

**Resolution – HPTE #421**

**Approving CDOT Back Up Loan Agreement regarding the C-470 Express Toll Project**

**WHEREAS**, pursuant to C.R.S. § 43-4-806, *et seq.*, the General Assembly of the State of Colorado (“State”) created the Colorado High Performance Transportation Enterprise (“CTIO”) <sup>1</sup> 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**, pursuant to C.R.S. § 43-4-806(6)(h), CTIO is empowered to make and enter into all other contracts and agreements, including intergovernmental agreements under C.R.S. § 29-1-103, that are necessary or incidental to the exercise of its powers and performance of its duties; and

**WHEREAS**, CDOT is an agency of the State authorized under § 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; and

**WHEREAS**, 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; and

**WHEREAS**, in furtherance of CTIO's efforts to finance the C-470 Express Lanes Project and for the benefit of CDOT, CTIO 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).

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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.

**WHEREAS**, CTIO has requested a credit facility from CDOT in the amount of \$4,000,000 to satisfy the CTIO O&M Obligations (as defined in the Intra-Agency Agreement)] because due to lower revenues than originally projected, partially caused by the unforeseen impacts of Covid-19 on work and travel patterns, the C-470 Express Lanes project's cash flow has not been generated as originally anticipated; and

**WHEREAS**, CTIO has been placed in technical non-compliance under the Master Trust Indenture and First Supplemental Indenture, and to cure the non-compliance CTIO is requesting a back-up loan from CDOT; and

**WHEREAS**, the CTIO Board has reviewed the back-up loan agreement and corresponding documents attached thereto;

**NOW THEREFORE BE IT RESOLVED**, the CTIO Board hereby approves back-up loan agreement between CTIO and CDOT for the C-470 Express Lanes Project in substantially the form presented and authorizes the CTIO Director, or his designee, to execute the Agreement with such changes therein and additions thereto, including revisions or modifications, as the CTIO Director or his designee may determine to be necessary or appropriate.

Signed as of June 14, 2023

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Simon Logan  
Secretary, HPTE Board