



COLORADO

Department of Transportation

Statewide Bridge Enterprise

4201 E. Arkansas, Room 275
Denver, CO 80222

DATE: August 20, 2015
TO: Colorado Bridge Enterprise Board of Directors
FROM: Joshua Laipply, P.E., Chief Engineer
SUBJECT: Funding Commitments and Eligibility Criteria for the I-70 East Project

Purpose

On February 19, 2015, the Transportation Commission approved Resolution #TC-15-2-5, which identified the Colorado Bridge Enterprise (“CBE”) as the Managing Partner for the I-70 East Corridor Project (the “Project”), and set out that CBE is expected to be eligible to contribute up to \$850 million to the Project. Resolution #TC-15-2-5 further directed CBE and the High Performance Transportation Enterprise (“HPTE”) to proceed with the Design-Build-Finance-Operate-Maintain (DBFOM) procurement and delivery process for the Project. The purpose of this memorandum is to further define CBE’s financial commitment to the Project, and outline the relevant restrictions on the use of CBE revenues.

Action

Approve Resolution #15-8-2 establishing the CBE funding commitments and eligibility criteria for the Project.

Background

CBE Financial Contribution

CBE imposes a bridge safety surcharge ranging from \$13 to \$32 on most vehicles registered in the State in accordance with C.R.S. § 43-4-805(g). Revenues from the bridge safety surcharge fee (the “Bridge Surcharges”) were approximately \$100 million for the fiscal year ended June 30, 2015. Using a conservative 1% annual growth rate, CBE revenues are expected to grow from about \$121 million in 2017 (construction start on the Project) to \$200 million in 2051 (anticipated term of availability payments). On December 15, 2010, CBE issued its Colorado Bridge Enterprise Revenue Bonds, Senior Taxable Build America, Series 2010A (the “Series 2010A Bonds”). CBE’s net debt service obligation on the Series 2010A Bonds is approximately \$12 million per year through 2025, increasing to approximately \$25 million per year through 2041 at full maturity.

CBE has agreed to fund \$850 million, net present value (NPV), for its contribution to the Project. A portion of the CBE funds will be used to repay owner pre-development costs and the remaining portion will be used to fund milestone payments and capital payments under the project agreement that will be entered into between CBE, HPTE and the Project developer. Milestone payments will be paid during the construction of the Project. Capital payments will be made as a portion of an overall performance payment payable monthly to the Project developer during the operation of the Project. The capital payment portion of the performance payment will go to repay the capital raised by the Project developer, including potentially, but not limited to, a TIFIA loan, private activity bonds, and private developer equity, which together will fund the capital costs of the Project not otherwise funded by milestone payments.

Restrictions on Annual Use of CBE Revenues

CBE will commit up to fifty percent (50%) of its available revenues, after required debt service on the Series 2010A Bonds, to the Project during the 30-year operational period following substantial completion. CBE may allocate additional funds in excess of fifty percent during the expected five year construction period, from 2017-2021, in order to fund milestone payments and reduce overall borrowing costs, which is anticipated to decrease the annual



amount of CBE’s capital payments during the operational period of the Project, and increase CBE’s available bonding capacity for other projects statewide.

The financing plan for the Project shall provide that the minimum amounts set forth in Table 1 below remain available for other CBE projects in each year during the 2017-2021 construction period, which amounts represent not less than fifty-percent of the CBE revenues projected to be available in each year. Total CBE payments on the Project shall be further limited to the ranges set forth in Table 1 below in each fiscal year, and total CBE contributions to the Project shall not exceed a total of \$350 million during the 2017-2021 construction period. Subject to such limitations, and any other limitations set forth in this memorandum, all remaining CBE revenues, including unallocated fund balances, will be available for use in structuring the financing plan for the Project.

Table 1: CBE Funding Commitments During Project Construction Period

	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Total
Minimum Available CBE Program Funding for non-I-70 East Projects	\$80 million	\$55 million	\$55 million	\$55 million	\$55 million	\$300 million
Maximum CBE Payments for I-70 East in Fiscal Year	\$0 - \$125 million	\$0 - \$175 million	\$0 - \$175 million	\$0 - \$175 million	\$0 - \$175 million	\$350 million

In permitting flexibility in the payment structure for the Project, it is not the intent of CBE to commit more than fifty-percent (50%) of available revenues over the estimated 35-year duration of the Project, nor shall the payment structure increase the overall \$850 million NPV commitment of CBE to the Project. In no event shall such payment structure diminish CBE’s ability to fund existing commitments for programmed designated bridge projects over the Project’s construction period.

