

## CDOT Backup Loan Agreement

THIS LOAN AGREEMENT, made this 15th day of June 2023, by and between the State of Colorado for the use and benefit of THE COLORADO DEPARTMENT OF TRANSPORTATION ("CDOT" or "Lender") and the COLORADO HIGH-PERFORMANCE TRANSPORTATION ENTERPRISE ("HPTE" or "Borrower") entered pursuant to the Amended and Restated C-470 Express Lanes Project Intra-Agency Agreement, dated as of the 1st June, 2017, between Lender and Borrower ("Intra-Agency Agreement").

### RECITALS

A. Lender, is an agency of the State of Colorado authorized pursuant to Section 43-1-105, 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. Borrower was authorized and created pursuant to Sections 43-4-806(1) and (2), C.R.S. 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 Section 43-4-806(4), C.R.S. 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 Section 43-4-806(4), C.R.S. 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 Project (as defined below) and for the benefit of CDOT, HPTE has entered into that certain Master Trust Indenture dated as of March 1, 2017 ("Master Trust Indenture"), as supplemented by a First Supplemental Trust Indenture dated as of March 1, 2017 ("First Supplemental Indenture"), each between HPTE and Zions Bank, a division of ZB, National Association, as Trustee ("Trustee"), as well as that certain TIFIA Loan Agreement, dated as of March 1, 2017, with 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 ("TIFIA Loan Agreement"), which loan will be evidenced by a bond ("2017 TIFIA Bond") issued to the TIFIA Lender pursuant to the Master Trust Indenture, as supplemented by a Second Supplemental Trust Indenture dated as of March 1, 2017 ("Second Supplemental Indenture") between HPTE and the Trustee (collectively, the "Financing Agreements") to finance a portion of the Project (as defined in the Intra-Agency Agreement).

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 up to \$4,000,000.00, 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 Section 43-4-806(4), C.R.S. 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 make available up to \$4,000,000.00 ("Principal Amount") to the Borrower, in draws as specified by Borrower ("Outstanding Amount"), and the Borrower agrees to pay the Lender the Outstanding Amount up to the Principal Amount of the loan, plus interest on the terms described herein (collectively, "Loan"). The Borrower's obligation to pay the Lender the principal of and interest on the Loan is evidenced by a promissory note ("Note") in the form attached hereto as Attachment 1.

**Section 1.02. Closing.** The Lender shall encumber and make available for draw the Principal Amount of the Loan to the Borrower, on a date mutually agreed to by the Borrower and the Lender ("Closing Date").

## **ARTICLE II LOAN OBLIGATIONS**

**Section 2.01. Principal and Interest Payments.** Borrower shall pay to Lender the Outstanding Amount up to the Principal Amount of the Loan plus accrued interest in accordance with Section 2.07 hereof, or Borrower may make prepayments in accordance with Section 2.05 hereof only to the extent permitted under the Financing Agreements.

**Section 2.02. Lender Invoice and Reports.** Lender shall forward an invoice that includes the Outstanding Amount and interest that shall be due to Lender at least thirty (30) days before the next scheduled payment is due.

**Section 2.03. Interest.** Interest shall accrue on the Outstanding Amount of the Loan from the Date of draw 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 or part, without penalty, by paying the Lender the Outstanding 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 Outstanding Amount and interest on the Loan ("Loan Obligations") are extraordinary limited obligations of the Borrower payable solely from net revenues generated by the Project in accordance with the terms of the Financing Agreements.

**Section 2.07. Repayment Schedule.** Subject to the requirements of the Financing Agreements, the Borrower shall pay to the Lender of the Outstanding Amount of the Loan not later than June 30, 2063 ("Maturity Date");. The Borrower shall be credited for any payments made prior to the Maturity Date and the interest due shall also be updated to reflect such payments in accordance with Section 2.05 herein. An Illustrative example of the anticipated amortization schedule for repayment is attached hereto and incorporated herein as Exhibit A. The parties agree Exhibit A maybe be updated and changed to reflect the current amortization schedule based on draws made by CTIO, without need for formal amendment of this Agreement.

**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.]*

**Attachment 1**  
**NOTE**

§ \_\_\_\_\_  
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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 up to \$4,000,000.00, with interest from date at the rate 3.5% 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:

Subject to the requirements of the Financing Agreements, Maker shall pay to the Lender of the Outstanding Amount of the Loan on the Maturity Date. The Maker shall be credited for any payments made prior to the Maturity Date and the interest due shall also be updated to reflect such payments.

COLORADO HIGH PERFORMANCE  
TRANSPORTATION ENTERPRISE

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

Attest: .....

.....

**EXHIBIT A  
C-470 EXPRESS LANES PROJECT  
CDOT BACKUP O&M LOAN DRAWS AND ANTICIPATED AMORTIZATION**

<b>Effective Date</b>		6/30/2023					
<b>Interest Rate:</b>		3.50%					
<b>Period Ending</b>	<b>Beginning Balance</b>	<b>Disbursements<sup>1</sup></b>	<b>Interest Accrued</b>	<b>Interest Paid<sup>2</sup></b>	<b>Principal Paid<sup>3</sup></b>	<b>Total Payments</b>	<b>Ending Balance</b>
6/30/2023	-	850,000	-	-	-	-	850,000
6/30/2024	850,000	3,150,000	29,750	(29,750)	-	(29,750)	4,000,000
6/30/2025	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2026	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2027	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2028	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2029	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2030	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2031	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2032	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2033	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2034	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2035	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2036	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2037	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2038	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2039	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2040	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2041	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2042	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2043	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2044	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2045	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2046	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2047	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2048	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2049	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2050	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2051	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2052	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2053	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2054	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2055	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2056	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2057	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2058	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2059	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2060	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2061	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2062	4,000,000	-	140,000	(140,000)	-	(140,000)	4,000,000
6/30/2063	4,000,000	-	140,000	(140,000)	(4,000,000)	(4,140,000)	-
6/30/2064	-	-	-	-	-	-	-
6/30/2065	-	-	-	-	-	-	-
6/30/2066	-	-	-	-	-	-	-
6/30/2067	-	-	-	-	-	-	-
6/30/2068	-	-	-	-	-	-	-
6/30/2069	-	-	-	-	-	-	-
6/30/2070	-	-	-	-	-	-	-
<b>Total</b>		<b>4,000,000</b>	<b>5,489,750</b>	<b>(5,489,750)</b>	<b>(4,000,000)</b>	<b>(9,489,750)</b>	

**Notes**

<sup>1</sup> Anticipated loan disbursements as of June 2023; amounts to be updated in accordance with actual draws.

<sup>2</sup> Amounts reflect total interest due each period; interest accrual resulting from deferred or partial payments shall be reflected in loan balance.

<sup>3</sup> Anticipated principal payments based on Maturity Date; amounts to be updated in accordance with actual loan balance and any prepayments.