounts received by CDOT.
	3. CDOT Responsibilities for I-25 North Corridor Project. Except as otherwise specifically identified as a responsibility of HPTE in Paragraph 4 of this Section I, CDOT shall be responsible for the design, acquisition and construction of the I-25 North Corridor Project, including, but not limited to, the following:
		1. CDOT will provide reasonable cooperation to HPTE with regard to the Financing and any continuing disclosure or other ongoing obligations related thereto, including without limitation any such obligations under the Direct Agreement.
		2. CDOT will provide design and construction management for the I-25 North Corridor Project and will oversee the Construction Contractors, who shall perform the construction in accordance with the approved design plans and technical specifications and/or administer the construction, all in accordance with the terms and conditions of the respective Construction Contracts. Such administration shall include, but not be limited to, inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing, investigating and, if appropriate, disputing contractor claims; construction supervision of the Construction Contractors and subcontractors under the respective Construction Contracts in relation to the construction schedules and other requirements of the respective Construction Contracts; enforcing the rights and remedies of CDOT under the Construction Contracts; and meeting requirements of applicable federal and state laws and regulations.
		3. CDOT will be responsible for acquiring all rights of way, if any, necessary for the I-25 North Corridor Project and for compliance with the Uniform Federal Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. § 4601, et seq.) requirements.
		4. If necessary, CDOT will be responsible for obtaining the proper clearance or approval from any public or private utility company that may become involved in the I-25 North Corridor Project.
		5. CDOT shall ensure that any and all work in connection with the I-25 North Corridor Project is undertaken in accordance with the requirements of the current federal and state environmental regulations, including the National Environmental Policy Act of 1969 (42 U.S.C. § 4321, et seq.), as applicable.
		6. CDOT will be responsible for ensuring compliance with Federal Disadvantaged Business Enterprise requirements for the I-25 North Corridor Project.
		7. In the event the I-25 North Corridor Project involves modifications of a railroad company’s facilities whereby the related work is to be accomplished by railroad company forces, CDOT shall make timely application to the Public Utilities Commission requesting its order providing for the installation of the proposed improvements and not proceed with that work without compliance. CDOT shall also establish contact with the railroad company involved for the purposes of complying with applicable provisions of 23 CFR 646, subpart B, concerning federal aid projects involving railroad facilities.
		8. CDOT will maintain all documents related to the construction of the I-25 North Corridor Project and make them available for inspection and review by HPTE and all federal agencies with an interest in the I-25 North Corridor Project for a period of not less than three years after the completion of the work.
	4. HPTE Responsibilities for Segments 5-8 Express Lanes Project. HPTE shall be specifically responsible for the following with respect to the construction of the Segments 5-8 Express Lanes Project:
		1. HPTE will be responsible for the contracting necessary to implement a user fee system and the enforcement of such contracts, including paying for the costs of all tolling equipment, software and related installation.
		2. HPTE will be responsible for complying with all reporting requirements under the Financing Agreements.
	5. Segment 2 Express Lanes Project and the Segment 3 Express Lanes Project. The parties acknowledge and agree that the planning, designing, engineering, acquisition, installation, construction, repair and reconstruction of the Segment 2 Express Lanes Project and the Segment 3 Express Lanes Project have been completed and no further obligations remain between the parties with respect to such planning, designing, engineering, acquisition, installation, construction, repair or reconstruction.
2. OPERATIONS AND MAINTENANCE OF I-25 NORTH CORRIDOR PROJECT
	1. Overview and Costs. The I‑25 North Express Lanes Project has been and is being constructed adjacent to the I‑25 General Purpose Lanes, and the Parties recognize the need to cooperate in carrying out the related operations and maintenance for the Express Lanes and adjacent General Purpose Lanes. To that end, the Parties agree to cooperate in ensuring that the operations and maintenance are performed and agree to the division of costs as set forth in this Agreement. As a general matter, HPTE shall be responsible for operating and maintaining the Express Lanes (including contracting for tolling services and tolling enforcement), and CDOT shall be responsible for operating and maintaining the General Purpose Lanes. It is the intent of the Parties that, except as specifically provided otherwise herein, CDOT shall perform such operations and maintenance of both the Express Lanes and the General Purpose Lanes, which for certainty shall include all work constituting both “**Project O&M Expenses**” and “**Renewal and Replacement Costs**” (as such terms are defined in the TIFIA Loan Agreement), and HPTE shall pay CDOT for the overall operations and maintenance expenses that are attributable to the Express Lanes, as more specifically below in this Section II and in the TOMs IAA. CDOT shall operate and maintain the Express Lanes and the General Purpose Lanes in a reasonable and prudent manner and shall maintain the Express Lanes and the General Purpose Lanes in good repair, working order and condition and in accordance with the requirements of all applicable laws, applicable contracts, and the performance standards that apply to CDOT’s operation and maintenance of the Express Lanes and the General Purpose Lanes. CDOT shall provide the same standard and level of service to the operation and maintenance of the Express Lanes and the performance of Renewal and Replacement (as defined in the TIFIA Loan Agreement) as it does to the operation and maintenance and renewal and replacement of the General Purpose Lanes and shall provide the same such standard and level of service on I-25 North as compared to other highways maintained by CDOT in the Denver metropolitan region.