CBE Debt Management Practices

Under the indenture for the Series 2010A Bonds, any additional senior bonds or obligations issued or incurred by CBE have a first priority lien on all CBE Revenues, which primarily includes the Bridge Surcharges. The indenture allows for the issuance of First Tier and Second Tier Subordinate Obligations with no specific additional debt test. It is contemplated that if there is a requirement for CBE to pledge revenues in relation to the Project that this obligation would be structured as a subordinate obligation to the Series 2010A Bonds. It is CBE’s intent to preserve its ability to utilize revenues not committed to the Project for future debt issuances on a senior or parity basis with those obligations issued for the Project.

Documentation of Bridge-Eligible Work

C.R.S. §§ 43-4-805(3)(c) provides authorization for CBE to expend moneys to fund, including payment on bond or loan obligations, the administration, planning, financing, repair, reconstruction, replacement, or maintenance of Designated Bridges, and for the acquisition of land to the extent it is required in connection with any Designated Bridge project identified and authorized pursuant to C.R.S. § 43-4-805(5)(f). The Project includes a number of Designated Bridges (as further described below), including foremost the reconstruction of the existing I-70 viaduct from Brighton Boulevard to Colorado Boulevard and its replacement with the Partial Covered Lowered Alternative (the “PCL”). A “Designated Bridge” is defined in C.R.S. §§ 43-4-803(10) to also include “any roadways, sidewalks, or other infrastructure connected or adjacent to or required for the optimal functioning of the bridge.”

Preliminary estimates indicate approximately \$861 million in costs on the Project are CBE-Eligible Costs (as defined herein), which supports CBE’s overall funding commitment of \$850 million. However, given the nature of the planned DFBO procurement and the availability payment financing structure, proposers on the Project will not submit detailed construction pricing in their proposals, as would be the case under traditional design-bid-build contracting. Therefore, in order that CBE can verify its overall funding contribution does not exceed the total amount CBE is statutorily authorized to fund toward the Project, proposers will specifically be required to submit a breakdown of costs between CBE-Eligible and Non-CBE-Eligible work with their proposals.



Determination of Cost Eligibility

CBE's broad statutory authorization would generally permit funding of any work broadly connected with the reconstruction of Designated Bridges. However, in order to provide consistency in bridge-eligibility designations statewide, as well as to maximize the reach and effectiveness of CBE revenues, CBE previously adopted more conservative general project eligibility criteria in a CBE Guidance Document, effective December 21, 2011 (as amended). Some modifications to the CBE Guidance Document are required to establish the CBE-Eligible Criteria for the Project, as the guidance did not specifically contemplate the replacement of the existing I-70 viaduct with the below-grade PCL.

To the extent practicable, the more restrictive criteria set forth in the CBE Guidance Document will also be applied to the Project in the form of "CBE-Eligible Criteria" for "CBE-Eligible Costs," which are set forth in more detail in the project-specific guidance attached to this memorandum. The CBE-Eligible Criteria, which can be further altered at any time in CBE's discretion, generally do not permit Bridge Surcharges to be utilized for costs related to capacity expansions, new connections that are not required under an approved local transportation plan, or enhancements not required in by an approved environmental document. Only CBE-Eligible Costs meeting the CBE-Eligible Criteria within the limits of a Designated Bridge project are eligible for funding from CBE Bridge Surcharge revenues.

Eligibility of Operations & Maintenance Costs

The CBE-Eligible Share of operations and maintenance costs of the Project are CBE-Eligible Costs during construction for the life of the existing viaduct. Because the below-grade PCL that would replace the existing viaduct (subject to final approval through the NEPA process) would not be a Designated Bridge following reconstruction, post-demolition operations and maintenance costs would not be considered CBE-Eligible Costs.

Next Steps

It is anticipated that CBE, the Colorado Department of Transportation ("CDOT"), and the High Performance Transportation Enterprise ("HPTe") will enter into an intra-agency agreement further defining the responsibilities and commitments of each party, consistent with the commitments of CBE set out in the memorandum, in late 2015.

Key Benefits

Additional guidance is needed from CBE with respect to CBE's financial commitments to the Project, as well as the relevant restrictions on the use of CBE funds. Approval of this guidance will provide additional certainty to the Project's advisor team, as well as outside parties including ratings agencies, USDOT, and proposer teams, which will enable the Project team to finalize the draft Request for Proposals that is to be released in September. Also, the financing flexibility provided in this memorandum is anticipated to decrease CBE's overall borrowing for the Project, while increasing CBE's available funding for other projects statewide.

