

**Resolution #BE-2021-07-02**

Approving Extension of Deadline to Issue Colorado Bridge Enterprise Senior Revenue Bonds (Central 70 Project), Series 2021A, and Senior Project Infrastructure Bonds (Central 70 Project), Series 2021B

**Approved by the Bridge Enterprise on July 15, 2021**

**WHEREAS**, the General Assembly created the Colorado Bridge Enterprise (“BE” and, solely in its capacity as issuer of the Bonds (as defined below), the “Issuer”) pursuant to Section 43-4-805, C.R.S., as a government-owned business within the Colorado Department of Transportation (“CDOT”) to accelerate the repair and reconstruction of deficient bridges further defined as structures that are “poor”; and

**WHEREAS**, the BE Board of Directors (the “BE Board”) is empowered, pursuant to Section 43-4-805(5)(h)(II), C.R.S., to enter into agreements pursuant to which a private entity designs, develops, constructs, reconstructs, repairs, operates, or maintains all or any portion of a designated bridge project on behalf of BE; and

**WHEREAS**, BE and the Colorado High Performance Transportation Enterprise (“HPTE,” and together with BE, the “Enterprises”) are, at the direction of the Colorado Transportation Commission and in collaboration with CDOT, jointly procuring the design, construction, financing, operation, and maintenance of the reconstruction of the 9.4-mile portion of the 1-70 East Corridor in the Denver area (the “Central 70 Project”) as a public-private partnership; and

**WHEREAS**, on November 21, 2017, the Enterprises and Kiewit Meridiam Partners LLC (the “Developer”), executed and delivered the Central 70 Project Agreement (as amended from time to time in accordance with the terms thereof, including by the First Amendment to the Project Agreement, dated December 21, 2017, the Second Amendment to the Project Agreement, dated May 9, 2019, and the Third Amendment to the Project Agreement, dated December 11, 2019, the “Project Agreement”), which sets forth, among other things, the rights and obligations of the Enterprises and the Developer with respect to the design, construction, financing, operation, maintenance, renewal and replacement of the Central 70 Project, during both the construction period and 30-year operating period, including, inter alia, provisions related to the issuance of “private activity bonds” by the Issuer and performance payments to be made by the Enterprises to the Developer during operations; and

**WHEREAS**, Sections 43-4-805(5)(c) and Section 43-4-807, C.R.S., provide, in part, that the Issuer may issue revenue bonds for the purpose of paying the cost of financing, repairing, reconstructing, replacing and maintaining designated bridges; and

**WHEREAS**, on December 21, 2017, the Issuer issued \$114,660,000 aggregate principal amount of its Colorado Bridge Enterprise Senior Revenue Bonds (Central 70 Project), Series 2017 (the “Series 2017 Bonds”) upon the terms and conditions set forth in the Trust Indenture, dated as of December 1, 2017 (the “Original Indenture”), by and between the Issuer and U.S. Bank National Association, as trustee (the “Trustee”), the proceeds of which

were loaned by the Issuer to the Developer (the “Series 2017 Loan”) pursuant to the Loan Agreement, dated as of December 21, 2017, as amended (the “Series 2017 Loan Agreement”), by and between the Issuer and the Developer; and

**WHEREAS**, the Developer used the proceeds of the Series 2017 Loan to finance a portion of the costs of designing and constructing the Central 70 Project; and

**WHEREAS**, the Developer entered into the TIFIA Loan Agreement, dated as of December 19, 2017, as amended (the “2017 TIFIA Loan Agreement”), with the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender”), pursuant to which the TIFIA Lender has, to date, lent \$416 million to the Developer (the “2017 TIFIA Loan”); and

**WHEREAS**, the Developer used the proceeds of the 2017 TIFIA Loan to finance a portion of the costs of designing and constructing the Central 70 Project; and

**WHEREAS**, the Developer and Kiewit Infrastructure Co. (the “Construction Contractor”) entered into the Design and Construction Contract for the Central 70 Project, dated as of November 21, 2017 (as amended from time to time in accordance with the terms thereof, including by the First Amendment to the Design and Construction Contract, dated December 21, 2017, the Second Amendment to the Design and Construction Contract, dated May 9, 2019, and the Third Amendment to the Design and Construction Contract, dated December 11, 2019, the “Construction Contract”), in connection with the design, construction, and operation and maintenance during construction of a portion of the Central 70 Project; and

**WHEREAS**, the Construction Contractor provided notice to the Developer that certain supervening events occurred under the Construction Agreement (the “CC SE Notices”); and

**WHEREAS**, the Developer provided notice to the Enterprises that certain supervening events occurred under the Project Agreement (the “PA SE Notices”); and

**WHEREAS**, the Enterprises and the Developer have engaged in discussions in an effort to determine any extension of time, relief and compensation to which the Developer is entitled in respect of the PA SE Notices; and

**WHEREAS**, the Developer and the Construction Contractor have engaged in discussions in an effort to determine any extension of time, relief and compensation to which Construction Contractor is entitled in respect of the CC SE Notices; and

**WHEREAS**, the Enterprises, the Developer and the Construction Contractor have resolved such PA SE Notices and set forth the details of such agreement in a memorandum of settlement, that was executed and delivered by the Enterprises, the Developer and the Construction Contractor and became effective on May 24, 2021 (the “Memorandum of Settlement”); and

**WHEREAS**, in connection with resolving the PA SE Notices and entering into the Memorandum of Settlement, the Developer intends to raise additional funds to be used for, among other things, the payment of costs of designing and constructing the Central 70 Project by undertaking a refinancing of the 2017 TIFIA Loan and incurring additional debt; and

**WHEREAS**, pursuant to the Memorandum of Settlement, the Enterprises agreed to cooperate with the Developer with respect to incurring additional debt to pay for a portion of the costs of designing and constructing the Central 70 Project and to refinance the 2017 TIFIA Loan; and

**WHEREAS**, pursuant to Resolution #BE-2021-04-05 adopted by the BE Board on April 14, 2021, as supplemented by Resolution #BE-2021-05-03 adopted by the BE Board on May 20, 2021 (collectively, the “Original Resolution”), the BE Board approved assisting the Developer with incurring additional debt with respect to the Central 70 Project, by issuing its (a) “Colorado Bridge Enterprise Senior Revenue Bonds (Central 70 Project), Series 2021A (Taxable)” (the “Series 2021A Bonds”) and (b) “Colorado Bridge Enterprise Senior Project Infrastructure Bonds (Central 70 Project), Series 2021B (Taxable)” (the “Series 2021B Bonds,” and together with the Series 2021A Bonds, the “Bonds”), in a combined aggregate principal amount not to exceed \$550,000,000, pursuant to the Original Indenture and a First Supplemental Trust Indenture (the “First Supplemental Indenture,” and together with the Original Indenture, the “Indenture”) to be entered into by the Issuer and the Trustee; and

**WHEREAS**, the proceeds of the Bonds will be loaned to the Developer pursuant to one or more loans in accordance with a loan agreement (the “Series 2021 Loan Agreement”) to be entered into by and between the Issuer and the Developer, to (a) pay a portion of the cost of designing and constructing the Central 70 Project, (b) fund capitalized interest on the Series 2021B Bonds, (c) refinance the 2017 TIFIA Loan, and (d) as necessary, pay certain costs of issuance or costs of financing associated therewith; 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 the Issuer, CDOT, HPTE, or the State of Colorado (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 the Issuer, HPTE or CDOT nor the full faith and credit 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 owners of the Bonds may not look to any revenues of the Issuer, HPTE, CDOT or the State for repayment of the Bonds and the only sources of repayment of the Bonds will be revenues provided by the Developer to the Issuer pursuant to the Series 2021 Loan Agreement for the payment of the principal (or redemption price) of and interest on the Bonds; (c) the Bonds will not constitute an indebtedness of the Issuer, HPTE, CDOT or the State or a multiple-fiscal year obligation of the Issuer, 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 the Issuer, HPTE, CDOT or the State, other than the Trust Estate; and (e) no property of the Issuer, 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 Second Amended and Restated Collateral Agency Agreement (the “CAA”) to be entered into by and among the Developer, the TIFIA Lender, U.S. Bank National Association, as intercreditor agent on behalf of the Secured Parties (as defined in the CAA), U.S. Bank National Association, as collateral agent on behalf of itself and the other Secured Parties, U.S. Bank National Association as securities intermediary on behalf of itself and the other Secured Parties, and each other Secured Party that accedes thereto from time to time; and

**WHEREAS**, a portion of the Trust Estate with respect to the Series 2021B Bonds and the related loan (the “Series 2021B Loan”) to be provided by the Issuer pursuant to the Series 2021 Loan Agreement, will include the proceeds of a loan (the “2021 TIFIA Loan”) to be made to the Developer pursuant to a TIFIA Loan Agreement (the “2021 TIFIA Loan Agreement”), expected to be entered into between the Developer and the TIFIA Lender; and

**WHEREAS**, the Developer will agree to repay the Series 2021B Loan (and the Series 2021B Bonds) with the proceeds of the 2021 TIFIA Loan; and

**WHEREAS**, pursuant to the Original Resolution, the Bonds are required to be issued no later than July 16, 2021 (the “Bond Issuance Deadline”); and

**WHEREAS**, the TIFIA Lender is in the process of procuring the final approvals to provide the 2021 TIFIA Loan to the Developer and to enter into the 2021 TIFIA Loan Agreement with the Developer, including, among others, approval from the Secretary of the United States Department of Transportation (the “TIFIA Approvals”); and

**WHEREAS**, the TIFIA Approvals are required in order to issue the Bonds; and

**WHEREAS**, the TIFIA Approvals may not be received by the current Bond Issuance Deadline (July 16, 2021); and

**WHEREAS**, the BE Board desires to (a) extend the Bond Issuance Deadline to September 17, 2021, and (b) except as otherwise provided herein, ratify the provisions of the Original Resolution; and

**WHEREAS**, BE 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; and

**NOW THEREFORE BE IT RESOLVED**, the BE Board hereby approves, the extension of the Bond Issuance Deadline to September 17, 2021.

**BE IT FURTHER RESOLVED**, the BE Board hereby finds, declares and determines that BE 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, BE will continue to qualify as an “enterprise” within such meaning.

**BE IT FURTHER RESOLVED**, the BE Board hereby (a) declares that this Resolution will be supplemental to the Original Resolution, (b) ratifies the Original Resolution, as supplemented by the provisions of this Resolution, and (c) declares that the Original Resolution shall remain in full, force and effect.

*Herman F. Stockinger A A A*

Herman Stockinger, Secretary  
Colorado Bridge Enterprise

7-15-2021

Date