	2. HPTE License. In consideration of the various benefits CDOT will receive as a result of the I‑25 North Express Lanes Project, CDOT hereby provides to HPTE a perpetual, non-exclusive, non-terminable license over, under, upon and in the Express Lanes (the “License”) for HPTE to operate and maintain the Express Lanes. CDOT acknowledges and agrees that HPTE may sublicense the License as needed to fulfill its obligations hereunder. Subject to the License, CDOT reserves the right of use, occupancy and ownership over, under, upon and in the lands included in the site of the I-25 North Corridor Project; provided that CDOT agrees that it shall not transfer or purport to assign, convey, transfer, dispose of, alienate or create any lien or encumbrance in any of the land included in the site of the I-25 North Corridor Project and shall defend CDOT’s title or real property interest to such land, subject to rights held by third parties as of the date hereof, against any person claiming an interest adverse to CDOT. CDOT shall exercise its rights under this Paragraph 2 consistent with a mutually agreed upon and approved concept of operations for the Express Lanes and the General Purpose Lanes and in a manner that does not interfere in any material respect with the collection of tolls by HPTE on Express Lanes.
	3. Payment of Project O&M Expenses and Renewal and Replacement Costs. Except as otherwise provided herein, HPTE agrees to pay to CDOT as provided in the TOMs IAA those Project O&M Expenses and Renewal and Replacement Costs that are payable to CDOT; provided that anything to the contrary in the TOMs IAA notwithstanding, CDOT acknowledges and agrees that: (i) all Project O&M Expenses shall be paid solely from amounts on deposit in the Project O&M Expenses Account (as defined in the Master Trust Indenture) in accordance with the terms of the Master Trust Indenture, and no failure to pay or shortfall in payment pursuant to the TOMs IAA as a result of the unavailability of funds in the Project O&M Expenses Account shall be deemed to be a breach of or default under the TOMs IAA; (ii) all Renewal and Replacement Costs shall be paid solely from amounts on deposit in the Renewal and Replacement Account (as defined in the Master Trust Indenture) in accordance with the terms of the Master Trust Indenture and no failure to pay or shortfall in payment pursuant to the TOMs IAA as a result of the unavailability of funds in the Renewal and Replacement Account shall be deemed to be a breach of or default under the TOMs IAA; and (iii) HPTE shall pay Project O&M Expenses in two semi-annual allotments.
	4. CDOT O&M Expense and Renewal and Replacement Cost Payment Obligations. CDOT shall be responsible for:
		1. with respect to the General Purpose Lanes in any Segment, all Project O&M Expenses and Renewal and Replacement Costs; and
		2. with respect to the Express Lanes in any Segment, (i) all Project O&M Expenses and Renewal and Replacement Costs which are existing and regularly funded by CDOT prior to the completion of the I‑25 North Express Lanes Project within such Segment and the opening of the Express Lanes in such Segment to tolled traffic, and (ii) any Project O&M Expenses and Renewal and Replacement Costs for which the addition of the I‑25 North Express Lanes Project results in a *de minimis* impact on overall operations and maintenance expenses within the I-25 North Corridor Project Area (such costs described in this clause (ii) to include, without limitation, CDOT’s costs incurred with respect to (A) repair and replacement of guardrail, (B) repair and replacement of lighting fixtures, (C) contracts with the State Patrol for safety enforcement within the corridor (but exclusive of additional enforcement contracted by HPTE for toll evasion enforcement), and (D) pavement maintenance on the General Purpose Lanes).
	5. HPTE O&M Expense and Renewal and Replacement Cost Payment Obligations. HPTE shall be solely responsible for costs incurred with respect to the I‑25 North Express Lanes Project for: (a) toll processing and collection; (b) maintenance of toll equipment; (c) contracts for toll evasion enforcement with the State Patrol or other law enforcement entity; (d) pavement maintenance on the Express Lanes; (e) HPTE overhead and administrative costs related to the operations and maintenance of the Express Lanes; and (f) all other Project O&M Expenses and Renewal and Replacement Costs that are payable by HPTE to CDOT pursuant to the TOMs IAA. All such costs, collectively, shall constitute the “**HPTE O&M Obligations**.”
	6. Submission of Scope of Work; True-Up. Prior to the commencement of any Fiscal Year, HPTE and CDOT shall agree upon a “**Statement of Work**” (as such term is used in the Tolling Operations and Maintenance IAA) for such Fiscal Year, which Statement of Work shall set forth all HPTE O&M Obligations that are payable to CDOT under the TOMs IAA for such Fiscal Year. Such Statement of Work shall separately account for costs constituting Project O&M Expenses and those constituting Renewal and Replacement Costs (if and only to the extent such work is performed by CDOT). HPTE shall (to the extent consistent with, and subject to, the Financing Agreements) cause the amount of all such HPTE O&M Obligations to be remitted to CDOT. CDOT and HPTE shall comply with the “true-up” requirements of the TOMs IAA at the times in each Fiscal Year set forth therein and otherwise in accordance therewith.