Options and Recommendations

- Approve the funding commitments and project-specific eligibility criteria for the I-70 East Project as presented.
- Approve with changes.

Attachments

- Resolution #15-8-2 Establishing CBE Funding Eligibility Criteria and Commitments for the I-70 East Project
- Colorado Bridge Enterprise (CBE) Cost Eligibility Criteria for the I-70 East Project





Colorado Bridge Enterprise Cost Eligibility Criteria for the I-70 East Project

Effective: August 20, 2015

The Board of Directors (“Board”) of the Colorado Bridge Enterprise (“CBE”) has approved the following project-specific eligibility criteria (the “CBE-Eligible Criteria”) for the I-70 East Project (the “Project”). The CBE-Eligible Criteria, which can be further altered at any time in CBE’s discretion, generally do not permit Bridge Surcharge revenues to be utilized for costs related to capacity expansions, new connections that are not required under an approved local transportation plan, or enhancements not required in by an approved environmental document.

Only “CBE-Eligible Costs” meeting the CBE-Eligible Criteria within the limits of a “Designated Bridge” are eligible for funding from CBE Bridge Surcharge revenues.

Designated Bridges

The limits of the Designated Bridge project for the replacement of the existing I-70 viaduct extend beyond the footprint of the existing viaduct due to the profile change required to reconnect I-70 and the PCL to existing grade. Subject to the more detailed CBE-Eligible Criteria set forth herein, the “PCL Limits” constituting this Designated Bridge project are as follows: On the west, from the point where the I-70 profile ties in to the existing highway grade, immediately west of Brighton Boulevard, extending to the east to the point where the I-70 profile is no longer in cut and matches to existing grade, east of Colorado Boulevard.

The following bridge(s), which are also Designated Bridges, are expected to be replaced within the PCL Limits: (i) Brighton (*partially eligible, depending on point of return to existing grade*); (ii) York (and sanitary and storm sewers); (iii) Josephine Pedestrian Bridge; (iv) Columbine (included in the cover); (v) Clayton (included in the cover); (vi) Fillmore; (vii) Steele/Vasquez; (viii) Monroe (45th Ave. Connector); (ix) Union Pacific Railroad (I-70 Mainline); (x) BNSF Railroad Market Lead (two bridges); (xi) Union Pacific Railroad - 46th Avenue (eastbound and westbound); (xii) Union Pacific Railroad Access Road; (xiii) Union Pacific Railroad Bridge; and (xiv) Colorado Boulevard (*partially eligible - see other CBE-Eligibility Criteria*).

The Cook Street bridge is not a Designated Bridge, and costs related to it are not CBE-Eligible Costs.

The Dahlia Street bridge is located east of the PCL point of return to grade, and costs related to it are also not CBE-Eligible Costs.

Costs related to the cover included within the PCL are fully CBE-Eligible Costs.

Subject to the more detailed CBE-Eligible Criteria set forth herein, the I-270 flyover bridge over I-70 and the I-70 bridge over Peoria Street are also Designated Bridges, and costs related to these are CBE-Eligible Costs. No other bridges east of Colorado Boulevard are Designated Bridges.

CBE-Eligible Criteria for CBE-Eligible Costs

The following criteria shall be applied to the Designated Bridge projects within the Project to determine CBE-Eligible Costs for the Project. Costs incurred that relate to the entire Project may be split such that the proportion of such costs that (a) is equal to the proportion of the total costs of the Project that is attributable to work relating to Designated Bridges, and (b) otherwise meet the CBE-Eligible Criteria, will be CBE-Eligible Costs (the “CBE-Eligible Share”).



