

**FIRST AMENDMENT TO LOAN AGREEMENT**

This First Amendment to Loan Agreement (this “*Amendment*”) dated as of January [\_\_\_], 2021 (the “*Amendment Date*”), is between the COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE (the “*Borrower*”) and BANK OF AMERICA, N.A. (together with its successor and assigns, the “*Lender*”). All terms used herein and not defined herein shall have the meanings assigned to such terms in the hereinafter defined Agreement.

**W I T N E S S E T H**

WHEREAS, the Borrower and the Lender have previously entered into that certain Loan Agreement dated as of February 24, 2016 (as the same may be amended, restated, or otherwise modified from time to time, the “*Agreement*”);

WHEREAS, the Borrower has requested that the Lender make certain amendments to the Agreement;

WHEREAS, pursuant to Section 8.06 of the Agreement, the Agreement may be amended by a written amendment thereto, signed by the Lender and the Borrower; and

WHEREAS, the parties hereto wish to amend the Agreement as set forth herein.

NOW THEREFORE, in consideration of the premises, the parties hereto hereby agree as follows:

1. AMENDMENTS.

Upon satisfaction of the conditions precedent set forth in Section 2 hereof, the Agreement shall be amended as follows:

1.01. Section 1.01 of the Agreement is hereby amended by deleting therefrom the defined terms “*Margin Rate Factor*,” “*Margin Rate Amount*” and “*MRF Amount*” in their entireties.

1.02. Section 3.03(d) of the Agreement is hereby amended in its entirety and as so amended shall be restated to read as follows:

(d) *Reserved.*

1.03. Section 6.05 of the Agreement is hereby amended by the addition thereto of a new subsection (n) to read as follows and to appear in the appropriate alphabetical sequence:

(n) *Quarterly Certification.* On each March 15, June 15, and September 15, commencing on March 15, 2021, the Borrower shall deliver to the Lender a quarterly certification in the form of Exhibit C attached hereto and signed by the

Director, certifying that revenues on deposit with the Borrower as of such fiscal quarter (i) equal or exceed the required percentage of annual debt service on the Note, and (ii) will only be utilized for the payment of annual debt service on the Note, each as set forth on Exhibit C attached hereto.

1.04. The Agreement is hereby amended by the addition thereto of Exhibit C as displayed on Exhibit A attached hereto.

2. CONDITIONS PRECEDENT.

This Amendment shall be deemed effective on the Amendment Date subject to the satisfaction of or waiver by the Lender of all of the following conditions precedent:

2.01. Delivery by the Borrower and the Lender of an executed counterpart of this Amendment.

2.02. A certificate of the Borrower certifying the names and true signatures of the respective officers thereof authorized to sign this Amendment.

2.03. Repayment by the Borrower to Banc of America Preferred Funding Corporation (“BAPFC”) by or on the Amendment Date of the loan made under that certain Loan Agreement dated as of December 19, 2014 (the “I-70 Loan Agreement”), between the Borrower and BAPFC, as evidenced by the Colorado High Performance Transportation Enterprise Toll Revenue Note (I-70 West Peak Period Shoulder Lanes Project), Series 2014 (the “Note”) and all amounts due and owing under the I-70 Loan Agreement and the Note.

2.04. Payment to the Lender on the Amendment Date of (i) Margin Rate Amount due on the Amendment Date, and (ii) the reasonable legal fees and expenses of counsel to the Lender.

2.05. All other legal matters pertaining to the execution and delivery of this Amendment shall be satisfactory to the Lender and its counsel.

3. REPRESENTATIONS AND WARRANTIES OF THE BORROWER.

3.01. The Borrower hereby represents and warrants that the following statements shall be true and correct as of the date hereof:

(a) the representations and warranties of the Borrower contained in Article V of the Agreement and in each of the Related Documents are true and correct on and as of the date hereof as though made on and as of such date (except to the extent the same expressly relate to an earlier date); and

(b) no Default or Event of Default has occurred and is continuing or would result from the execution of this Amendment.

4.02. In addition to the representations given in Article V of the Agreement, the Borrower hereby represents and warrants as follows:

(a) The execution, delivery and performance by the Borrower of this Amendment and the Agreement, as amended hereby, are within its powers, have been duly authorized by all necessary action and do not contravene any law, rule or regulation, any judgment, order or decree or any contractual restriction binding on or affecting the Borrower.

(b) No authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the Borrower of this Amendment or the Agreement, as amended hereby.

(c) This Amendment and the Agreement, as amended hereby, constitute valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms, except that (i) the enforcement thereof may be limited by bankruptcy, reorganization, insolvency, liquidation, moratorium and other laws relating to or affecting the enforcement of creditors' rights and remedies generally, the exercise of judicial discretion in appropriate cases and by the limitations on legal remedies against the Borrower, and (ii) no representation or warranty is expressed as to the availability of equitable remedies.

## 5. MISCELLANEOUS.

Except as specifically amended herein, the Agreement shall continue in full force and effect in accordance with its terms. Reference to this Amendment need not be made in any note, document, agreement, letter, certificate, the Agreement or any communication issued or made subsequent to or with respect to the Agreement, it being hereby agreed that any reference to the Agreement shall be sufficient to refer to the Agreement, as hereby amended. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired hereby. All capitalized terms used herein without definition shall have the same meanings herein as they have in the Agreement. THIS AMENDMENT AND THE OTHER RELATED DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AMENDMENT OR ANY OTHER RELATED DOCUMENT (EXCEPT, AS TO ANY OTHER RELATED DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BY GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF COLORADO.

All warranties and representations contained in the Agreement and the other Related Documents are hereby reconfirmed as of the date hereof. All collateral previously provided to secure the Agreement and/or Note continues as security, and all guaranties guaranteeing obligations under the Related Documents remain in full force and effect. This is an amendment, not a novation. This Amendment shall not be construed as or be deemed to be a waiver by the

Lender of existing defaults by the Borrower, whether known or undiscovered. All agreements, representations and warranties made herein shall survive the execution of this Amendment.

This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties agree that any electronically signed document (including this Agreement) shall be deemed (i) to be “written” or “in writing,” (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or “printouts,” if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, “electronic signature” means a manually-signed original signature that is then transmitted by electronic means; “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a “pdf” (portable document format) or other replicating image attached to an e-mail message; and, “electronically signed document” means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective officers hereunto duly authorized as of the Amendment Date.

COLORADO HIGH PERFORMANCE  
TRANSPORTATION ENTERPRISE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BANK OF AMERICA, N.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

**EXHIBIT C**

**[FORM OF] QUARTERLY CERTIFICATION  
PURSUANT TO SECTION 6.05(N) OF THE LOAN AGREEMENT DATED AS OF FEBRUARY 24, 2016  
BETWEEN BANK OF AMERICA, N.A. AND THE COLORADO HIGH PERFORMANCE  
TRANSPORTATION ENTERPRISE**

Calculations as of [March 15] [June 15] [September 15], 20\_\_]

- |  |  |
|--|--|
| 1. Revenues as of [March 15] [June 15] [September 15], 20__] | \$ _____   |
| 2. Debt Service on the Note                                  | \$ _____   |
| 3. Ratio of Line 1 to Line 2                                 | _____ %  |
| 4. Quarterly Requirement                                     | [25%] <sup>1</sup> [50%] <sup>2</sup> [85%] <sup>3</sup> |
| 5. Is Line 3 equal to or greater than Line 4? (circle one)   | Yes / No   |

The undersigned Director of the Borrower hereby certifies that (i) the above calculations are true and correct as of the date first written above for the immediately preceding fiscal quarter, and (ii) the revenues identified in Line 1 above will only be utilized for the payment of annual debt service on the Note. Unless otherwise defined herein, the terms used in this Certificate shall have the meanings assigned thereto in the Agreement.

COLORADO HIGH PERFORMANCE  
TRANSPORTATION ENTERPRISE

By

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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<sup>1</sup> Select for March 15 quarterly certification.  
<sup>2</sup> Select for June 15 quarterly certification.  
<sup>3</sup> Select for September 15 quarterly certification.