	7. O&M Shortfall; Performance. To the extent the Gross Revenues, less amounts first required to be paid in accordance with the security and priority of payments set forth in the Financing Agreements, including, but not limited to, the payment of: (a) debt service on any Senior Bonds; (b) debt service on the TIFIA Loan; (c) debt service on any future junior lien toll revenue bonds; (d) required deposits to the debt service reserve funds relating to the Senior Bonds, the TIFIA Loan and any junior lien toll revenue bonds; and (e) fees and expenses related to the Financing Agreements (as so reduced, the “**Net Revenues**”) payable by HPTE for any Fiscal Year, shall be inadequate to cover the HPTE O&M Obligations set forth in the Statement of Work for such Fiscal Year, including, for certainty, amounts payable to CDOT, E-470 and ETC, and to any successor counterparty under the TSA or the ETC Contract, respectively, for both Project O&M Expenses and Renewal and Replacement Costs, HPTE may request a CDOT Backup Loan to fund such shortfall. Notwithstanding such shortfall in the availability of Net Revenues to cover the HPTE O&M Obligations or a failure by HPTE to make any principal or interest payment due under any CDOT Backup Loan Agreement, CDOT agrees that it shall continue to perform operations and maintenance of both the Express Lanes and the General Purpose Lanes in accordance with the standards set forth in Paragraphs 1 and 4 above.
3. CDOT BACKUP LOAN OBLIGATIONS
	1. CDOT Backup Loan Set Aside. Subject to the provisions of Paragraph 6 of this Section III, for any Fiscal Year: (a) HPTE shall, on or before September 15 of the immediately preceding Fiscal Year, estimate whether and in what maximum amount it may be necessary for HPTE to request that CDOT provide financial support to fulfill an HPTE O&M Obligation due to an insufficiency of Net Revenues to pay all or any portion of the HPTE O&M Obligations, it being understood that any such financial support shall be in the form of a loan from CDOT to HPTE pursuant to C.R.S. Section 43-4-806(4) (a “CDOT Backup Loan”); (b) HPTE shall notify the CDOT Executive Director in writing of such estimated maximum amount (the “**CDOT Backup Loan Set Aside**”); and (c) CDOT shall include the amount of the CDOT Backup Loan Set Aside in its budget request to the Transportation Commission for such Fiscal Year for an allocation of moneys from the state highway fund.
	2. Increase in CDOT Backup Loan Set Aside. HPTE may also, at any time during any Fiscal Year, notify the Executive Director in writing that HPTE desires that CDOT make a CDOT Backup Loan for projected HPTE O&M Obligations in an amount that exceeds the CDOT Backup Loan Set Aside, if any, that the Transportation Commission has previously allocated for such Fiscal Year. In such event, the Executive Director shall submit a supplemental budget request to the Transportation Commission at its next regularly scheduled meeting for an allocation or supplemental allocation of moneys in the state highway fund for the purpose of making such CDOT Backup Loans to HPTE in such Fiscal Year in an amount equal to the amount set forth in the notice delivered by HPTE to the Executive Director pursuant to this Section III.
	3. Use of Backup Loans. Moneys allocated by the Transportation Commission to make CDOT Backup Loans shall be transferred to HPTE and shall be used by HPTE to satisfy the HPTE O&M Obligations, as they become due.
	4. Limitations. Notwithstanding any other provision hereof:
		1. CDOT and HPTE agree and acknowledge that the Transportation Commission has no obligation to allocate funds to make CDOT Backup Loans in any Fiscal Year and the decision whether or not to allocate funds, and the amount, if any, of funds allocated, to make CDOT Backup Loans in any Fiscal Year shall be made at the sole and absolute discretion of the Transportation Commission;
		2. CDOT and HPTE further agree and acknowledge that notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, any CDOT Backup Loan made hereunder shall, in accordance with C.R.S. Section 43-4-806(4) constitute a loan and shall not be considered a grant for purposes of Section 20(2)(d) of Article X of the State Constitution or as defined in C.R.S. Section 24-77-102;
		3. Prior to allocating any funds to make CDOT Backup Loans in any Fiscal Year, CDOT shall determine that such authority exists in the law and that a sufficient unencumbered balance remains available in Fund 400 for CDOT Backup Loans in an amount equal to the amount of funds so allocated;
		4. If an allocation by the Transportation Commission shall have been made, CDOT Backup Loans shall be made up to the amounts requested by HPTE as set forth above;
		5. CDOT acknowledges and agrees that HPTE shall not make any payments to CDOT for the repayment of any CDOT Backup Loans pursuant to any CDOT Backup Loan Agreement unless, as of any proposed date for such payment, HPTE shall have first paid all amounts that have become due and payable on such date or on any date prior to such proposed payment under the Financing Agreements; and
		6. CDOT further acknowledges and agrees that payment of any CDOT Backup Loans shall be payable from Net Revenues after payment of HPTE’s payment obligations in accordance with the terms and conditions of the Financing Agreements.
	5. CDOT Backup Loan Agreements. Any CDOT Backup Loans made to HPTE in support of HPTE O&M Obligations shall be authorized by and subject to a separate Transportation Commission Resolution and shall be evidenced by one or more loan agreements in substantially the form attached hereto as Exhibit A (a “**CDOT Backup Loan Agreement**”), with terms consistent with the terms contained herein. The Parties agree to cooperate in good faith to determine a reasonable repayment schedule for each CDOT Backup Loan that is consistent with the terms and conditions of the Financing Agreements.