1. Costs related to capacity improvements are not CBE-Eligible Costs.
 - a. Costs related to widening cross-streets are only CBE-Eligible Costs in proportion to the existing capacity. For example, the existing crossing of Steele/Vasquez Street under I-70 is four lanes. The proposed typical section of Steele Street is seven lanes. Costs related to the additional three lanes are not CBE-Eligible Costs.
 - b. Costs related to added capacity on I-70 are not CBE-Eligible Costs. For example, the existing viaduct is a six-lane cross-section. Costs related to the four additional lanes in the proposed highway cross-section are not CBE-Eligible Costs. Note: This may not require an exact 60% - 40% cost split, as costs for elements that would be equally required (e.g. roadway shoulders) regardless of cross-section width are fully CBE-Eligible Costs.
 - c. Costs related to structures spanning the highway to the extent the additional span/structure deck area is required to accommodate the capacity expansion are not CBE-Eligible Costs.
2. Connectivity. Reconnections of existing local streets are generally CBE-Eligible Costs within the limits necessary to reconnect roadways, both horizontally and vertically.
 - a. Costs related to reconstruction of 46th Avenue are CBE-Eligible Costs.
 - b. Costs related to traffic control devices required for reconnecting local streets and connecting 46th Avenue are CBE-Eligible Costs. Note: Costs related to Cook Street are not CBE-Eligible Costs, as there is no existing connectivity.
 - c. Costs related to reconstruction of the Colorado Boulevard bridge and interchange are partially eligible.
 - d. Costs related to reconstruction of the Colorado Boulevard bridge and interchange are partially CBE-Eligible Costs.
 - i. Costs related to reconstruction of the Colorado Boulevard bridge to the extent the additional span/area is required to accommodate the capacity expansion of I-70 are not CBE-Eligible Costs. Modifications that would otherwise be required if the bridge were reconstructed to current standards without a capacity expansion are CBE-Eligible Costs.
 - ii. To the extent realignment of the Colorado Boulevard bridge is required only for construction of and connection to the PCL, costs related to horizontal reconnection of the roadways to the north and south are CBE-Eligible Costs. Costs related to realignment solely for project phasing are not CBE-Eligible Costs.
 - iii. Costs related to additional bridge width for turn lanes and a median are CBE-Eligible Costs.
 - iv. Costs related to the reconstruction of the westbound on-ramps and eastbound off-ramps are necessary to connect to the PCL, and therefore are CBE-Eligible Costs.
 - v. Costs related to the reconstruction of the westbound off-ramps and eastbound on-ramps are not CBE-Eligible Costs.
3. Design and Environmental Costs.
 - a. Costs for design and environmental studies conducted prior to commercial close are fully CBE-Eligible Costs.
 - b. Following commercial close, the CBE-Eligible Share of costs for design, environmental studies, environmental compliance, and environmental justice measures are CBE-Eligible Costs.
4. Costs for acquisition of right-of-way necessary for any Project element otherwise satisfying the CBE-Eligible Criteria are CBE-Eligible Costs.
5. Costs related to utilities and utility relocations necessary for any Project element otherwise satisfying the CBE-Eligible Criteria are CBE-Eligible Costs.
6. Costs related to removals of existing structure and roadway within the limits of a Designated Bridge project are CBE-Eligible Costs.
7. Costs related to realignment of roadways to correct safety and hydraulic issues in connection with a



Designated Bridge project are CBE-Eligible Costs.

8. Costs related to all structural elements within the limits of a Designated Bridge project are CBE-Eligible Costs.
9. Costs related to retaining walls, columns and abutments within the limits of a Designated Bridge project, including those necessary for the PCL and the partial cover, are CBE-Eligible Costs.
10. Costs for removals, earthwork, pavement, sidewalk, curb and gutter, and barriers within the limits of a Designated Bridge project are CBE-Eligible Costs.
11. Costs related to dewatering within the limits of a Designated Bridge project are CBE-Eligible Costs.
12. Costs related to offsite storm drainage required to protect the PCL are CBE-Eligible Costs.
13. Costs related to onsite storm drainage improvements within the limits of a Designated Bridge project, or the CBE-Eligible Share of such costs in proportion to the costs necessary to protect a Designated Bridge project, are CBE-Eligible Costs.
14. Costs related to erosion protection to prevent scour of piers, abutments, and substructure of a Designated Bridge project are CBE-Eligible Costs.
15. Costs related to guardrail and safety treatments on approaches and departures to a Designated Bridge or within the PCL Limits are CBE-Eligible Costs.
16. Costs for earthwork and surfacing for approaches to match new profile are CBE-Eligible Costs.
17. Costs related to removal of trees, clearing and grubbing for new structure and approaches to a Designated Bridge project are CBE-Eligible Costs.
18. Costs of architectural treatments, but only to the extent required by the FEIS/ROD or applicable environmental document, are CBE-Eligible Costs.
19. The CBE-Eligible Share of costs related to traffic control, mobilization, construction oversight, testing, permitting, and other general project costs are CBE-Eligible Costs.
20. Costs related to tolling systems are not considered to be CBE-Eligible Costs.¹

¹ Installation of the tolling system is outside the scope of the DBFOM procurement and will be provided pursuant to HPTE's Tolling Services Agreement with the E-470 Public Highway Authority



Resolution #BE-15-8-2

Establishing CBE Funding Eligibility Criteria and Commitments for the I-70 East Project

Approved by the Bridge Enterprise Board of Directors on Aug. 20, 2015

WHEREAS, the Colorado Bridge Enterprise (“CBE”) was created pursuant to Section 43-4-805, C.R.S., as an enterprise for purposes of section 20 of article X of the Colorado Constitution, and as a government-owned business within the Colorado Department of Transportation (“CDOT”), for the business purpose of financing, repairing, reconstructing, and replacing designated bridges, as defined in Section 43-4-803(10), C.R.S.; and

WHEREAS, CBE and the High Performance Transportation Enterprise (“HPTE”) are currently undertaking the Interstate 70 East Reconstruction Project, which generally consists of the removal of the I-70 viaduct between Brighton Boulevard and Colorado Boulevard, the lowering of approximately one mile of I-70 below grade, the construction of a landscaped cover over a portion of I-70, and the addition of managed lanes in each direction on I-70 between I-25 and Tower Road (the “I-70 East Project”); and

WHEREAS, the Board has determined that it is appropriate and in the public interest to prepare for the possibility that the Partial Cover Lowered Alternative ultimately receives approval through the NEPA process and, as permitted under 23 C.F.R. § 636.109, to pursue the procurement of the I-70 East Project concurrent with and prior to the conclusion of the NEPA process; and

WHEREAS, on February 19, 2015, the Transportation Commission approved Resolution #TC-15-2-5, which identified CBE as the Managing Partner for the I-70 East Project and set out that CBE is expected to be eligible to contribute up to \$850 million toward the I-70 East Project; and

WHEREAS, the I-70 East Project is expected to be procured under a design-build-finance-operate-maintain (“DBFOM”) structure through a project agreement among the Colorado Bridge Enterprise, the Colorado High Performance Transportation Enterprise (“HPTE”) and a private entity (the “Developer”); and

WHEREAS, preliminary cost estimates for the I-70 East Project support CBE’s \$850 million (net present value) commitment to the I-70 East Project, which commitment the Board of Directors of the CBE (the “Board”) now desires to further clarify through this Resolution and the memorandum included herewith; and

WHEREAS, in order to maximize the reach and effectiveness of limited bridge surcharge revenues, establish statewide consistency, and provide assurance that only those costs eligible under the provisions of Section 43-4-805, *et seq.*, C.R.S. are funded out of CBE revenues, CBE approved a Guidance Document for project funding eligibility reviews effective December 21, 2011; and

WHEREAS, it is necessary and desirable for CBE to establish project-specific Cost Eligibility Criteria for the I-70 East Project, which criteria are generally consistent with the 2011 Guidance Document; and

WHEREAS, in order that CBE can verify its overall funding contribution does not exceed the total amount CBE is statutorily authorized to fund toward the Project, the Developer will specifically be required to submit a breakdown of costs between CBE-eligible and non-CBE-eligible work with their proposals, utilizing the approved project-specific criteria; and

WHEREAS, in order to reduce overall costs, including costs of borrowing and CBE's ongoing annual capital payment obligations, and to maximize the revenues available for designated bridge projects statewide, the Board further desires to permit flexibility in the financing structure for the I-70 East Project, as further described in the memorandum submitted with this Resolution; and

WHEREAS, the Executive Oversight Committee (EOC) for the I-70 East Project will review financial submissions received from proposers and the overall proposed financing plan and make a recommendation to the Board, which, pursuant to Section 43-4-805(5)(f), C.R.S., shall have the power to approve the final agreement entered into by CBE for the I-70 East Project.

NOW THEREFORE BE IT RESOLVED, the Board of Directors of the Colorado Bridge Enterprise hereby approves in concept the Memorandum Regarding CBE Funding Commitments and Eligibility Criteria for I-70 East Project submitted with this Resolution, which outlines CBE's financial commitments to the I-70 East Project and establishes the desirability for adopting project-specific eligibility criteria to govern the use of CBE revenues for the I-70 East Project; provided, however, that in no event shall CBE commit more than fifty-percent (50%) of available revenues over the estimated thirty-five (35) year duration of the I-70 East Project, nor shall the payment structure increase the overall \$850 million net present value commitment of CBE to the I-70 East Project.

BE IT FURTHER RESOLVED, the Board of Directors of the Colorado Bridge Enterprise hereby adopts the attached Colorado Bridge Enterprise Cost Eligibility Criteria for the I-70 East Project.

Herman F. Stockinger III

Herman Stockinger, Secretary
Bridge Enterprise Board of Directors

8-20-15

Date