

**Resolution – HPTE # 125**

**Approving Documents Related to the U.S. 36 and the I-25 Managed Lanes Project and Financial Close under the Concession Agreement**

**WHEREAS** pursuant to C.R.S. Section 43-4-806, the General Assembly of the State of Colorado created the Colorado High Performance Transportation Enterprise (**HPTE**), as a government-owned business within the Colorado Department of Transportation (**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, will allow more efficient movement of people, goods, and information throughout Colorado, and will accelerate the economic recovery of Colorado; and

**WHEREAS** such innovative means of financing projects include, but are not limited to, public-private partnerships, operating concession agreements, user fee-based project financing, and availability payment and design-build contracting; and

**WHEREAS** in connection with Phase 2 of the U.S. 36 Managed Lanes Project (**Phase 2 Project**), HPTE issued a Request for Proposals on February 12, 2013, pursuant to which Plenary Roads Denver LLC (**Concessionaire**) submitted a final proposal to HPTE and HPTE and the Concessionaire 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 dated October 4, 2013, and Amendment No. 2 to the Concession Agreement dated December 27, 2013, and Amendment No. 3 to the Concession Agreement dated January 29, 2014 (**Concession Agreement**), in order to implement the Phase 2 Project and the operation and maintenance of U.S. 36 Phase 1 Project and the I-25 Managed Lanes; and

**WHEREAS** HPTE anticipates Financial Close under the Concession Agreement to occur in February 2014 (**Financial Close**); and

**WHEREAS** in connection with Financial Close:

- The United States Department of Transportation will make a Transportation Infrastructure Finance and Innovation Act loan to a Concessionaire-related entity, for purposes of partially financing the Phase 2 Project (**Concessionaire TIFIA Phase 2 Loan**); and
- HPTE and the Concessionaire will amend and restate the Concession Agreement pursuant to an Amended and Restated Concession Agreement for US 36 and the I-25 Managed Lanes (**Amended and Restated Concession Agreement**); and

- HPTE and the Concessionaire will contract with the E-470 Public Highway Authority (**E-470**) to provide back-office tolling services related to I-25 Managed Lanes pursuant to an I-25 Managed Lanes Tolling Services Agreement (**Tolling Services Agreement**); and

**WHEREAS** in relation to the Amended and Restated Concession Agreement, HPTE has negotiated a Direct Agreement among HPTE, Concessionaire, and Bank of New York Mellon Trust Company, N.A., as security trustee (**BNY**), and in connection with the Concessionaire TIFIA Phase 2 Loan, USDOT requested HPTE to provide certain assurances to, and agreements with, USDOT pursuant to a Compliance Agreement among the USDOT, HPTE, and CDOT (collectively and together with the Amended and Restated Concession Agreement, the **Amended and Restated Concession Agreement and Related Documents**); and

**WHEREAS** in relation to the Tolling Services Agreement, HPTE has negotiated (i) a Trademark License Agreement by and between HPTE, Concessionaire, and E-470, (ii) a Consent and Agreement among E-470, HPTE, Concessionaire, and BNY, and (iii) a Cooperative Agreement Regarding Depreciation Costs for US 36 among HPTE, E-470, and Concessionaire (collectively and together with the Tolling Services Agreement, the **Tolling Related Documents**); and

**WHEREAS** (1) the proposed Amended and Restated Concession Agreement and Related Documents and (2) the proposed Tolling Related Documents (collectively, **Financial Close Documents**) are substantially final; and

**WHEREAS** pursuant to Section 43-4-806(6)(a) and (h), the HPTE Board of Directors has the power and duty to supervise the HPTE Director and to make and enter into contracts or agreements and the HPTE Board of Directors is familiar with the terms of the Financial Close Documents.

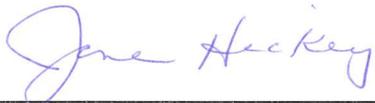
**NOW THEREFORE BE IT RESOLVED**, the HPTE Board of Directors hereby approves and authorizes HPTE to enter into the Financial Close Documents and any other agreements necessary to achieve Financial Close in substantially the form available at the meeting at which this Resolution is being adopted, with such changes, not inconsistent with this Resolution, as the HPTE Director determines are necessary to achieve Financial Close.

**BE IT FURTHER RESOLVED**, the HPTE Board of Directors hereby authorizes the HPTE Director to execute the Financial Close Documents on behalf of HPTE, in such form and with such revisions or modifications as the HPTE Director may determine to be necessary or appropriate (such determination to be conclusively, but not exclusively, evidenced by the execution of the Financial Close Documents, with such revisions or modifications, by the HPTE Director). The HPTE Director is hereby authorized to execute and deliver for and on behalf of HPTE any agreements approved by or contemplated by this Resolution, and any and all certificates and documents, and to

perform all other acts that the HPTE Director may deem necessary or appropriate in order to implement and carry out the transactions and other matters authorized by this Resolution.

**BE IT FURTHER RESOLVED**, the HPTE Board hereby ratifies all prior amendments to the Concession Agreement, and approves and authorizes HPTE to enter into additional amendments to the Concession Agreement that are necessary to modify various deadlines set forth in the Concession Agreement to account for any delays in achieving Financial Close and authorizes the HPTE Director to execute any such amendments on behalf of HPTE in such form as the HPTE Director may determine to be necessary or appropriate (such determination to be conclusively, but not exclusively, evidenced by the execution of such amendments by the HPTE Director).

Signed as of February 19, 2014



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Jane Hickey  
Secretary, HPTE Board of Directors