	6. Termination of Backup Loan Obligations. Notwithstanding the forgoing provisions of this Section III:
		1. During any Fiscal Year, CDOT shall have the right to request that the requirements of this Section III be terminated at the end of such Fiscal Year; provided that CDOT shall submit such request to HPTE no later than 120 days prior to the end of such Fiscal Year.
		2. Following the submission by CDOT of any request provided for in clause a. of this Paragraph 6, HPTE and CDOT shall meet within 45 days of HPTE’s receipt of such request to jointly determine, subject to clause c. of this Paragraph 6, whether such request shall be granted by HPTE.
		3. CDOT hereby acknowledges and agrees that HPTE shall not make a determination pursuant to clause b. of this Paragraph 6 that such request shall be granted without the prior written consent of the TIFIA Lender.
		4. If HPTE shall grant CDOT’s request made pursuant to clause a., subject to clause c., of this Paragraph 6, the provisions of this Section III (other than this Paragraph 6) shall, upon the end of the then-current Fiscal Year, be of no further effect, and CDOT shall thereupon have no further obligation to consider making any CDOT Backup Loan or to include any CDOT Backup Loan Set Aside in any future annual budget request to the Transportation Commission.
4. DEFAULTS, TERMINATION AND REMEDIES
	1. Default; Cure. The failure of either Party to fulfill its obligations to perform in accordance with the terms of this Agreement shall constitute a breach of this Agreement. Subject to the requirements of Section V.1. hereof, the non-breaching Party shall thereupon have the right to terminate this Agreement for cause by giving written notice to the other Party of its intent to terminate, and at least thirty (30) days’ opportunity to cure the default or show cause why termination is not otherwise appropriate; provided, however that such breaching Party shall not be in default under this Agreement if it has promptly commenced a cure of such nonperformance and is diligently pursuing the same. Any finding of nonperformance and failure to cure under this Paragraph 1 shall be referred for dispute resolution as provided for in Paragraph 3 of this Section IV prior to any termination becoming effective.
	2. Default for Non-Payment. If HPTE fails to repay any CDOT Backup Loan in accordance with the applicable CDOT Backup Loan Agreement, and upon notice to HPTE and failure by HPTE to cure within thirty (30) days thereof, CDOT may, at its option: (a) suspend or terminate its commitment to consider making future CDOT Backup Loans hereunder; (b) require HPTE to engage a traffic consultant to review and analyze the operations of the I‑25 North Express Lanes Project and recommend actions regarding revising toll rates, changing the methods of operations, or any other actions to increase Gross Revenues, and in CDOT’s discretion, require HPTE to either implement such recommended actions or undertake such alternative course of action that will ensure HPTE’s ability to meet its payment obligations under the applicable CDOT Backup Loan Agreement; or (c) take any other appropriate action available at law or in equity; provided, however, that no CDOT Backup Loan, or interest thereon, shall be repaid except to the extent Net Revenues are available for such purpose under the terms and conditions of the Financing Agreements and the CDOT Backup Loan is not subject to acceleration. Notwithstanding the exercise of any of the remedies above, or the termination of this Agreement for any reason, HPTE shall not be relieved of liability to CDOT for any damages sustained by CDOT by virtue of any breach of this Agreement by HPTE (it being mutually understood that any payment by HPTE in respect of such damages shall be subject to the same restrictions in the Financing Agreements as apply to the repayment of any CDOT Backup Loan), nor shall CDOT be permitted to cease performance of operations and maintenance of the I‑25 North Express Lanes Project. This Section IV.2 shall survive any termination of this Agreement.
	3. Dispute Resolution. Any dispute concerning the performance of this Agreement shall be resolved at the lowest staff level possible, and shall first be referred to the CDOT Chief Engineer and the HPTE Director. Failing resolution by such officers, the escalation process shall be: (i) CDOT Executive Director and HPTE Director; and (ii) Transportation Commission and HPTE Board of Directors.
5. GENERAL PROVISIONS
	1. Effective Date; Term. This Agreement shall be effective as of the date of the date first written above and shall continue until the earlier of (a) the expiration of the useful life of the I‑25 North Express Lanes Project; (b) the date HPTE no longer operates the I‑25 North Express Lanes Project; and (c) the Parties mutually agree to terminate the Agreement. Notwithstanding any other provision of this Agreement to the contrary, the Parties shall not terminate this Agreement while any amounts remain outstanding on the TIFIA Loan.
	2. Order of Precedence. In the event of conflicts or inconsistencies between this Agreement and the Direct Agreement, the provisions of the Direct Agreement shall govern.
	3. Modification. Except as specifically provided otherwise herein, no modification of this Agreement shall be effective unless agreed to in writing by both parties in an amendment to this Agreement that is properly executed and approved in accordance with applicable law.
	4. Severability. The terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.
	5. Notices. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of CDOT and HPTE. All communication, notices, and correspondence with respect to the performance of this Agreement shall be addressed to the individuals identified below. Either Party from time to time, designate in writing new or substitute representatives.

