DIRECT AGREEMENT

This **DIRECT AGREEMENT** (this “Direct Agreement”) dated as of [●], 2023 (the “**Effective Date**”), is made by and among the (i) COLORADO DEPARTMENT OF TRANSPORTATION, an agency of the State of Colorado (“CDOT”); (ii) COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE, a government-owned business within CDOT and a division of CDOT (“HPTE” or “Borrower” or “**Issuer**”); (iii) UNITED STATES DEPARTMENT OF TRANSPORTATION, an agency of the United States, acting by and through the Executive Director of the Build America Bureau (“USDOT” or the “TIFIA Lender”); and (iv) ZIONS BANCORPORATION, NATIONAL ASSOCIATION, as trustee under the Master Trust Indenture as defined below (together with its successors, designees and assigns in such capacity, the “**Trustee**”).

PRELIMINARY STATEMENTS

1. CDOT and HPTE have entered into (a) that certain I-25 North Express Lanes Project Intra-Agency Agreement, dated as of [•], 2023, as it may be modified or amended from time to time in accordance with its terms (the “I-25N IAA”), relating to the Project (as defined in the TIFIA Loan Agreement (as defined below)) and the I-25N Express Lanes (as defined in the TIFIA Loan Agreement), and (b) that certain Interagency Agreement, effective as of June 30, 2022], as it may be modified or amended from time to time in accordance with its terms (together with any replacement agreement thereof, the “**TOMs IAA**”), relating to the performance of, and payment for, operation and maintenance services performed on the I-25N Express Lanes and HPTE’s other tolled express lanes.
2. CDOT (i) has entered into that certain (a) the CM/GC Construction Project Contract, dated as of July 3, 2019, by and between CDOT and RLW/SEMA, a Joint Venture, L.P (the “**Segments 5 & 6 Construction Contractor**”), (b) the CM/GC Construction Project Contract, dated as of September 18, 2019, by and between CDOT and the Segments 5 & 6 Construction Contractor, (c) the CM/GC Construction Project Contract, dated as of July 23, 2020, by and between CDOT and the Segments 5 & 6 Construction Contractor, (d) the CM/GC Construction Project Contract, dated as of November 3, 2020, by and between CDOT and the Segments 5 & 6 Construction Contractor, (e) the CM/GC Construction Project Contract, dated as of January 28, 2021, by and between CDOT and the Segments 5 & 6 Construction Contractor, and (f) the [CM/GC Construction Preconstruction Contract], dated as of [•], 20[•], by and between CDOT and the Segments 5 & 6 Construction Contractor; and (ii) will enter into the CM/GC Construction Project Contract for Segment 5, which is expected at the end of 2023, by and between CDOT and the Segments 5 & 6 Construction Contractor (collectively, the “**Segments 5 & 6 Construction Agreements**”).
3. CDOT has entered into that certain Design/Build Contract (the “**Segments 7 & 8 Construction Agreement**”, and together with the Segment 6 Construction Agreements, the “**Construction Agreements**”), dated as of February 13, 2018, by and between CDOT and Kraemer/IHC Joint Venture (the “**Segments 7 & 8 Construction Contractor**”, and together with the Segments 5 & 6 Construction Contractor and, with respect to any other CDOT Agreement (as defined below) that may be entered into, the contractor or contractors party thereto, the “**Construction Contractors**”).

The foregoing agreements in paragraphs (1) through (3) above, together with any CDOT O&M Loan Agreement entered into from time to time pursuant to the I-25N IAA and any Principal Project Contracts (as defined in the TIFIA Loan Agreement) entered into by CDOT and one or more Construction Contractors in connection with the design, procurement, engineering and construction of any portion of the Project, are herein collectively referred to as the “**CDOT Agreements**.”

1. HPTE has entered into a Master Trust Indenture, dated as of [•], 2023 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Master Trust Indenture”) with the Trustee, pursuant to which HPTE intends to issue or incur debt obligations (the “**Bonds**”) in order to finance certain costs in connection with the construction and development of the Project.
2. In reliance on the support for the Project provided by CDOT pursuant to the CDOT Agreements and upon the assignment by HPTE of the Trust Estate to the Trustee pursuant to (and as defined in) the Master Trust Indenture, the TIFIA Lender desires to make available to HPTE a loan pursuant to that certain TIFIA Loan Agreement, dated as of the date hereof, by and between the TIFIA Lender and HPTE (as amended, amended and restated, supplemented or otherwise modified from time to time, the “TIFIA Loan Agreement”) for the purpose of financing certain costs in connection with the construction and development of the Project.
3. It is a condition to the consummation of the transactions contemplated by the TIFIA Loan Agreement and the Master Trust Indenture that CDOT and HPTE enter into this Direct Agreement with the TIFIA Lender and the Trustee to provide certain assurances and agreements, as further described below, in connection with the CDOT Agreements and the transactions contemplated thereby.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CDOT, HPTE, USDOT and the Trustee (each, a “Party” and collectively the “**Parties**”) hereby agree as follows:

