

Resolution – HPTE # 117

Approving Certain Matters with Respect to Colorado High Performance Transportation Enterprise U.S. 36 and I-25 Managed Lanes Senior Revenue Bonds, Series 2013

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

WHEREAS Section 43-4-806(6)(c) and Section 43-4-807 provide, in part, that HPTE may issue revenue bonds for the purpose of completing surface transportation infrastructure projects; and

WHEREAS pursuant to Internal Revenue Code Section 142(a)(15), governments such as HPTE are permitted to issue exempt facility bonds for certain transportation purposes (Qualified Facilities), which include any surface transportation project which receives Federal assistance under Title 23, United States Code; and

WHEREAS HPTE determined that the design, acquisition, construction, reconstruction, development, expansion, improvement, equipping and/or modification, as appropriate, of Phase II of the U.S. 36 Express Lanes/Bus Rapid Transit Project between 88th Street in Louisville and Table Mesa/Foothills in Boulder (Project Location), which includes, among other components (i) construction of an express lane in each direction of U.S. 36 between 88th Street and Table Mesa/Foothills for Bus Rapid Transit, High Occupancy Vehicles and tolled Single/Double Occupancy Vehicles; (ii) reconstruction of two general purpose lanes in each direction between 88th Street and Table Mesa/Foothills; (iii) widening of U.S. 36 in the Project Location to accommodate 12-foot-wide inside and outside shoulders; (iv) replacing the Coal Creek Bridge and rehabilitating and widening the South Boulder Creek bridge and widening the McCaslin Boulevard bridge to accommodate a diverging diamond interchange in the Project Location; (v) adding Bus Rapid Transit improvements, including new electronic display signage at stations and bus priority improvements at ramps in the Project Location; (vi) installing Intelligent Transportation Systems for tolling, transit and traveler information, and incident management in the Project Location; (vii) installing a separate commuter bikeway along the rest of the U.S. 36 corridor in the Project Location; and (viii) improving the Regional Transportation District station at McCaslin Boulevard (collectively, the U.S. 36 Phase 2 Project), are to be carried out by a private sector party through the grant by HPTE of a concession and license in relation to the U.S. 36 Phase 2 Project; and

WHEREAS HPTE issued a Request for Proposals on February 12, 2013, in relation to the U.S. 36 Phase 2 Project and the operation and maintenance of U.S. 36 Phase 1 and the I-25 Managed Lanes (collectively, U.S. 36 and the I-25 Managed Lanes Project), pursuant to which Plenary Roads Denver LLC (Concessionaire) submitted a final proposal to HPTE and HPTE and the Concessionaire have entered into that certain

Concession Agreement for US 36 and the I-25 Managed Lanes dated June 27, 2013, as amended by Amendment No. 1 to the Concession Agreement for US 36 and the I-25 Managed Lanes dated October 4, 2013 (Concession Agreement) in order to implement the U.S. 36 and the I-25 Managed Lanes Project; and

WHEREAS the U.S. 36 Phase 2 Project will receive Federal assistance under Title 23, United States Code; and

WHEREAS Internal Revenue Code Section 142(m) establishes a national limitation of \$15,000,000,000 on the amount of exempt facility bonds which may be issued for Qualified Facilities and directs the Secretary of Transportation (Secretary) to allocate such amount among Qualified Facilities as the Secretary deems appropriate; and

WHEREAS the Secretary has allocated \$100,000,000 to HPTE for the issuance of exempt facility bonds for the U.S. 36 Phase 2 Project; and

WHEREAS pursuant to Internal Revenue Code Section 147(f), on August 27, 2013, HPTE gave notice of a public hearing with respect to the issuance of the Bonds (defined below) by publication in The Denver Post, a newspaper of general circulation available to residents in the locality of the Project Area, and, on September 11, 2013, HPTE conducted such public hearing concerning the issuance of the Bonds; and

WHEREAS, following such public hearing, the State Treasurer of the State, being the elected official of the State delegated the authority for public approvals for purposes of said Section 147(f) by the Governor of the State, approved the financing of the U.S. 36 Phase 2 Project and the issuance of the Bonds in a principal amount not to exceed \$50,000,000 for such purpose; and

WHEREAS HPTE proposes to make a loan to the Concessionaire pursuant to a loan agreement (Loan Agreement) to be entered into by and among HPTE, the Concessionaire, and the other members of the Borrower Group (as defined in Exhibit A to the Loan Agreement) to finance a portion of the cost of the U.S. 36 Phase 2 Project and, as necessary, to pay certain costs of issuance associated therewith and provide for a bond reserve fund therefor, and, to fund such loan, HPTE intends to issue its "U.S. 36 and I-25 Managed Lanes Senior Revenue Bonds, Series 2013," in an aggregate principal amount not to exceed \$50,000,000 (Bonds) pursuant to a Trust Indenture (Indenture) to be entered into by HPTE and The Bank of New York Mellon Trust Company, N.A., as Trustee (Trustee); and

WHEREAS (a) the Bonds, when issued, will be special, limited obligations of HPTE, payable solely from and secured solely by the Trust Estate (as defined in the Indenture), and will not, and shall not be deemed to constitute an obligation, moral or otherwise, of CDOT or the State, any other agency, instrumentality or political subdivision of the State, or any official, board member, director, officer, employee, agent or representative of any of the foregoing, and neither the full faith and credit of HPTE, CDOT or the State nor the taxing power of the State or any other agency, instrumentality or political

subdivision of the State will be pledged to the payment of the principal or redemption price of and interest on the Bonds; (b) the registered owners of the Bonds may not look to any revenues of HPTE, CDOT or the State for repayment of the Bonds and the only sources of repayment of the Bonds will be as provided in the Indenture; (c) the Bonds will not constitute an Indebtedness of HPTE, CDOT or the State or a multiple-fiscal year obligation of HPTE, CDOT or the State within the meaning of any provisions of the State Constitution or the laws of the State; (d) the payment of the Bonds will not be secured by any encumbrance, mortgage, or other pledge of property of HPTE, CDOT or the State, other than the Trust Estate; (e) no property of HPTE, CDOT or the State, subject to such exception, will be liable to be forfeited or taken in payment of the Bonds; and

WHEREAS HPTE anticipates that the Bonds will be sold to Goldman, Sachs & Co., as underwriter (Underwriter) pursuant to a Bond Purchase Agreement to be entered into by and among HPTE, the Concessionaire, certain other members of the Borrower Group and the Underwriter (Bond Purchase Agreement); and

WHEREAS, in connection with the marketing and sale of the Bonds, the Underwriter has requested that HPTE approve the distribution and use of a preliminary official statement and final official statement with respect to the Bonds (Preliminary Official Statement and Official Statement, respectively); and

WHEREAS there is on file with HPTE a draft of the Preliminary Official Statement.

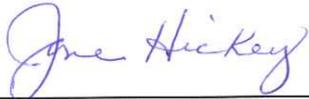
NOW THEREFORE BE IT RESOLVED, the HPTE Board of Directors (Board) hereby approves and authorizes the issuance of the Bonds, in a maximum principal amount not to exceed \$50,000,000; provided that, prior to the issuance of the Bonds, the Board shall have been presented with and shall have approved substantially final forms of the Indenture (including without limitation the form of the Bonds attached thereto), the Loan Agreement, the Bond Purchase Agreement and all other documents to be executed in connection therewith to which HPTE will be a party, with such changes therein as are permitted by the Board resolution making such approvals.

BE IT FURTHER RESOLVED, the Board hereby approves and authorizes the distribution and use by the Underwriter in connection with the marketing and sale of the Bonds of (a) the Preliminary Official Statement, in substantially the form of the draft thereof presented to the Board at this meeting, with such changes and additions thereto, not inconsistent with this resolution, as are acceptable to the Director, and (b) the final Official Statement, in substantially the form of the final Preliminary Official Statement, with such changes and additions thereto, not inconsistent with this resolution, as are deemed acceptable by the Director; provided that HPTE takes no responsibility for, and nothing herein shall be construed as an acceptance of responsibility by HPTE with respect to, the Preliminary Official Statement or final Official Statement, other than (i) information contained therein under the captions "PROJECT PARTICIPANTS – HPTE," "NO LITIGATION – The Issuer" and "APPENDIX B – Summary of Certain Provisions of the Concession Agreement," (ii) the description of HPTE to be included under the caption "SUMMARY" to be included in the Preliminary

Official Statement and final Official Statement, and (iii) such other information included in the Preliminary Official Statement and the final Official Statement that the Director determines (after consultation with counsel) is necessary or appropriate in the circumstances to be furnished by HPTE.

BE IT FURTHER RESOLVED, the Board hereby authorizes the Director to execute and deliver such certificates and other documents and take such other actions as may be necessary or convenient to the accomplishment of the purposes of this resolution, including, without limitation, (a) for purposes of Securities and Exchange Commission Rule 15c2-12 (17 C.F.R. § 240.15c2-12), the execution and delivery of a certificate deeming final (i) the information in the Preliminary Official Statement included under the captions “PROJECT PARTICIPANTS – HPTE,” “NO LITIGATION – The Issuer” and “APPENDIX B – Summary of Certain Provisions of the Concession Agreement,” (ii) the description of HPTE to be included under the caption “SUMMARY” to be included in the Preliminary Official Statement, and (iii) such other information included in the Preliminary Official Statement that the Director determines (after consultation with counsel) is necessary or appropriate in the circumstances to be furnished by HPTE, and (b) the acknowledgement, execution and delivery of the disclosure letter transmitted by the Underwriter to HPTE pursuant to Municipal Securities Rulemaking Board Rule G-17.

Signed as of November 20, 2013



Jane Hickey
Secretary, HPTE Board of Directors