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| If to CDOT: Stephen Harelson, Chief EngineerCDOT2829 W. Howard PlaceDenver, CO 80204Email: Stephen.Harelson@state.co.us | If to HPTE:Nicholas Farber, DirectorHPTE2829 W. Howard PlaceDenver, CO 80204Email: Nicholas.Farber@state.co.us |

* 1. Maintenance of Records. Each Party shall maintain all books, documents, papers, accounting records and other evidence pertaining to the I-25 North Corridor Project including, but not limited to, any costs incurred during the construction, operation and maintenance of the I-25 North Corridor Project, and make such materials available to the other Party upon reasonable request.
	2. Successors and Assigns. Except as otherwise provided herein, this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.
	3. No Third Party Beneficiaries. No third party beneficiary rights or benefits of any kind are expressly or impliedly provided herein. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person.
	4. Governmental Immunity. Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, C.R.S. Sections 24-10-101, *et seq*., or the Federal Tort Claims Act, 28 U.S.C. 2671, *et seq*, as applicable, as now or hereafter amended.
	5. Adherence to Laws. At all times during the performance of this Agreement, the Parties shall strictly adhere to all applicable federal and state laws, rules, and regulations that have been or may hereafter be established, including, but not limited to state and federal laws respecting discrimination and unfair employment practices.
	6. Availability of Funds. All payments pursuant to this agreement are subject to and contingent upon the continuing availability of funds appropriated for the purposes hereof. If any of said funds become unavailable, as determined by CDOT, either Party may immediately terminate or seek to amend this agreement, subject to the provisions set forth in Section V.1. hereof.
	7. Choice of Law. The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision of this Agreement, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Agreement to the extent that the Agreement is capable of execution.