1. Defined Terms. All capitalized terms not defined herein shall have the meanings ascribed to them in the TIFIA Loan Agreement.
2. Compliance with Laws, etc. CDOT agrees to comply in all material respects with all applicable material federal and State laws, including all items set forth in Exhibit Eto the TIFIA Loan Agreement.
3. Compliance with CDOT Agreements. CDOT agrees to take all action necessary to comply with its obligations, covenants and responsibilities set forth in the CDOT Agreements.
4. Conditions Precedent. Notwithstanding anything in this Direct Agreement to the contrary, this Direct Agreement shall not become effective until the following conditions precedent shall have been satisfied:
	1. CDOT shall have delivered to the TIFIA Lender and the Trustee a certificate in the form attached hereto as **Exhibit A** (i) designating CDOT’s Authorized Representative, and (ii) confirming such person’s position and incumbency.
	2. CDOT shall have delivered to the TIFIA Lender and the Trustee a legal opinion, in form and substance satisfactory to the TIFIA Lender and the Trustee (including those opinions set forth on **Exhibit B**), from the Office of the Attorney General of the State.
	3. CDOT shall have delivered to the TIFIA Lender and the Trustee a certificate from CDOT’s Authorized Representative as to the absence of debarment, suspension or voluntary exclusion from participation in Government contracts, procurement and non-procurement matters substantially in the form attached hereto as **Exhibit C** with respect to CDOT and its principals (as defined in 2 C.F.R. § 180.995).
	4. CDOT shall have delivered to the TIFIA Lender (A) evidence of CDOT’s self-insurance arrangements, (B) certificates of insurance evidencing (1) that each Construction Contractor has obtained or caused to be obtained insurance with respect to the Project that meets the requirements of Section 15(f) of the TIFIA Loan Agreement and (2) that each liability policy of such Construction Contractor (other than workers’ compensation insurance) reflects the Trustee on behalf of the Secured Parties as a loss payee; (C) that each liability policy (other than workers’ compensation insurance) of each Construction Contractor reflects the TIFIA Lender as an additional insured and (D) at the TIFIA Lender’s request, copies of such insurance policies.
	5. CDOT shall have provided to the TIFIA Lender (A) a copy of all resolutions authorizing CDOT to execute and deliver, and to perform its respective obligations under, the CDOT Agreements and this Direct Agreement, and such resolutions have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only resolutions adopted by CDOT relating to the matters described therein, and (B) a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the CDOT Agreements and this Direct Agreement.
	6. CDOT shall have provided to the TIFIA Lender certified, complete and fully executed copies of each performance security instrument delivered to or by CDOT pursuant to any CDOT Agreement as of the Effective Date, each of which shall be (A) in compliance with the requirements for such performance security pursuant to the applicable CDOT Agreement, and (B) in full force and effect.
5. Representations and Warranties of CDOT. CDOT hereby represents and warrants as of the date of execution of this Direct Agreement, as of each date on which any disbursement of the TIFIA Loan is requested or made, and as of each date, if any, that the representations of Issuer contained in Article IV of the Master Trust Indenture are made:
	1. CDOT is an agency of the State of Colorado and, as authorized by the Transportation Commission, has taken all necessary action authorizing it to execute, deliver and perform its obligations under the CDOT Agreements, including this Direct Agreement.
	2. This Direct Agreement and each CDOT Agreement in effect as of the Effective Date has been duly authorized, executed and delivered by CDOT and constitutes the legal, valid and binding agreement of CDOT enforceable in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).
	3. Upon execution and delivery of this Direct Agreement, CDOT is not in default of any of the terms of or its obligations under the CDOT Agreements or this Direct Agreement, and no event has occurred or condition exists that, with the giving of notice or the passage of time or both, would constitute a default under the CDOT Agreements or this Direct Agreement.
	4. CDOT has obtained, maintains in full force and effect, and has complied in all material respects with, all necessary governmental authorizations and consents and approvals of any other Person necessary as of the time this representation and warranty is made for the development, construction, operation and maintenance of the Project and the I-25N Express Lanes and that are required for CDOT to execute, deliver and perform its obligations under the CDOT Agreements.
	5. As of the Effective Date, the officers of CDOT executing this Direct Agreement (or that previously executed) and any of the other CDOT Agreements, and any certificates or instruments related thereto, are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same on behalf of CDOT.
	6. The execution and delivery of this Direct Agreement and any of the CDOT Agreements, the consummation of the transactions contemplated herein or therein and the fulfillment of or compliance with the terms and conditions of this Direct Agreement or any CDOT Agreement will not (i) conflict with CDOT’s Organizational Documents, (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by CDOT of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which CDOT is a party or by which it or its properties or assets are otherwise subject or bound, or (iii) result in the creation or imposition of any Lien upon the Project or the I-25N Express Lanes other than Permitted Liens.
	7. CDOT is in compliance in all material respects with, and has conducted (or caused to be conducted) its business and government functions related to the Project and the I-25N Express Lanes and the business and operations of the Project and the I-25N Express Lanes in compliance in all material respects with, all applicable laws (other than Environmental Laws, which are addressed in subsection (h) below), to the extent applicable. To CDOT’s knowledge, each Principal Project Party is, and has caused its respective contractors and subcontractors to be, in compliance in all material respects with all applicable laws, including those set forth on Exhibit E to the TIFIA Loan Agreement, to the extent applicable. No notices of violation of any applicable law have been issued, entered or received by CDOT or, to CDOT’s knowledge and solely in respect of the Project and the I-25N Express Lanes or any Principal Project Contract, any Principal Project Party, other than, in each case, notices of violations that are immaterial.
	8. CDOT and, to CDOT’s knowledge, each Principal Project Party is in compliance with all laws applicable to the Project relating to Environmental Laws. All Governmental Approvals relating to Environmental Laws that are necessary for the ownership and construction of the Project or, as applicable, the operation, maintenance and repair of the Project (and each Segment thereof), have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. CDOT has not received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that CDOT is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the ownership and construction of the Project and the operation, maintenance and repair of the Project (and each Segment thereof) and the I-25N Express Lanes and, to CDOT’s knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by CDOT with any such Environmental Law or Governmental Approval. All material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to CDOT regarding CDOT’s or the Project’s or the I-25N Express Lanes’ compliance with (A) Environmental Laws, and (B) Governmental Approvals relating to Environmental Laws that are required for the ownership and construction of the Project and the operation, maintenance and repair of the I-25N Express Lanes for which operations, maintenance or repair costs are payable in whole or in part from Pledged Revenues have been provided to the TIFIA Lender.
