

## **Resolution — HPTE # 191**

### **Authorizing the Execution of a Loan Agreement with Bank of America, N.A. and Delivery of the Note related thereto and Approving an Intra-Agency Agreement with the Colorado Department of Transportation for the I-25 North Express Lanes Project (Segment 3)**

**WHEREAS**, pursuant to Section 43-4-806, *et seq.*, C.R.S., 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”) 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**, 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**, Section 43-4-806(2)(c)(III), C.R.S., 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**, Section 43-4-806, C.R.S., authorizes HPTE to issue revenue bonds for the purpose of completing surface transportation infrastructure projects and Section 43-4-803(2), C.R.S., defines “bond” to mean any bond, note, interim certificate, commercial paper, contract, or other evidence of indebtedness; and

**WHEREAS**, HPTE is authorized, pursuant to Section 43-4-806(2)(c)(I), C.R.S., to impose user fees on the travelling public for the privilege of using surface transportation infrastructure; and

**WHEREAS**, HPTE, in partnership with CDOT, is undertaking the I-25 North Express Lanes Project (Segment 3) (the “Segment 3 Project”) to complete, implement and operate one new tolled express lane in each direction between approximately 120<sup>th</sup> Avenue and E-470; and

**WHEREAS**, the Segment 3 Project consists of widening an existing shoulder that will operate as a tolled express lane during peak travel period; and

**WHEREAS**, the HPTE Board of Directors (“HPTE Board”) supports the Segment 3 Project and recognizes the benefits it provides to the State, which include, but are not limited to, improving travel times, managing congestion in the I-25 North Corridor, and providing travelers with a choice of a new travel lane; and

**WHEREAS**, in 2015, HPTE conducted a solicitation process to request interest from commercial lenders for the Segment 3 Project and pursuant to that process, Bank of

America, N.A. (the “Lender”) was selected as the preferred lender in both interest cost and lending terms; and

**WHEREAS**, the Lender proposes to make a loan to HPTE (the “Segment 3 Loan”) pursuant to a loan agreement (the “Loan Agreement”) to be entered into between HPTE and the Lender, to fund the payment of the lawful expenses and costs of planning, designing, engineering, acquisition, installation or construction of the Segment 3 Project and other lawful expenses and costs related thereto, including to pay certain costs associated with entering into the Loan Agreement; and

**WHEREAS**, in connection with the Segment 3 Loan, HPTE will pledge to the Lender the user fee revenues collected by HPTE from the Segment 3 Project as further detailed in the Loan Agreement; and

**WHEREAS**, in connection with the Segment 3 Loan, HPTE intends to execute and deliver a Colorado High Performance Transportation Enterprise Toll Revenue Note (I-25 North Express Lanes Project - Segment 3), Series 2016, the form of which is appended to the Loan Agreement, in the approximate principal amount of \$35 million (the “Note”); and

**WHEREAS**, in connection with the Segment 3 Loan, HPTE intends to execute a note registrar agreement ("Note Registrar Agreement") with Zions Bank, a division of ZB, National Association ("Zions Bank"), pursuant to which Zions Bank will serve as the note registrar under the Loan Agreement; and

**WHEREAS**, in order to finalize the Loan Agreement, HPTE has requested that CDOT enter into the I-25 North Express Lanes Project (Segment 3) Intra-Agency Agreement with HPTE (“Intra-Agency Agreement”) pursuant to which HPTE can request a transfer of money from the Transportation Commission from the state highway fund to assist HPTE in fulfilling its payment obligations under the Loan Agreement and in operating and maintaining the Segment 3 Project in the event the user-fee revenues are insufficient or projected to be insufficient to satisfy such obligations; and

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

**WHEREAS**, HPTE acknowledges that the Transportation Commission is not required by the 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**, the HPTE Board has determined that it is necessary, desirable and in the best interest of HPTE to enter the Loan Agreement, the Note Registrar Agreement and the Intra-Agency Agreement and deliver the Note to the Lender to facilitate the construction and operation of the Segment 3 Project.

**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 completion of the Segment 3 Project, the Loan Agreement, the Note Registrar Agreement, the Note, the 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 Segment 3 Loan, the Loan Agreement, the Note Registrar Agreement, the Note and the Intra-Agency Agreement shall be, and the same hereby are, ratified, approved and confirmed.

**BE IT FURTHER RESOLVED**, the HPTE Board hereby finds and determines that it is necessary, desirable and in the best interest of HPTE to finance lawful expenses and costs of planning, designing, engineering, acquisition, installation or construction of the Segment 3 Project and other lawful expenses and costs related thereto.

**BE IT FURTHER RESOLVED**, the HPTE Board hereby approves in all respects the Loan Agreement, the Note Registrar Agreement, the Note, and the Intra-Agency Agreement in substantially the forms filed with HPTE and authorizes and directs the HPTE Director to execute and deliver the Loan Agreement, the Note Registrar Agreement, the Note and the Intra-Agency Agreement on behalf of HPTE, in substantially the forms filed with the HPTE Board prior to the meeting of the HPTE 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 (i) the initial interest rate charged in the Loan Agreement for the Segment 3 Loan so long as the initial interest rate does not exceed 3%, provided that such rate may increase under certain circumstance as provided in the Loan Agreement; and (ii) the principal amount pursuant to the Loan Agreement so long as such principal amount does not exceed \$35 million.

**BE IT FURTHER RESOLVED**, pursuant to and in accordance with the Constitution and laws of the State, including particularly Section 43-4-806, C.R.S., and the Supplemental Public Securities Act, Section 11-57-201 et seq., C.R.S., the Board hereby approves and authorizes the execution of the Note by HPTE to evidence the payment obligations of

HPTE under the Loan Agreement, but only from the collateral pledged therefor pursuant to the terms of the Loan Agreement, and the execution and delivery of the same on behalf of HPTE by the HPTE Director in substantially the form appended to the Loan Agreement, 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 (i) the initial interest rate charged for the Segment 3 Loan so long as the initial interest rate for the Segment 3 Loan does not exceed 3%, provided that such rate may increase under certain circumstance as provided in the Loan Agreement; and (ii) the principal amount being borrowed so long as such principal amount does not exceed \$35 million. The Board hereby elects to apply all of the provisions of the Supplemental Public Securities Act to the 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 Note provided for in Section 11-57-205, C.R.S. (subject to the principal amount and the interest rate parameters set forth above).

**BE IT FURTHER RESOLVED**, the HPTE 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 Lender that so long as the 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 financing of the Segment 3 Project 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 Loan Agreement, and the execution and delivery of any certificates and other documents relating to the exclusion of interest on the Note from gross income of the holders thereof for federal income tax purposes.

Signed as of January 20, 2016

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Kari V. Grant  
Interim Secretary, HPTE Board