*Remainder of page left intentionally blank. Signature page follows.*

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first above written.

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| STATE OF COLORADOJARED S. POLIS, GovernorBy: SHOSHANA M. LEWExecutive DirectorDEPARTMENT OF TRANSPORTATION | COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISEBy: NICHOLAS J. FARBERHPTE Director |
| APPROVED:PHILIP J. WEISERAttorney GeneralBy: [TITLE] |  |

**ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER**

**C.R.S. Section 24-30-202 requires that the State Controller approve all agreements. This Agreement is not valid until the State Controller, or such assistant as he may delegate, has signed it.**

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| **STATE CONTROLLERRobert Jaros, CPA, MBA, JD**By: Date:  |

**EXHIBIT A

Form of CDOT Backup Loan Agreement**

THIS LOAN AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_ by and between the State of Colorado for the use and benefit of THE COLORADO DEPARTMENT OF TRANSPORTATION (referred to herein as “**CDOT**” or the “**Lender**”) and the COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE (referred to herein as “**HPTE**” or the “**Borrower**”) entered into pursuant to the I-25 North Express Lanes Project Intra-Agency Agreement, dated as of [\_\_\_\_\_\_\_\_\_ \_\_], 2023, between Lender and Borrower (the “**Intra-Agency Agreement**”).

RECITALS

A. The Lender is an agency of the State of Colorado authorized pursuant to Section 43-1-105, Colorado Revised Statutes, as amended (“**C.R.S.**”) to plan, develop, construct, coordinate, and promote an integrated transportation system in cooperation with federal, regional, local and other state agencies.

B. The Borrower was authorized and created pursuant to C.R.S. Sections 43-4-806(1) and (2) as a government-owned business, a TABOR-exempt enterprise, and a division of CDOT, and is charged with aggressively pursuing innovative means of financing surface transportation projects.

C. The Transportation Commission of Colorado is the budgetary and policy-making body of the Lender and may, pursuant to C.R.S. Section 43-4-806(4), authorize the transfer of money from the state highway fund to the Borrower to defray expenses of the Borrower and, notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, such a transfer by the Lender to the Borrower shall, in accordance with C.R.S. Section 43-4-806(4), constitute a loan and shall not be considered a grant for purposes of Section 20(2)(d) of Article X of the State Constitution.

D. In furtherance of HPTE’s efforts to finance the I‑25 North Express Lanes Project (as defined in the Intra-Agency Agreement) and for the benefit of CDOT, HPTE has entered into that certain Master Trust Indenture dated as of [•], 2023 (the “**Master Trust Indenture**”), as supplemented by a First Supplemental Trust Indenture dated as of [•], 2023 (the “**First Supplemental Indenture**”), each between HPTE and Zions Bancorporation, National Association, as trustee (the “**Trustee**”), as well as that certain TIFIA Loan Agreement dated as of [•], 2023 (the “**TIFIA Loan Agreement**”) between HPTE and the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”), which loan will be evidenced by a bond (the “**TIFIA Bond**”) issued by HPTE to the TIFIA Lender pursuant to the Master Trust Indenture and the First Supplemental Indenture to finance a portion of the I‑25 North Express Lanes Project. The Master Trust Indenture, the First Supplemental Indenture, the TIFIA Loan Agreement and the TIFIA Bond are referred to herein collectively as the “Financing Agreements”.

E. The Borrower has requested a loan from the Lender in the amount of $[Requested Amount] to satisfy the HPTE O&M Obligations (as defined in the Intra-Agency Agreement) because [description].

F. The Transportation Commission has approved this loan request and authorized the Lender to make a loan to the Borrower in the amount of $[Principal Amount], and has allocated funds, in its sole discretion, for such purpose.

G. Authority exists in the law and a sufficient unencumbered balance thereof remains available in [Fund 400] to lend to the Borrower.

H. This Agreement is executed under the authority of C.R.S. Section 43-4-806(4) and by resolution of the HPTE Board of Directors.

**NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS, THE PARTIES HEREBY AGREE AS FOLLOWS:**

ARTICLE I
LOAN AND CLOSING

**Section 1.01. Loan and Promissory Note**. Pursuant to the terms of the Intra-Agency Agreement and this Agreement, the Lender hereby agrees to loan $[Principal Amount] (the “Principal Amount”) to the Borrower and the Borrower agrees to pay the Lender the Principal Amount of the loan, plus interest on the terms described herein (collectively, the “Loan”). The Borrower’s obligation to pay the Lender the principal of and interest on the Loan is evidenced by a promissory note (the “Note”) in the form attached hereto as Attachment 1.

**Section 1.02. Closing**. The Lender shall deliver the principal amount of the Loan to the Borrower, by means of a transfer immediately available funds to Borrower on a date mutually agreed to by the Borrower and the Lender (such date is referred to as the “Closing Date”).

ARTICLE II
LOAN OBLIGATIONS

**Section 2.01. Principal and Interest Payments**. The Borrower shall pay to the Lender the principal amount of the Loan plus accrued interest in accordance with Section 2.07 hereof, or the Borrower may make prepayments in accordance with Section 2.05 hereof only to the extent permitted under the Financing Agreements. A failure by Borrower to make any payment to the Lender in respect of the Loan or this Agreement due to the unavailability of funds for such payment under and pursuant to the Indenture (including by reason of any restrictions or other provisions set forth in the TIFIA Loan Agreement) shall not be treated as a breach, default or event of default hereunder or under the Note or otherwise with respect to the Loan.

**Section 2.02. Lender Invoice and Reports**. The Lender shall forward an invoice that includes the amount of principal and interest that shall be due to the Borrower at least thirty days before the next scheduled payment is due.

**Section 2.03. Interest**. Interest shall accrue on the principal amount of the Loan from the Closing Date through the day preceding the Maturity Date or Prepayment Date at the Interest Rate (defined in Section 2.04 hereof), computed on the basis of a 360-day year of twelve 30-day months.

**Section 2.04. Interest Rate**. “Interest Rate” means a rate of interest equal to the rate of interest established and adopted by resolution by the Colorado Transportation Commission for loans made by the Colorado state infrastructure bank pursuant to 2 CCR 605-1, Rule V (2), and in effect as of the date hereof

**Section 2.05. Optional Prepayment**. Subject to the requirements of the Financing Agreements, the Borrower, at its option, may prepay the Loan in whole by paying the Lender the outstanding principal amount or a portion of the Loan (such date of payment, a “Prepayment Date”), plus accrued interest to the Prepayment Date as selected by the Borrower.

**Section 2.06. Resource Pledge for Repayment**. The Borrower’s obligation to pay the principal and interest on the Loan and any other amounts payable by the Borrower hereunder (the “Loan Obligations”) are extraordinary limited obligations of the Borrower payable solely from net revenues generated by the I‑25 North Express Lanes Project in accordance with the terms of the Intra-Agency Agreement and the Financing Agreements.