	9. As of the Effective Date, there is no action suit, proceeding or, to the knowledge of CDOT, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of CDOT, threatened against or affecting the Project or the I-25N Express Lanes or the ability of CDOT to execute, deliver and perform its respective obligations under any of the CDOT Agreements or this Direct Agreement. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of CDOT, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of CDOT, threatened against or affecting the Project or the I-25N Express Lanes, CDOT or the assets, properties or operations of CDOT that in any case could reasonably be expected to result in a Material Adverse Effect.  To CDOT’s knowledge, there are no actions of the type described above pending, threatened against, or affecting any of the Principal Project Parties except for matters arising after the Effective Date that could not reasonably be expected to result in a Material Adverse Effect. CDOT is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.
	10. CDOT has fully complied with its verification obligations under 2 CFR § 180.320 and confirms, based on such verification, that, to its knowledge, CDOT nor any of its respective principals (as defined in 2 CFR § 180.995) is debarred, suspended or voluntarily excluded from participation in Federal Government contracts, procurement or non-procurement matters or delinquent on a Federal Government debt as more fully set forth in the certificate delivered pursuant to Section 4(c) hereof. Further, CDOT has fully complied with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.330, and with 2 CFR § 1200.332. CDOT is not aware of any non-compliance by any of its contractors or subcontractors with the applicable requirements of 2 CFR Part 180.
	11. CDOT has complied, with respect to the Project, with all applicable requirements of NEPA, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.).
	12. Each Principal Project Contract to which CDOT is a party and in effect as of any date on which this representation and warranty is made is in full force and effect and all conditions precedent to the obligations of the respective parties under each such Principal Project Contract have been satisfied. No event has occurred that gives CDOT or, to CDOT’s knowledge, any Principal Project Party, the right to terminate any such Principal Project Contract. CDOT is not in breach of any material term in or in default under any of such Principal Project Contracts, and to the knowledge of CDOT, no other party to any of such agreements or contracts is in breach of any material term therein or in default thereunder.
	13. The information furnished by CDOT to the TIFIA Lender, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished; *provided* that no representation or warranty is made with regard to projections or other forward-looking statements.
	14. Neither CDOT nor, to the knowledge of CDOT, any Principal Project Party:
		* 1. is a Sanctioned Person; or
			2. is in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (A) any applicable Anti-Money Laundering laws; (B) any applicable Sanctions; (C) any applicable Anti-Corruption Laws; or (D) any applicable anti-drug trafficking or anti-terrorism, civil or criminal;
			3. There are no pending or, to the knowledge of CDOT, threatened claims or investigations by any Governmental Authority against, or any internal investigations conducted by, CDOT with respect to any possible or alleged violations of any applicable Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.
			4. No use of proceeds of the TIFIA Loan Agreement or other transaction contemplated by the TIFIA Loan Agreement or any other CDOT Agreements will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.
	15. CDOT possesses either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real property relating to the Project and the I-25N Express Lanes, in each case as is necessary and sufficient as of the date this representation is made for the performance of CDOT’s respective rights and obligations in connection with the construction, operation, maintenance and repair of the Project and the I-25N Express Lanes. As of any date on which this representation and warranty is made, the Principal Project Contracts then in effect and the Governmental Approvals that have been obtained and are then in full force and effect create rights in CDOT sufficient (i) to enable CDOT to exercise its rights and perform its obligations in connection with the ownership and construction of the Project and the operation, maintenance and repair of the portions of the Project and the I-25N Express Lanes for which operations, maintenance or repair costs are payable in whole or in part from Pledged Revenues and (ii) to exercise its rights and perform its obligations under each CDOT Agreement. All utility services, means of transportation, facilities and other materials necessary for the construction and operation of the Project and the I-25N Express Lanes (including, as necessary, gas, electrical, water and sewage services and facilities) are, or will be when needed, available to the Project and arrangements in respect thereof have been made on commercially reasonable terms.
	16. CDOT is in compliance with all insurance obligations required under each CDOT Agreement as of the date on which this representation and warranty is made. To the extent CDOT self-insures, CDOT’s self-insurance program, is actuarially sound [in accordance with the standards established by the State Legislature].
	17. Except for Permitted Liens, CDOT has not created, nor is under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the Trust Estate, the Project, the I-25N Express Lanes, the Pledged Revenues, or the properties or assets in relation to the Project and the I-25N Express Lanes.
	18. CDOT owns, or has adequate licenses or other valid rights to use, all patents, trademarks, service marks, trade names, copyrights, franchises, formulas, licenses and other rights with respect thereto and has obtained assignment of all licenses and other rights of whatsoever nature, in each case, necessary for the Project and the I-25N Express Lanes and the operation of its business. To CDOT’s knowledge, there exists no conflict with the rights or title of any third party with respect to the intellectual property described in the preceding sentence. Excluding the use of commercially available “off-the-shelf” software, to CDOT’s knowledge, no product, process, method, substance, part or other material produced or employed or presently contemplated to be produced by or employed by the Project or the I-25N Express Lanes infringes or will infringe any patent, trademark, service mark, trade name, copyright, franchise, formula, license or other intellectual property right of any third party.
	19. CDOT is not required to establish an anti-money laundering compliance program pursuant to the Patriot Act.
6. Representations and Warranties of the TIFIA Lender. The TIFIA Lender represents and warrants that:
	1. The TIFIA Lender has all requisite power and authority to perform all transactions contemplated by this Direct Agreement.
	2. This Direct Agreement has been duly authorized, executed and delivered by the TIFIA Lender, and is a legally valid and binding agreement of the TIFIA Lender, enforceable in accordance with its terms.
	3. The officer of the TIFIA Lender executing this Direct Agreement is duly and properly in office and fully authorized to execute the same on behalf of the TIFIA Lender.
7. Representations and Warranties of the Trustee. The Trustee represents and warrants that:
	1. The Trustee has all requisite power and authority to perform all transactions contemplated by this Direct Agreement.
	2. This Direct Agreement has been duly authorized, executed and delivered by the Trustee, and is a legally valid and binding agreement of the Trustee, enforceable in accordance with its terms.
	3. The officer of the Trustee executing this Direct Agreement is duly and properly in office and fully authorized to execute the same on behalf of the Trustee.
8. CDOT Covenants and Acknowledgments to the TIFIA Lender. With respect to the TIFIA Lender, CDOT hereby covenants and agrees to the covenants contained in Sections 15(d)(i), 15(d)(ii), 15(e), 15(f)(i), 15(f)(ii), 15(f)(iii), 15(f)(v), 15(q), 15(v), 16(b), 16(c), 16(d)(ii), 16(h) and 16(l) of the TIFIA Loan Agreement as though each such covenant was set forth herein, in each case to the extent applicable to CDOT.
9. CDOT Covenants and Acknowledgments to the Trustee. With respect to the Trustee, CDOT hereby covenants and agrees to the covenants contained in Sections 15(d)(i), 15(d)(ii), 15(e), 15(f)(i), 15(f)(ii), 15(f)(iii), 15(f)(v), 15(q), 16(b), 16(c), 16(d)(ii), and 16(h) of the TIFIA Loan Agreement as though each such covenant was set forth herein, in each case to the extent applicable to CDOT.
10. CDOT further hereby covenants and agrees to the following covenants and acknowledgements:
	1. Copies of Documents.
		1. Except as otherwise agreed by the TIFIA Lender in writing or to the extent previously provided to the TIFIA Lender, CDOT will provide to the TIFIA Lender complete, correct and fully executed copies of any such amendment, modification or supplement to, or replacement of, any Related Document within five (5) Business Days after receipt of the executed version thereof.
		2. Except as otherwise provided to the TIFIA Lender, if CDOT enters into a Principal Project Contract, Additional Project Contract, or Intra-Agency Agreement after the Effective Date, CDOT shall provide to the TIFIA Lender an executed version of such Principal Project Contract, Additional Project Contract, or Intra-Agency Agreement, together with any related performance security instruments, contracts, side letters or other understandings, promptly following the full execution thereof.
	2. CDOT shall not, without the prior written consent of the TIFIA Lender, enter into any Additional Project Contract (or series of related contracts) that commits CDOT to spend, or is reasonably expected to involve expenditures by CDOT of, amounts that either: (A) exceed [$1,000,000] in any Borrower Fiscal Year, or (B) alone or when aggregated with the other Total Project Costs or O&M Expenses, as applicable, in the same line item of the applicable budget set forth in the Financial Plan most recently submitted to the TIFIA Lender, would cause aggregate Total Project Costs or O&M Expenses, as applicable, for such line item in any Borrower Fiscal Year to exceed the amounts for such line item for any Borrower Fiscal Year reflected in the budget in the Financial Plan most recently submitted to the TIFIA Lender.
	3. CDOT shall comply with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.320, and with 2 CFR § 1200.332.
	4. CDOT agrees to maintain adequate insurance or self-insurance arrangements in regard to the Project and the I-25N Express Lanes. To the extent CDOT obtains and maintains insurance from third party insurance providers, CDOT shall deliver to the TIFIA Lender all insurance brokers’ letters, certificates of insurance, and other documents related to such third party insurance policies. Promptly upon request by the TIFIA Lender or the Trustee, CDOT shall deliver to the TIFIA Lender or the Trustee evidence of CDOT’s self-insurance arrangements and, as applicable, copies of any underlying insurance policies obtained by or on behalf of CDOT in respect of the Project or the I-25N Express Lanes. All such policies shall be available at all reasonable times for inspection by the Trustee and the TIFIA Lender, and their agents and representatives. CDOT shall cause all liability insurance policies that are maintained by any Construction Contractor during the Construction Period and that are related to the Project, other than workers’ compensation insurance, to reflect the TIFIA Lender as an additional insured to the extent of its insurable interest. CDOT shall deliver to the TIFIA Lender all (i) insurance brokers’ letters, and (ii) certificates of insurance, in each case promptly after CDOT’s receipt thereof and in any event no later than when required to be delivered pursuant to the Indenture. Promptly upon request by the TIFIA Lender, CDOT shall deliver to the TIFIA Lender copies of any underlying insurance policies obtained by CDOT in respect of the Project or the I-25N Express Lanes.
	5. CDOT’s failure to (i) complete Segments 6, 7 and 8 by June 30, 2027, or (ii) complete the Project by June 30, 2031, in each case as generally described in the Application and the NEPA Determination, will constitute a Development Default pursuant to Section 19(a)(iii) of the TIFIA Loan Agreement, subject to CDOT’s opportunity to cure such Development Default as described in Section 19(a)(iii) of the TIFIA Loan Agreement.
	6. CDOT shall operate and maintain the I-25 North Express Lanes in a reasonable and prudent manner and shall maintain the I-25 North Express 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 adjacent to the I-25 North Express Lanes (the “**General Purpose Lanes**”). CDOT shall ensure that it provides the same standards and levels of service to the operation and maintenance of the I-25 North Express Lanes as it does to the operation and maintenance of the adjacent General Purpose Lanes. CDOT shall not discriminate against the Express Lanes in favor of the General Purpose Lanes, in terms of service or materials, in the performance of operation and maintenance activities.
	7. CDOT’s failure to cause the Construction Contractors to obtain and maintain property damage and liability insurance in accordance with the requirements of the applicable Construction Agreement shall, subject to the cure provisions of the TIFIA Loan Agreement, constitute an Event of Default under the TIFIA Loan Agreement.
	8. CDOT shall not change the fundamental nature of any Operating Segment of the I-25 North Express Lanes as lanes made available to the public on a non-exclusive basis for vehicular transportation, and subject to the charging and collection of tolls for the use of such lanes, as and to the extent permissible under applicable state and federal law.
	9. CDOT shall or shall cause HPTE to, within five (5) Business Days after CDOT learns of the occurrence, give the TIFIA Lender and the Trustee notice of any of the following events, setting forth details of such event:
		1. Substantial Completion - the occurrence of Substantial Completion with respect to each Segment of the Project, such notice to be provided in the form set forth in Exhibit L to the TIFIA Loan Agreement;
		2. Defaults - any material breach or default or event of default on the part of CDOT or any other party under any CDOT Agreement;
		3. Litigation - the filing of any actual litigation, suit or action, or the delivery to CDOT of any written claim, which could reasonably be expected to have a material adverse effect upon the Project or the I-25N Express Lanes or its revenues and expenses, the Pledged Revenues, or upon CDOT and its performance under any CDOT Agreement;
		4. Other Adverse Events - the occurrence of any other event or condition, which could reasonably be expected to have a material adverse effect upon the Project or the I-25N Express Lanes or its revenues and expenses, the Pledged Revenues, or upon CDOT and its performance under any CDOT Agreement;
		5. Delayed Governmental Approvals - any failure to receive or delay in receiving any Governmental Approval or making any required filing, notice, recordation or other demonstration to or with a Governmental Authority, in each case to the extent such failure or delay will or could reasonably be expected to result in a delay to any major milestone date (including the Projected Substantial Completion Date) set forth in the Construction Schedule, together with a written explanation of the reasons for such failure or delay and the CDOT’s plans to remedy or mitigate the effects of such failure or delay;
		6. Environmental Notices - any notice of material violation under any Environmental Law related to the Project or any material changes to the NEPA Determination;
		7. Insurance Claim - any insurance claims made by CDOT or a Construction Contractor in respect of any Segment of the I-25N Express Lanes in excess of $1,000,000 either individually or in the aggregate, to the extent the proceeds from such insurance claim would be deposited into a Project Account;
		8. Uncontrollable Force - the occurrence of any Uncontrollable Force that could reasonably be expected to result in a Material Adverse Effect;
		9. Project Changes - any (1) change to the Total Project Costs forecasts in excess of ten percent (10%) of total forecasted Total Project Costs or (2) material change to the Construction Schedule; and
		10. Events of Nonallocation - any decision by CDOT or the Transportation Commission not to allocate funds for, or lend all or any portion of, the amount requested by Borrower as a CDOT O&M Loan pursuant to the I-25N IAA.
	10. CDOT acknowledges and agrees that HPTE shall not make any payments to CDOT pursuant to any CDOT O&M Loan Agreement (i) from any amounts other than amounts on deposit in the CDOT O&M Loan Debt Service Account or the Surplus Account and (ii) unless, as of any proposed date for such payment, HPTE shall have (A) paid to the TIFIA Lender all TIFIA Debt Service (including any amounts characterized as TIFIA Mandatory Debt Service or TIFIA Scheduled Debt Service under a different TIFIA loan agreement related to the I-25N Express Lanes) that has become due and payable on such date or on any date prior to such proposed payment, including any amounts characterized as TIFIA Scheduled Debt Service under a different TIFIA loan agreement related to the I-25N Express Lanes that has not paid as of the scheduled date for payment of such TIFIA Scheduled Debt Service, and (B) made all transfers from the Surplus Account that have a higher priority than payments in respect of CDOT O&M Loans pursuant to Section 3.14(c) of the Master Trust Indenture. CDOT acknowledges and agrees that CDOT’s agreement to subordinate the repayment of each CDOT O&M Loan as provided herein and in each CDOT O&M Loan Agreement is intended to be and shall be enforceable as a subordination agreement within the meaning of Section 510 of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., or similar bankruptcy law. The seniority of the TIFIA Loan to the repayment of any CDOT O&M Loan will not be altered or impaired by the modification, subordination or recharacterization of the TIFIA Loan, whether before or after the commencement of an insolvency proceeding. If CDOT receives any amounts in contravention of the agreed priority of the TIFIA Loan, as provided herein, CDOT shall promptly pay over such amounts to the Trustee and shall hold any such amounts in trust for the Secured Parties pending such payment to the Trustee. CDOT shall not, and waives its right to, object to, oppose, take any action or vote in any way so as to directly or indirectly challenge or contest (following any Bankruptcy Related Event or otherwise) (i) any claim by the TIFIA Lender for allowance in any insolvency proceeding of post-petition interest, fees, or expenses with respect to the TIFIA Loan, (ii) the grant, creation, priority, validity, enforceability or perfection of the TIFIA Loan Agreement or any other TIFIA Loan Document or any Lien granted to the TIFIA Lender with respect to the TIFIA Loan, (iii) the validity or enforceability of the subordination provisions contained in this Agreement, or (iv) the rights and duties of the TIFIA Lender established in any TIFIA Loan Document to the extent such rights and duties are not, and/or have not been exercised in a manner, prohibited by any of the terms of this Agreement. At any time prior to the payment in full of the TIFIA Loan and any amounts due and payable by Borrower or CDOT pursuant to any TIFIA Loan Document, nothing contained herein shall prohibit or in any way limit the TIFIA Lender from objecting in any proceeding pursuant to any Insolvency Law to any action taken by CDOT, including the assertion by CDOT of any of its rights and remedies under any CDOT O&M Loan Agreement.
	11. Notwithstanding anything to the contrary in the I-25N IAA (including Section 6 thereof), CDOT shall maintain all records and files in its possession, if any, relating to the Project, the I-25N Express Lanes, the Pledged Revenues or the TIFIA Loan until three (3) years after the later of the date on which (i) all rights and duties under the TIFIA Loan Agreement and under the TIFIA Bond (including payments) have been fulfilled and any required audits have been performed and (ii) any litigation relating to the Project, the Pledged Revenues, the TIFIA Loan or the TIFIA Loan Agreement is finally resolved or, if the TIFIA Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the TIFIA Lender and CDOT. CDOT shall provide to the TIFIA Lender in a timely manner all records and documentation in its possession, if any, relating to the Project or the Pledged Revenues that the TIFIA Lender may reasonably request from time to time.
	12. CDOT shall not take any action to reorganize, consolidate with, or merge HPTE into another Person unless such merger or consolidation is with or into another entity established and Controlled by CDOT, and in each case, including reorganization, does not adversely affect or impair to any extent or in any manner (i) the Pledged Revenues or other elements of the Trust Estate, or (ii) the availability of the Pledged Revenues for the payment and security of the obligations of HPTE under the TIFIA Loan Documents. CDOT acknowledges that a reorganization of HPTE that does not satisfy the requirements of the preceding sentence shall be an event of default under the TIFIA Loan Agreement.
	13. CDOT agrees that steel, iron, and manufactured products used in the Project are subject to 23 U.S.C. § 313, as implemented by the FHWA Division Office. CDOT acknowledges that this Direct Agreement is neither a waiver of 23 U.S.C. § 313(a) nor a finding under 23 U.S.C. § 313(b). CDOT agrees that construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021), as implemented by the Office of Management and Budget, USDOT, and the FHWA Division Office. CDOT acknowledges that this Direct Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).
	14. Pursuant to 46 CFR Part 381, CDOT hereby agrees as follows, and shall insert the following clauses in contracts entered into by CDOT pursuant to which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project:
		1. At least fifty percent (50%) of any equipment, materials or commodities procured, contracted for or otherwise obtained with TIFIA Loan proceeds, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.
		2. Within twenty (20) days following the date of loading for shipments originating within the United States of America or within thirty (30) Business Days following the date of loading for shipments originating outside the United States of America, a legible copy of a rated, ‘on-board’ commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (i) above shall be furnished to both the TIFIA Lender and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
	15. CDOT shall comply with all applicable certification, declaration and/or disclosure requirements under 49 CFR Part 20.
11. Accounting and Audit Procedures; Reports and Records. CDOT shall provide to HPTE all information necessary for HPTE to comply with its obligations under Sections 15(g), 20, 21 and 22 of the TIFIA Loan Agreement.
12. Subject to Annual Allocation. The covenants, acknowledgements, and obligations of CDOT under this Direct Agreement and the CDOT Agreements relating to the provision of any CDOT O&M Loan are subject to allocation of moneys therefor by the Transportation Commission in its sole discretion, and shall not be deemed or construed as creating an indebtedness of CDOT within the meaning of any provision of the Colorado Constitution or the laws of the State concerning or limiting the creation of indebtedness of CDOT, and shall not constitute a multiple fiscal year direct or indirect debt or other financial obligation of CDOT within the meaning Section 20(4) of Article X of the Colorado Constitution.
13. No Liability for TIFIA Loan or Bonds. Nothing in this Direct Agreement shall be construed to mean that CDOT is liable under the TIFIA Loan Agreement or the Master Trust Indenture for the debt of HPTE, as Borrower under the TIFIA Loan Agreement or as Issuer under the Master Trust Indenture.
14. Project Monitoring. Each of the TIFIA Lender and the Trustee shall have the right in each of their sole discretions to monitor (or direct its agents to monitor) development, including, but not limited to, environmental compliance, design, right-of-way acquisition, and construction of the Project and each Segment included therein pursuant to the TIFIA Loan Agreement and the Master Trust Indenture, respectively. The FHWA Division Office has oversight responsibility for the Project, including ensuring compliance in all material respects with all applicable provisions of federal law. CDOT agrees to cooperate in good faith with the Trustee and the TIFIA Lender in the conduct of such monitoring by promptly providing the Trustee, the TIFIA Lender and the FHWA Division Office with such reports, documentation or other information as shall be requested by the Trustee or the TIFIA Lender, or its agents, including any independent engineer reports, documentation or information, should an independent engineer be retained by or at the request of CDOT or HPTE. Further, CDOT agrees to furnish to HPTE all reports and documents required to comply with Sections 20 and 21 of the TIFIA Loan Agreement.
15. Sovereign Immunity. Other than actions lying in tort as provided in C.R.S. § 24-10-101 et seq., CDOT has no immunity from the jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any action to enforce the obligations of CDOT under this Direct Agreement or under any of the CDOT Agreements. To the fullest extent permitted by applicable law, CDOT agrees that it will not assert any immunity (and, to the extent permitted by applicable law, hereby waives any such immunity) it may have as a governmental entity from lawsuits, other actions and claims, and any judgments with respect to the enforcement of any of the obligations of CDOT under this Direct Agreement or under any of the CDOT Agreements.
16. No Personal Recourse. No official, employee or agent of the TIFIA Lender, the Trustee or CDOT or any person executing this Direct Agreement shall be personally liable on this Direct Agreement by reason of the issuance, delivery or execution hereof.
17. CDOT’s Authorized Representative. CDOT shall at all times have appointed an authorized representative by designating such person or persons from time to time to act on CDOT’s behalf pursuant to a written certificate furnished to the Trustee, the TIFIA Lender and the Servicer, if any, containing the specimen signature or signatures of such person or persons and signed by CDOT (each such person, “**CDOT’s Authorized Representative**”).
18. TIFIA Lender’s Authorized Representative. Pursuant to Section 26 of the TIFIA Loan Agreement, the TIFIA Lender shall at all times have appointed a TIFIA Lender’s Authorized Representative by designating such Person or Persons from time to time to act on the TIFIA Lender’s behalf pursuant to a written certificate furnished to HPTE, CDOT and the Servicer, if any, containing the specimen signature or signatures of such person or persons and signed by the TIFIA Lender (each such Person, “**TIFIA’s Authorized Representative**”). Pursuant to the Delegation, the Director of the Credit Office of the Build America Bureau may act and serve as the TIFIA Lender’s Authorized Representative under this Direct Agreement, in addition to the Executive Director of the Build America Bureau for the purposes set forth herein.
19. Amendments and Waivers. No amendment, modification, termination or waiver of any provision of this Direct Agreement shall in any event be effective without the written consent of the Parties hereto.
20. Governing Law. This Direct Agreement shall be governed by the federal laws of the United States if and to the extent such federal laws are applicable and the internal laws of the State of Colorado, if and to the extent such federal laws are not applicable.
21. Severability. In case any provision in or obligation under this Direct Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.
22. Successors and Assigns. This Direct Agreement shall be binding upon the Parties hereto and their respective successors and assigns and shall inure to the benefit of the Parties hereto and the successors and assigns of the TIFIA Lender and the Trustee. None of CDOT or HPTE may sell, assign, transfer or delegate any of its rights or obligations under this Direct Agreement without the prior written consent of the TIFIA Lender and the Trustee.
23. Remedies Not Exclusive. No remedy conferred herein or reserved to the TIFIA Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.
24. Delay or Omission Not Waiver. No waiver by the TIFIA Lender or the Trustee of any breach by CDOT of any of its obligations, agreements or covenants hereunder shall be deemed a waiver of any subsequent breach, or a waiver of any other obligation, agreement or covenant, and no delay or omission of the TIFIA Lender or the Trustee to exercise any right or remedy provided hereunder upon a default of CDOT (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Direct Agreement or by law to the TIFIA Lender or the Trustee may be exercised from time to time, and as often as may be deemed expedient by the TIFIA Lender or the Trustee.
25. Notices. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:
	* 1. if to CDOT:

Colorado Department of Transportation

2829 W. Howard Place

Denver, Colorado 80204

Attention: [Steve Harelson, Chief Engineer]

Telephone: 303-757-[9170]

Email: stephen.harelson@state.co.us;

* + 1. if to the Borrower:

Colorado High Performance Transportation Enterprise

2829 W. Howard Place

Denver, Colorado 80204

Attention: Nicholas J. Farber, Director

Telephone: 303-757-9607

Facsimile: 303-757-9656

Email: nicholas.farber@state.co.us

* + 1. if to the TIFIA Lender:

Build America Bureau

United States Department of Transportation

Room W12-464

1200 New Jersey Avenue, SE

Washington, D.C. 20590

Attention: Director, Office of Credit Programs

Telephone: 202-366-2300

Email: BureauOversight@dot.gov;

with copies to (through the date of Substantial Completion):

Federal Highway Administration

Colorado Division Office

12300 W. Dakota Avenue, Suite 180

Lakewood, CO 80229

Attention: Division Administrator

Telephone: 720-963-3000

Email: Colorado.fhwa@dot.gov;

* + 1. if to the Trustee:

[1001 17th Street, Suite 850

Denver, CO 80202

Attention Corporate Trust Department

telephone: 720-947-[7476]

Email: [stephanie.nicholls]@zionsbancorp.com,

DenverCorporateTrust@zionsbancorp.com;]

Unless otherwise instructed by the TIFIA Lender’s Authorized Representative, all notices to the TIFIA Lender should be made by email to the email address noted above for the TIFIA Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower’s Authorized Representative, with respect to notices to the Borrower, by a CDOT’s Authorized Representative, with respect to notices to CDOT, or by the TIFIA Lender’s Authorized Representative, with respect to notices to the TIFIA Lender. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 25 (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 25 (or in accordance with the latest unrevoked written direction from the receiving party); *provided* that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

1. Miscellaneous.
	1. Each of the TIFIA Lender and the Trustee is hereby authorized to demand specific performance of this Direct Agreement, whether or not HPTE shall have complied with any of the provisions hereof or of the I-25N IAA or TOMs IAA applicable to it, at any time when CDOT shall have failed to comply with any of the provisions of this Direct Agreement applicable to it. Notice of such demand for specific performance shall be made concurrently to all parties to this Direct Agreement. CDOT irrevocably waives any defense based on the adequacy of a remedy at law, which might be asserted as a bar to such remedy of specific performance.
	2. Neither this Direct Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by each Party.
	3. CDOT shall fully cooperate with the TIFIA Lender and the Trustee and perform all additional acts reasonably requested by the TIFIA Lender or the Trustee to effect the purposes of this Direct Agreement. The Parties hereto agree that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the TIFIA Lender or the Trustee may reasonably request to effectuate the terms of this Direct Agreement.
	4. Whenever CDOT’s knowledge is implicated in this Direct Agreement or the phrase “to CDOT’s knowledge” or a similar phrase is used in this Direct Agreement, CDOT’s knowledge or such phrase(s) shall be interpreted to mean to the best of CDOT’s knowledge after reasonable and diligent inquiry and investigation.
2. Counterparts; Electronic Signatures. This Direct Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Direct Agreement or of any document or instrument delivered in connection herewith shall be effective as delivery of an original executed counterpart of this Direct Agreement or such other document or instrument, as applicable. Each Party hereto acknowledges and agrees that it may execute this Direct Agreement, and any amendment, modification, or waiver hereto, using Electronic Signatures. Such Electronic Signatures are intended to authenticate this writing and to have the same force and effect as handwritten signatures.
3. Effectiveness. This Direct Agreement shall be effective on the Effective Date.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the Parties hereto have executed this Direct Agreement as of the date first above written.

**COLORADO DEPARTMENT OF TRANSPORTATION**

By:
 Name: [•]
 Title: [•]

LEGAL REVIEW:

Philip J. Weiser,

Attorney General

By:

 Assistant Attorney General

**COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE**

By:
 Name: Nicholas J. Farber
 Title: Director

LEGAL REVIEW:

Philip J. Weiser,

Attorney General

By:

 Assistant Attorney General

**UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau**

By:
 Name: Morteza Farajian
 Title: Executive Director

**ZIONS BANCORPORATION, NATIONAL ASSOCIATION, as Trustee**

By:
 Name:
 Title:

**EXHIBIT A**

**INCUMBENCY CERTIFICATE**

The undersigned certifies that he/she is the [Executive Director/Chief Engineer] of the COLORADO DEPARTMENT OF TRANSPORTATION, an agency of the State of Colorado (the “**CDOT**”), and as such he/she is authorized to execute this certificate and further certifies that the following persons have been elected or appointed, are qualified, and are now acting as officers or authorized persons of CDOT in the capacity or capacities indicated below, and that the signatures set forth opposite their respective names are their true and genuine signatures. He/She further certifies that any of the officers listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the Direct Agreement and/or the other CDOT Agreements as the CDOT’s Authorized Representative (each as defined in that certain Direct Agreement, dated as of the date hereof, among CDOT, the Colorado High Performance Transportation Enterprise, the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau and Zions Bank, A Division of ZB, National Association):

Name Title Signature

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this \_\_\_\_\_ day of [\_\_\_], 2023.

[\_\_\_\_\_\_\_\_]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:

 Title:

**EXHIBIT B**

**OPINIONS REQUIRED OF COUNSEL TO CDOT**

An opinion of the counsel of CDOT, dated as of the Effective Date, to the effect that: (a) CDOT is duly formed, validly existing, and in good standing under the laws of the State of Colorado; (b) CDOT has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Direct Agreement and each of the CDOT Agreements; (c) the execution and delivery by CDOT of, and the performance of its respective obligations under, the Direct Agreement and each of the CDOT Agreements, have been duly authorized by all necessary organizational or regulatory action; (d) CDOT has duly executed and delivered the Direct Agreement and each of the CDOT Agreements and each such document constitutes the legal, valid and binding obligation of CDOT; enforceable against CDOT in accordance with their respective terms; (e) no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of CDOT for the execution and delivery by CDOT of, and the performance of CDOT under, the Direct Agreement and each of the CDOT Agreements other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by CDOT; (f) the execution and delivery by CDOT of, and compliance with the provisions of, the Direct Agreement and each of the CDOT Agreements in each case do not (i) violate the Organizational Documents of CDOT, (ii) violate the law of the State, (iii) violate the laws of the United States that are customarily applicable to transactions of the type contemplated, except that no opinion shall be required with respect to Federal securities, banking, insurance, or tax laws, or (iv) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which CDOT is a party, or to the best of such counsel’s knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which CDOT is subject; and (g) to counsel’s knowledge after due inquiry, there are no pending actions, suits, proceedings or investigations against CDOT or any other party by or before any court, arbitrator or any other governmental authority in connection with the Direct Agreement, the CDOT Agreements, or the Project.

**EXHIBIT C**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
AND OTHER RESPONSIBILITY MATTERS–
PRIMARY COVERED TRANSACTIONS**

The undersigned, on behalf of the Colorado Department of Transportation, an agency of the State of Colorado, hereby certifies that the Colorado Department of Transportation has fully complied with its verification obligations under 2 C.F.R. § 180.320 and hereby further confirms, in accordance with 2 C.F.R. § 180.335, that, to its knowledge, the Colorado Department of Transportation and its principals (as defined in 2 C.F.R. § 180.995):

* + 1. Are not presently excluded (as defined in 2 C.F.R. § 180.940) or disqualified (as defined in 2 C.F.R. § 180.935);
		2. Have not within a three (3) year period preceding the Effective Date been convicted of any of the offenses listed in 2 C.F.R. § 180.800(a) or had a civil judgment rendered against them for one of those offenses within that time period;
		3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses listed in 2 C.F.R. § 180.800(a); and
		4. Have not within a three (3) year period preceding the Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.
		5. Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in that certain TIFIA Loan Agreement, dated as of [\_\_\_\_], 2023, between the TIFIA Lender and the Borrower, as the same may be amended from time to time.

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**COLORADO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title: