

Resolution – CTIO #

Approving an Intra-Agency Agreement with CDOT, a Loan Agreement with the U.S. Department of Transportation, Build America Bureau (“TIFIA”), a Master Trust Indenture with TIFIA, and a Direct Agreement with TIFIA for the 1-25 North Express Lanes Project.

WHEREAS, the General Assembly created the Colorado High Performance Transportation Enterprise (“CTIO”), pursuant to § 43-4-806, C.R.S., as a government-owned business within the Colorado Department of Transportation (“CDOT”) to pursue innovative means of more efficiently financing important surface transportation projects that will improve the safety, capacity, and accessibility of the surface transportation system; and

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

WHEREAS, CDOT, in partnership with CTIO, is working to complete, implement and operate certain transportation infrastructure projects in the I-25 North Corridor (collectively, “I-25 North Express Lane Project”), which 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, “Express Lanes”) and completion of the general purpose lanes adjacent to the Express Lanes (collectively, “General Purpose Lanes”), which Express Lanes and General Purpose Lanes are located in: (i) an approximately 6-mile segment of I-25 North between the U.S. Highway 36 interchange and the State Highway 128 (120th Avenue) interchange (“Segment 2”); (ii) an approximately 6-mile segment of I-25 North between the State Highway 128 (120th Avenue) interchange and the E-470/Northwest Parkway interchange (“Segment 3”); (iii) an approximately 7-mile segment of I-25 North between the State Highway 66 interchange and the State Highway 56 interchange (“Segment 5”); (iv) an approximately 5-mile segment of I-25 North between the State Highway 56 interchange and the State Highway 402 interchange (“Segment 6”); (v) an approximately 7-mile segment of I-25 North between the State Highway 402 interchange and the State Highway 392 interchange (“Segment 7”); and (vi) an approximately 7-mile segment of I-25 North between the State Highway 392 interchange and the State Highway 14 interchange (“Segment 8”);and

WHEREAS, CDOT and CTIO have completed the planning, designing, engineering, acquisition, installation, construction, repair, and reconstruction of the components of the I-25 North Express Lanes Project consisting of Express Lanes located in Segments 2 and 3 (the “Segment 2 Express Lanes Project” and the “Segment 3 Express Lanes Project,”

Attachment B: DRAFT CTIO Resolution Approving Agreements Related to the I-25 North Express Lanes Project

respectively), and said Express Lanes in such Segments are currently open for tolled traffic; and

WHEREAS, CDOT has requested CTIO's involvement in the planning, designing, engineering, acquisition, installation, construction, repair, and reconstruction of the components of the I-25 North Express Lanes 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; and

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

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

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

WHEREAS, to effect the Financing, CTIO will enter into that certain Master Trust Indenture ("MTI), between CTIO and Zions Bancorporation, National Association, as trustee ("Trustee"), and will also enter into that certain TIFIA Loan Agreement ("TLA") with the TIFIA Lender, which loan will be evidenced by a bond ("TIFIA Bond") issued by CTIO to the TIFIA Lender pursuant to the MTI. 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"; and

WHEREAS, CDOT has entered into a CM/GC Construction Project Contract dated July 3, 2019 ("Segment 5/6 Construction Contract") with RLW/SEMA, a Joint Venture, L.P. ("Segment 5/6 General Contactor") for the construction of the components of the I-25 North Express Lane Project located in Segments 5 and 6, which Segment 5/6

Attachment B: DRAFT CTIO Resolution Approving Agreements Related to the I-25 North Express Lanes Project

Construction Contract establishes, among other things, minimum insurances to be provided by the Segment 5/6 General Contactor during the construction period, certain required parent guarantees and payment and performance bonds, and sets forth liquidated damages to be assessed by CDOT in the event such components of the I-25 North Express Lane Project are not completed within the timeframe set forth in the Segment 5/6 Construction Contract; and

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

WHEREAS, because the Project is a joint effort between CDOT and CTIO, and CTIO does not have the responsibility to either construct the Project or operate or maintain the Project, the TIFIA Lender has required as a condition of the financing that CDOT, CTIO, and the TIFIA Lender enter into a direct agreement for the Project (“Direct Agreement”); and

WHEREAS, the Board has reviewed the terms and conditions of the TLA, MTI, IAA, and Direct Agreement and the obligations of CTIO contained therein; and

WHEREAS, the Board desires to reaffirm that any payment made by CDOT to CTIO under the IAA and/or Direct Agreement shall, notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, constitute a loan from the Transportation Commission to CTIO and shall not be considered a grant for purposes of Section 20(2)(d) of Article X of the State Constitution; and

NOW THEREFORE BE IT RESOLVED, the Board hereby approves the IAA with CDOT in substantially the form presented and authorizes the CTIO Director to execute the IAA with such revisions or modifications, not inconsistent with this Resolution, as the CTIO Director may determine to be necessary or appropriate, whose signature thereon shall constitute conclusive evidence of such approval.

BE IT FURTHER RESOLVED, the Board hereby approves the TLA with the TIFIA Lender in substantially the form presented and authorizes the CTIO Director to execute the TLA with such revisions or modifications, not inconsistent with this Resolution, as the CTIO

Attachment B: DRAFT CTIO Resolution Approving Agreements Related to the I-25 North Express Lanes Project

Director may determine to be necessary or appropriate, whose signature thereon shall constitute conclusive evidence of such approval.

BE IT FURTHER RESOLVED, the Board hereby approves the MTI with Zions Bancorporation, National Association in substantially the form presented and authorized the CTIO Director to execute the IAA with such revisions or modifications, not inconsistent with this Resolution, as the CTIO Director may determine to be necessary or appropriate, whose signature thereon shall constitute conclusive evidence of such approval.

BE IT FURTHER RESOLVED, the Board hereby approves the Direct Agreement with CDOT and the TIFIA Lender in substantially the form presented and authorizes the CTIO Director to execute the Direct Agreement with such revisions or modifications, not inconsistent with this Resolution, as the CTIO Director may determine to be necessary or appropriate, whose signature thereon shall constitute conclusive evidence of such approval.

BE IT FURTHER RESOLVED, the Board hereby authorizes the CTIO Director to take all additional actions the CTIO Director deems necessary and appropriate to finalize the I-25 North Express Lanes Project.

Signed as of April [], 2023

Simon Logan
Secretary, CTIO Board