**Section 2.07. Repayment Schedule**. Subject to the requirements of the Financing Agreements, the Borrower shall make equal installments of $[Payment Amount] to the Lender each [Payment Period] beginning on [First Payment Due Date]; and continuing each [Payment Period] thereafter for [Number of Payments] consecutive [Payment Periods] (each such date of payment, a “Repayment Date,” and the final Repayment Date, the “Maturity Date.”).

**Section 2.08. Remittance**. All loan payments shall be made payable to the Colorado Department of Transportation, and sent to the Lender’s accounting branch at 2829 W. Howard Place, Denver, CO 80204, or to such other place or person as may be designated by the Lender in writing.

ARTICLE III
DEFAULT AND TERMINATION

**Section 3.01. Event of Default**. Borrower default (“Event of Default”) is governed by Section IV of the Intra-Agency Agreement.

**Section 3.02. Remedies**. Lender’s remedies against a Borrower Event of Default are governed by Section IV of the Intra-Agency Agreement.

**Section 3.03. Remedies Neither Exclusive Nor Waived**. No remedy under Section 3.02 hereof is intended to be exclusive, and each such remedy shall be cumulative and in addition to the other remedies. No delay or failure to exercise any remedy shall be construed to be a waiver of an Event of Default.

**Section 3.04. Waivers.** The Lender may waive any Event of Default and its consequences. No waiver of any Event of Default shall extend to or affect any subsequent or any other then existing Event of Default.

ARTICLE IV
TERMINATION

**Section 4.01.** Subject to the terms of the Intra-Agency Agreement, this Agreement may be terminated as follows:

(a) Termination for Cause. If, through any cause, the Borrower shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if the Borrower shall violate any of the covenants, agreements, or stipulations of this Agreement, the Lender shall thereupon have the right to terminate this Agreement for cause by giving written notice to the Borrower of its intent to terminate and at least thirty (30) days’ opportunity to cure the default or show cause why termination is otherwise not appropriate. Notwithstanding above, the Borrower shall not be relieved of liability to the Lender for any damages sustained by the Lender by virtue of any breach of this Agreement by the Borrower.

(b) Termination Due to Loss of Funding. The parties hereto expressly recognize that the Loan is made to the Borrower with State funds which are available to the Lender for the purposes of making a loan for the purposes described herein, and therefore, the Borrower expressly understands and agrees that all its rights, demands and claims to a loan arising under this Agreement are contingent upon availability of such funds to the Lender. In the event that such funds or any part thereof are not available to the Lender, the Lender may immediately terminate or amend this Agreement.

*[Signature page follows.]*

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| STATE OF COLORADOJARED S. POLIS, GovernorBy: SHOSHANA M. LEWExecutive DirectorDEPARTMENT OF TRANSPORTATION | COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISEBy: NICHOLAS J. FARBERHPTE Director |
| APPROVED:PHILIP J. WEISERAttorney GeneralBy: [TITLE] |  |

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

**C.R.S. Section 24-30-202 requires that the State Controller to approve all agreements. This Agreement is not valid until the State Controller, or such assistant as he may delegate, has signed it.**

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| **STATE CONTROLLERRobert Jaros, CPA, MBA, JD****By:** **Date:**  |

**Attachment 1
NOTE**

$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For VALUE RECEIVED, THE COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE (the “Maker”) subject to and in accordance with a Loan Agreement dated the [Date], promises to pay to the Colorado Department of Transportation (the “Holder”) the principal sum of $[Principal Amount], with interest from date at the rate [Interest Rate]% per annum on the balance from time to time remaining unpaid. The said principal and interest shall be payable in lawful money of the United States of America at 2829 W. Howard Place, Denver, CO 80204 or at such place as may hereafter be designated by written notice from the Holder to the Maker hereof, on the date and in the manner following:

The Maker shall make equal installments of $[Payment Amount] to the Lender each [Payment Period] beginning on [First Payment Due Date]; and continuing each [Payment Period] thereafter for [Number of Payments] consecutive [Payment Periods]. *[Or replace by reference to the agreed repayment schedule]*.

COLORADO HIGH PERFORMANCE
TRANSPORTATION ENTERPRISE

By:

Its:

Attest: