

## **Resolution – HPTE<sup>1</sup> # 433**

### **Authorizing the Execution and Delivery of a Spread Lock Agreement with Wells Fargo Municipal Capital Strategies, LLC in connection with the I-70 Mountain Express Lanes Project**

**WHEREAS**, pursuant to Colorado Revised Statutes (“**C.R.S.**”) Section 43-4-806, the General Assembly of the State of Colorado (the “**State**”) created the Colorado High Performance Transportation Enterprise (“**HPTE**”), as a government-owned business within the Colorado Department of Transportation (“**CDOT**”) and a division of CDOT; and

**WHEREAS**, the purpose of HPTE is 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, can feasibly be commenced in a reasonable amount of time, and will allow more efficient movement of people, goods, and information throughout Colorado; and

**WHEREAS**, HPTE receives less than 10% of its annual revenue in grants, as such term is used in Article X, Section 20 of the State Constitution, from the State government and local governments in the State, combined; and

**WHEREAS**, C.R.S. Section 43-4-806(2)(c)(I) provides that HPTE may impose user fees on the travelling public for the privilege of using surface transportation infrastructure; and

**WHEREAS**, HPTE, in partnership with CDOT, has completed and is operating a transportation infrastructure project in the I-70 Mountain Corridor that consists of, among other components, widening the shoulder lanes, and operating such lanes as tolled express lanes during peak periods, located in (i) an approximate 13-mile segment of eastbound I-70 between the U.S. Highway 40 Interchange (from mile point 230) and through the Veterans Memorial Tunnels to Idaho Springs (from mile point 244) within CDOT’s existing right-of-way, and (ii) an approximate 12-mile segment of westbound I-70 between the Veterans Memorial Tunnels (from mile point 242) and the U.S. Highway 40 Interchange (from mile point 230.5) within CDOT’s existing right-of-way (collectively, the “**I-70 MEXL Project**”); and

**WHEREAS**, the HPTE Board of Directors (the “**Board**”) continues to support the I-70 MEXL Project and recognizes the benefits it provides to the State, which include, among others, improving travel times, managing congestion in the I-70 Mountain Corridor, enhancing the improvements made to the Veterans Memorial Tunnels, and providing travelers with a choice of new travel lanes; and

**WHEREAS**, C.R.S. Section 43-4-806(2)(c)(III) provides that HPTE may contract with any governmental or nongovernmental source of funding for loans to be used to support HPTE’s functions; and

**WHEREAS**, C.R.S. Section 43-4-806(2)(c)(II) authorizes HPTE to issue revenue bonds for the purpose of completing surface transportation infrastructure projects, and C.R.S.

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<sup>1</sup> The High Performance Transportation Enterprise (HPTE) is now doing business as the Colorado Transportation Investment Office (CTIO). CTIO is how the enterprise refers to itself now and in the future. However, the HPTE name is retained for legislative and legal documents.

Section 43-4-803(2) defines “bond” to mean any bond, note, interim certificate, commercial paper, contract, or other evidence of indebtedness; and

**WHEREAS**, in January 2021, HPTE entered into a loan agreement (as amended, restated, or otherwise modified to date, the “**2021 Loan Agreement**”) with Wells Fargo Municipal Capital Strategies, LLC (a wholly owned subsidiary of Wells Fargo Bank, National Association) (“**Wells Fargo**”) pursuant to which Wells Fargo made a loan to HPTE in the principal amount of \$25,205,000 (“**2021 Loan**”), the proceeds of which were used to refinance a loan that was provided by Banc of America Preferred Funding Corporation, the proceeds of which were used to fund a portion of the eastbound segment of the I-70 MEXL Project and pay other lawful expenses and costs related thereto; and

**WHEREAS**, at the time HPTE entered into the 2021 Loan Agreement, it issued its Colorado High Performance Transportation Enterprise Toll Revenue Note (I-70 Mountain Express Lanes Projects), Series 2021 (the “**2021 Note**”) to Wells Fargo, which evidences HPTE’s obligation to pay Wells Fargo the principal of and interest on the 2021 Loan and such other amounts due and payable by HPTE under the 2021 Loan Agreement; and

**WHEREAS**, HPTE has determined that it is necessary, desirable and in the best interest of HPTE to prepay the 2021 Note (and the related 2021 Loan) on or about January 29, 2024; and

**WHEREAS**, HPTE recently conducted a solicitation process to request interest from commercial lenders to provide a loan to HPTE, the proceeds of which would be used to prepay the 2021 Note (and the related 2021 Loan), among other uses, and pursuant to that process, Wells Fargo was selected as the preferred lender; and

**WHEREAS**, HPTE and Wells Fargo are in the process of negotiating the terms of the new loan documents, including a new loan agreement (the “**2024 Loan Agreement**”), and HPTE staff expects to request approval from the Board in January 2024 to enter into the 2024 Loan Agreement and other related matters; and

**WHEREAS**, the interest rate on the 2024 Loan will be equal to the sum of (i) the “**Applicable Spread**” (as described below), and (ii) 80% of the daily secured overnight financing rate as administered by the Federal Reserve Bank of New York; and

**WHEREAS**, Wells Fargo has proposed an Applicable Spread of 59 basis points (0.59%), however, this spread could possibly be subject to an increase beginning on January 1, 2024 as a result of certain capital requirements that may be imposed on Wells Fargo in accordance with Basel Accord III (also known as Basel III) which were published by the Basel Committee on Banking Supervision; and

**WHEREAS**, in order to lock-in the Applicable Spread of 59 basis points (0.59%), Wells Fargo has proposed that HPTE enter into a “Spread Lock Agreement” prior to December 31, 2023; and

**WHEREAS**, HPTE has determined that it is desirable and in the best interest of HPTE to enter into the Spread Lock Agreement; and

**WHEREAS**, the terms of the Spread Lock Agreement will have no force or effect (and will terminate) unless HPTE and Wells Fargo enter into the 2024 Loan Agreement, the terms of which are subject to negotiation and agreement by HPTE and Wells Fargo and approval of the Board (expected to be requested in January 2024); and

**WHEREAS**, termination of the Spread Lock Agreement will not impose any obligations (financial or otherwise) on HPTE; and

**WHEREAS**, there is on file with the Board a form of the Spread Lock Agreement; and

**WHEREAS**, the Board desires to authorize and approve the execution and delivery of the Spread Lock Agreement; and

**NOW THEREFORE BE IT RESOLVED**, all actions not inconsistent with the provisions of this Resolution heretofore taken by any HPTE staff members or the Director of HPTE (the “**HPTE Director**”) and the efforts of HPTE directed toward the negotiation of the Spread Lock Agreement are, ratified, approved and confirmed.

**BE IT FURTHER RESOLVED**, the Board hereby approves in all respects the Spread Lock Agreement in substantially the form filed with the Board prior to the meeting of the Board at which this Resolution is adopted, and authorizes and directs the HPTE Director to execute and deliver the Spread Lock Agreement on behalf of HPTE, in substantially the form filed with the Board prior to the meeting of the Board at which this Resolution is adopted, with such changes therein and additions thereto, not inconsistent with this Resolution, as are approved by the HPTE Director (whose signature thereon shall constitute conclusive evidence of such approval).

**BE IT FURTHER RESOLVED**, the Board hereby authorizes and directs the HPTE Director to take all action and execute and deliver for and on behalf of HPTE any and all certificates, documents and other papers, and to perform all other acts that the HPTE Director deems necessary or appropriate in order to execute and deliver the Spread Lock Agreement and to carry out the transaction and other matters authorized by this Resolution, including, without limitation, the execution and delivery of such certificates, documents and other papers and the performance of such acts as required by the Spread Lock Agreement.

Signed as of December 20, 2023

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Simon Logan  
Secretary, HPTE Board of Directors