

**Resolution – HPTE # 126**

**Approving Certain Matters with Respect to Colorado High Performance Transportation Enterprise U.S. 36 and I-25 Managed Lanes Senior Revenue Bonds, Series 2014**

**WHEREAS** pursuant to 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**” and, solely in its capacity as issuer of the Bonds defined below, the “**Issuer**”), as a government-owned business within the Colorado Department of Transportation (“**CDOT**”); 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 Constitution of the State, from the State government and local governments in the State, combined;

**WHEREAS** Section 43-4-806(6)(c) and Section 43-4-807 provide, in part, that the Issuer 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 the Issuer 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 (the “**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, the “**U.S. 36 and the I-25 Managed Lanes Project**”), pursuant to which Plenary Roads Denver LLC ( the “**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 previously amended to the date hereof, the “**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 (the “**Secretary**”) to allocate such amount among Qualified Facilities as the Secretary deems appropriate; and

**WHEREAS** the Secretary has allocated \$100,000,000 to the Issuer 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, the Issuer 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, the Issuer 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**, the Issuer proposes to make a loan to the Concessionaire pursuant to a loan agreement (the “**Loan Agreement**”) to be entered into by and among the Issuer, 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, to fund such loan, the Issuer intends to issue its “U.S. 36 and I-25 Managed Lanes Senior Revenue Bonds, Series 2014,” in an aggregate principal amount not to exceed \$50,000,000 (the “**Bonds**”) pursuant to a Trust Indenture (the “**Indenture**”) to be entered into by the Issuer and The Bank of New York Mellon Trust Company, N.A., as Trustee (the “**Trustee**”); and

**WHEREAS** (a) the Bonds, when issued, will be special, limited obligations of the Issuer, 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 HPTE, 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**, the Trust Estate pledged to the payment of the Bonds includes a security interest in certain amounts held pursuant to a Master Security Agreement (the "**MSA**") to be entered into by and among the Issuer, the Trustee, The Bank of New York Mellon, as security trustee, The Bank of New York Mellon, as intercreditor agent, the United States Department of Transportation, Northleaf/PRD LenderCo LP, and the Borrower Group Members; and

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

**WHEREAS**, the Issuer, the Concessionaire and Plenary Roads Finco LP will enter into a Tax Regulatory Agreement (the "**Tax Regulatory Agreement**") providing for certain obligations to be undertaken by the Concessionaire and Plenary Roads Finco LP with respect to the proceeds of the Bonds, the amounts to be used to pay the principal of and interest on the Bonds, and the use of the U.S. 36 Phase 2 Project; and

**WHEREAS**, in connection with the marketing and sale of the Bonds, the Issuer has previously approved the distribution and use of a preliminary official statement and final official statement with respect to the Bonds (the "**Preliminary Official Statement**" and the "**Official Statement**," respectively); and

**WHEREAS**, in a resolution of the HPTE Board of Directors (the "**Board**") adopted on November 20, 2013, the Board has previously authorized and approved the issuance by the Issuer of the Bonds, subject to the approval by the Board of the documents described above, and has also previously approved the use and distribution of the

Preliminary Official Statement and the Official Statement in connection with the marketing and sale of the Bonds; and

**WHEREAS**, there is on file with the Board forms of the Loan Agreement, the Indenture (including the form of the Bonds appended thereto), the MSA, the Bond Purchase Agreement and the Tax Regulatory Agreement (collectively, the “**Issuer Documents**”), and a copy of the final Preliminary Official Statement published on February 12, 2014; and

**WHEREAS**, the Board desires to authorize and approve the Issuer Documents and to ratify its previous authorization and approval of the issuance of the Bonds by the Issuer and of the use and distribution of the Preliminary Official Statement and the Official Statement;

**NOW THEREFORE BE IT RESOLVED**, pursuant to and in accordance with the Constitution and laws of the State, including particularly C.R.S. Section 43-4-806(6)(c) and Section 43-4-807 and the **Supplemental Public Securities Act**, C.R.S. Section 11-57-201 et seq., the Board hereby approves and authorizes the issuance of the Bonds by the Issuer, and the execution and delivery of the same on behalf of the Issuer by the Director of HPTE (the “**HPTE Director**”) or any other officer of HPTE, in a maximum principal amount not to exceed \$50,000,000, in substantially the form appended to the Indenture, with such changes therein and additions thereto, not inconsistent with this Resolution, as are approved by the person(s) executing the same (whose signature(s) thereon shall constitute conclusive evidence of such approval). The Board hereby elects to apply all of the provisions of the Supplemental Public Securities Act to the issuance of the Bonds and, pursuant to the provisions of the Supplemental Public Securities Act, hereby delegates to the HPTE Director the determination of those terms of the Bonds provided for in C.R.S. 11-57-205 (subject to the maximum principal amount set forth above).

**BE IT FURTHER RESOLVED**, the Board hereby approves the Issuer Documents and authorizes and directs the HPTE Director or any other officer of HPTE to execute and deliver each of the Issuer Documents on behalf of the Issuer, 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 person(s) executing the same on behalf of the Issuer (whose signature(s) thereon shall constitute conclusive evidence of such approval).

**BE IT FURTHER RESOLVED**, the Board hereby ratifies its prior approval and authorization of, and hereby approves and authorizes, the distribution and use by the Underwriter in connection with the marketing and sale of the Bonds of the Preliminary Official Statement, in the form thereof filed with the Board prior to the meeting of the Board at which this Resolution is adopted, and hereby ratifies its prior approval and authorization of, and hereby approves and authorizes, the distribution and use by the Underwriter in connection with the marketing and sale of the Bonds, in substantially the

form of the Preliminary Official Statement, with such changes therein and additions thereto, not inconsistent with this Resolution, as are approved by the HPTE 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) the statements under the captions "SUMMARY – General – Issuer," "SUMMARY – The Project – Concession Agreement; Concessionaire" (the first paragraph only), "NO LITIGATION – Issuer," "PROJECT PARTICIPANTS – HPTE; "PROJECT PARTICIPANTS – CDOT," "CONCESSION AGREEMENT," "OTHER PROJECT AGREEMENTS – Intergovernmental Agreements," "LEGISLATIVE REQUEST" (the first and third sentences of the first paragraph and the third paragraph only) and in Appendix B "SUMMARY OF CERTAIN PROVISIONS OF THE CONCESSION AGREEMENT", and (ii) such other information included in the Preliminary Official Statement and the final Official Statement that the HPTE 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 finds, declares and determines that HPTE is an "enterprise" within the meaning of Article X, Section 20 of the Constitution of the State, and hereby covenants and agrees for the benefit of the registered owners of the Bonds that so long as any of the Bonds remain outstanding, HPTE will continue to qualify as an "enterprise" within such meaning; provided, however, after calendar year 2014, the Board may disqualify HPTE as an "enterprise" in any year in which an Issuer Representative (as defined in Exhibit A to the Indenture) certifies that said disqualification does not materially adversely affect the enforceability of the Bonds or any of the Issuer Documents.

**BE IT FURTHER RESOLVED**, the Board hereby finds, declares and determines that: (a) the Bonds, when issued, will be special, limited obligations of the Issuer, payable solely from and secured solely by the Trust Estate, and will not, and shall not be deemed to constitute an obligation, moral or otherwise, of HPTE, 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.

**BE IT FURTHER RESOLVED**, the Board hereby authorizes the HPTE Director or any other officer of HPTE 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, the delivery of all certificates and other documents required to be delivered by the provisions of the Bond Purchase Agreement.

Signed as of February 19, 2014



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Jane Hickey  
Secretary, HPTE Board of Directors