

Resolution – HPTE #435

Authorizing the Execution and Delivery of a Loan Agreement with Wells Fargo Municipal Capital Strategies, LLC and the Delivery of a related Note, and the Execution and Delivery of an Intra-Agency Agreement with the Colorado Department of Transportation 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 (mile point 230.0) and to the Veterans Memorial Tunnels (mile point 244.0) within CDOT’s existing right-of-way, and (ii) an approximate 12-mile segment of westbound I-70 between the Veterans Memorial Tunnels (mile point 242.0) and the U.S. Highway 40 Interchange (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.

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 (the “**2021 Lender**”) pursuant to which the 2021 Lender 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 the 2021 Lender, which evidences HPTE’s obligation to pay The 2021 Lender 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 Municipal Capital Strategies, LLC (the “**2024 Lender**”) was selected as the preferred lender; and

WHEREAS, the 2024 Lender will make a loan to HPTE in a principal amount not to exceed \$27 million (the “**2024 Loan**”) pursuant to a loan agreement (the “**2024 Loan Agreement**”) to be entered into between HPTE and the 2024 Lender, to (i) prepay the 2021 Note (and the related 2021 Loan), and pay certain costs associated with entering into the 2024 Loan Agreement; and

WHEREAS, in connection with the 2024 Loan, HPTE will issue, and deliver to the 2024 Lender, its Colorado High Performance Transportation Enterprise Toll Revenue Note (I-70 Mountain Express Lanes Project), Series 2024, in a principal amount not to exceed \$27 million (the “**2024 Note**”), which will evidence HPTE’s obligation to pay the 2024 Lender the principal of and interest on the 2024 Loan and such other amounts due and payable by HPTE under the 2024 Loan Agreement; and

WHEREAS, the 2024 Note (and the related 2024 Loan) will be payable from and secured by a pledge of, on a first lien basis, the user-fee revenues to be collected by HPTE from the I-70 MEXL Project (net of any toll collection expenses), as further detailed in the 2024 Loan Agreement, and certain funds and accounts established pursuant to the 2024 Loan Agreement and certain other amounts as described in the 2024 Loan Agreement; and

WHEREAS, C.R.S. Section 43-4-806(4) provides that the Transportation Commission of Colorado (the “**Transportation Commission**”) may transfer moneys from the state highway fund to HPTE to defray expenses of HPTE and, notwithstanding any state fiscal rule or generally accepted accounting principle that could otherwise be interpreted to require a contrary conclusion, such a transfer constitutes a loan from the Transportation Commission to HPTE and shall not be considered a grant for purposes of Section 20(2)(d) of Article X of the State Constitution; and

WHEREAS, the interest rate on the 2024 Loan will be equal to the sum of (i) the Applicable Spread (59 basis points (0.59%)), and (ii) 80% of the daily secured overnight financing rate as administered by the Federal Reserve Bank of New York; and

WHEREAS, in order to lock-in the Applicable Spread of 59 basis points (0.59%), HPTE and the 2024 Lender entered into that certain Spread Lock Agreement, dated December 21, 2023, which Spread Lock Agreement was approved by the Board at its meeting on December 20, 2023; and

WHEREAS, in connection with the execution and delivery of the 2024 Loan Agreement and the issuance of the 2024 Note (and the related incurrence of the 2024 Loan), HPTE has requested that CDOT enter into an Intra-Agency Agreement with HPTE (the “**2024 Intra-Agency Agreement**”), pursuant to which HPTE, in accordance with C.R.S. Section 43-4-806(4), can request a transfer of moneys from the Transportation Commission from the state highway fund to assist HPTE in fulfilling its payment obligations under the 2024 Loan Agreement and the 2024 Note and in operating and maintaining the I-70 MEXL Project in the event the user-fee revenues to be collected by HPTE from the I-70 MEXL Project are insufficient or projected to be insufficient to satisfy such obligations; and

WHEREAS, any financial support that CDOT provides HPTE under the 2024 Intra-Agency Agreement shall be in the form of a loan from the Transportation Commission to HPTE pursuant to C.R.S. Section 43-4-806(4); and

WHEREAS, HPTE acknowledges that the Transportation Commission is not required by the 2024 Intra-Agency Agreement to make any such loan, and that any determination by the Transportation Commission to make, and allocate funds for, any such loan shall be in the sole discretion of the Transportation Commission; and

WHEREAS, there is on file with the Board forms of the following documents:

- (a) the 2024 Loan Agreement;
- (b) the 2024 Note; and
- (c) the 2024 Intra-Agency Agreement; and

WHEREAS, the Board desires to (i) approve the prepayment of the 2021 Note (and the related 2021 Loan), and the payment of certain costs associated with entering into the 2024 Loan Agreement, and (ii) authorize and approve the execution, delivery and

issuance (as applicable) of the 2024 Loan Agreement, the 2024 Note and the 2024 Intra-Agency 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 prepayment of the 2021 Note (and the related 2021 Loan), the 2024 Loan Agreement, the 2024 Note, the 2024 Intra-Agency Agreement and all transactions contemplated in connection therewith, including, without limitation, the preparation and transmittal of all required notices, all supporting documentation with respect to the 2024 Loan, the 2024 Loan Agreement, the 2024 Note and the 2024 Intra-Agency Agreement shall be, and the same hereby are, ratified, approved and confirmed.

BE IT FURTHER RESOLVED, the Board hereby finds and determines that it is necessary, desirable and in the best interest of HPTE to (i) prepay the 2021 Note (and the related 2021 Loan), and (ii) pay other lawful expenses and costs related thereto.

BE IT FURTHER RESOLVED, the Board hereby approves the incurrence of the 2024 Loan and the issuance of the 2024 Note for the purposes described in this Resolution, provided that the principal amount of the 2024 Loan and the 2024 Note does not exceed \$27 million.

BE IT FURTHER RESOLVED, in addition to the principal of and interest on the 2024 Loan and the 2024 Note, the Board hereby approves the payment by HPTE of the other loan obligations as described in the 2024 Loan Agreement.

BE IT FURTHER RESOLVED, the Board hereby approves in all respects the 2024 Loan Agreement, the 2024 Note and the 2024 Intra-Agency Agreement in substantially the respective forms 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 2024 Loan Agreement, the 2024 Note and the 2024 Intra-Agency Agreement on behalf of HPTE, in substantially the respective forms 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, pursuant to and in accordance with the Constitution and laws of the State, including particularly C.R.S. Section 43-4-806 and the Supplemental Public Securities Act, C.R.S. Section 11-57-201, *et seq.* (the “**Supplemental Public Securities Act**”), the Board hereby approves and authorizes the execution of the 2024 Note by HPTE to evidence the payment obligations of HPTE under the 2024 Loan Agreement, but only from the collateral pledged therefor pursuant to the 2024 Loan Agreement, and the execution and delivery of the same on behalf of HPTE by the HPTE Director, 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), which changes can

include an increase or decrease in the principal amount of the 2024 Note (and the related 2024 Loan) so long as such principal amount does not exceed \$27 million. The Board hereby elects to apply all of the provisions of the Supplemental Public Securities Act to the 2024 Note and, pursuant to the provisions of the Supplemental Public Securities Act, hereby delegates to the HPTE Director the determination of those terms of the 2024 Note provided for in C.R.S. Section 11-57-205 (subject to the principal amount and the interest rate parameters set forth above).

BE IT FURTHER RESOLVED, the Board hereby finds, declares and determines that HPTE is an “enterprise” within the meaning of Article X, Section 20 of the State Constitution, and hereby covenants and agrees for the benefit of the 2024 Lender that so long as the 2024 Note remains outstanding, HPTE will maintain its “enterprise” status within such meaning.

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 implement the prepayment of the 2021 Note (and the related 2021 Loan) 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 2024 Loan Agreement, and the execution and delivery of any certificates and other documents relating to the exclusion of interest on the 2024 Note (and the related 2024 Loan) from gross income of the holders thereof for federal income tax purposes.

Signed as of January 17, 2024

Secretary, HPTE Board of Directors