

**Proposed Resolution #**

Approving an Intra-Agency Agreement between the Colorado Department of Transportation and the Colorado High Performance Transportation Enterprise and a Direct Agreement between the Colorado Department of Transportation, the High Performance Transportation Enterprise and TIFIA for the I-25 North Express Lanes Project.

**Approved by the Transportation Commission on \_\_\_\_\_.**

**WHEREAS**, pursuant to Section 43-1-106(8), C.R.S, the Transportation Commission is responsible for formulating the general policy with respect to the management, construction, and maintenance of public highways and other transportation systems in the state; and

**WHEREAS**, the Transportation Commission promulgates and adopts all budgets for the Colorado Department of Transportation (“CDOT”) and state transportation programs; and

**WHEREAS**, the General Assembly created the Colorado High Performance Transportation Enterprise (“CTIO”), pursuant to Section 43-4-806, C.R.S., as a government-owned business within 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

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

and the State Highway 14 interchange (“Segment 8”);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**, pursuant to Section 43-4-806(4), C.R.S., the Transportation Commission may authorize the transfer of money from the state highway fund to CTIO to defray expenses of CTIO; 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**, because the Project is a joint effort between CDOT and CTIO and because CTIO does not have the responsibility to either construct the Project or operate or maintain the Project, TIFIA has insisted that CDOT, CTIO, and TIFIA enter into a direct agreement for the Project (“Direct Agreement”); and

**WHEREAS**, the Transportation Commission has reviewed the Direct Agreement and a memo on the Direct Agreement prepared by staff; and

**WHEREAS**, the Direct Agreement requires CDOT to covenant to certain provision in the TIFIA Loan, including provisions concerning operations and maintenance responsibilities,

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

construction of the Project, and insurance; and

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

**WHEREAS**, the Transportation Commission recognizes and respects the legal principle that it cannot bind future Transportation Commissions with respect to budgetary and policy decisions, recognizes it cannot agree, in advance, to allocate and transfer state highway funds for a loan to CTIO, and agrees that any decision as to whether or not to allocate and transfer such funds for such purposes shall be made by the Transportation Commission, in its sole discretion, in the year in which the CTIO request occurs; and

**NOW THEREFORE BE IT RESOLVED**, the Transportation Commission approves the IAA between CDOT and CTIO and authorizes the CDOT Executive Director or his delegee to execute the IAA with such changes therein and additions thereto, not inconsistent with this Resolution, as are approved by the CDOT Executive Director or his delegee (whose signature thereon shall constitute conclusive evidence of such approval).

**BE IT FURTHER RESOLVED**, the Transportation Commission approves the Direct Agreement CDOT, CTIO, and TIFIA and authorizes the CDOT Executive Director or his delegee to execute the Direct Agreement with such changes therein and additions thereto, not inconsistent with this Resolution, as are approved by the CDOT Executive Director or his delegee (whose signature thereon shall constitute conclusive evidence of such approval).

---

Herman Stockinger, Secretary  
Transportation Commission of Colorado

---

Date