

**Resolution #BE-2021-04-05**

Approving Certain Matters with Respect to the 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 April 14, 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 and the Developer have agreed to resolve such PA SE Notices and expect to set forth the details of such agreement in a memorandum of settlement, to be entered into by and among the Enterprises, the Developer and the Construction Contractor (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 will agree 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** to assist the Developer with incurring additional debt with respect to the Central 70 Project, the Issuer proposes 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 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 provide 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 with the proceeds of the 2021 TIFIA Loan; and

**WHEREAS**, the Bonds will be sold to RBC Capital Markets, LLC and Barclays Capital Inc., as the underwriters of the Bonds (the “Underwriters”) pursuant to a Bond Purchase Agreement to be entered into by and among the Issuer, the Developer and the Underwriters (the “Bond Purchase Agreement”); and

**WHEREAS**, in connection with the marketing and sale of the Bonds, the Developer and the Underwriters have requested that the Issuer approve 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 connection with the issuance of the Bonds, the Issuer will be required to enter into a continuing disclosure undertaking (the “Issuer Continuing Disclosure Undertaking”), pursuant to which the Issuer will be required to file certain financial and operating information with respect to BE, HPTE and CDOT on an annual basis with the Municipal Securities Rulemaking Board; and

**WHEREAS** in connection with the agreements set forth under the Memorandum of Settlement, the Issuer and the Developer have agreed to make certain amendments to the Series 2017 Loan Agreement by entering into a Second Amendment to Loan Agreement (the “Amendment to Series 2017 Loan Agreement”), and

**WHEREAS**, there is on file with the BE Board forms of (i) the Series 2021 Loan Agreement, the First Supplemental Indenture (including the form of the Bonds appended thereto), the Bond Purchase Agreement, the Issuer Continuing Disclosure Undertaking and the

Amendment to Series 2017 Loan Agreement (collectively, the “Issuer Bond Documents”), and (ii) the Preliminary Official Statement; and

**WHEREAS**, the BE Board desires to authorize and approve the issuance of the Bonds, the execution and delivery of the Issuer Bond Documents, and the use and distribution of the Preliminary Official Statement and the Official Statement; 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**, pursuant to and in accordance with the Constitution and laws of the State, including particularly Section 43-4-805(5)(c) and Section 43-4-807, C.R.S., and the Supplemental Public Securities Act, Section 11-57-201 et seq., C.R.S. (the “Supplemental Public Securities Act”), the BE Board hereby approves and authorizes the issuance of the Bonds by the Issuer, provided that the Bonds are issued no later than July 16, 2021, and the execution and delivery of the same on behalf of the Issuer by the Director of BE (the “BE Director”) or her designee (including, but not limited to, the Chief Engineer of CDOT) or any other officer of BE, in a combined maximum principal amount not to exceed \$550,000,000, in substantially the form appended to the First Supplemental 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 BE 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 BE Director the determination of those terms of the Bonds provided for in Section 11-57-205, C.R.S. (subject to the combined maximum principal amount set forth above).

**BE IT FURTHER RESOLVED**, the BE Board hereby approves the Issuer Bond Documents and authorizes and directs the BE Director or her designee (including, but not limited to, the Chief Engineer of CDOT) or any other officer of BE to execute and deliver each of the Issuer Bond Documents on behalf of the Issuer, in substantially the respective forms filed with the BE Board prior to the meeting of the BE 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 BE Board hereby approves and authorizes the distribution and use by the Underwriters in connection with the marketing and sale of the Bonds of the Preliminary Official Statement, in the form thereof filed with the BE Board prior to the meeting of the BE Board at which this Resolution is adopted, and hereby approves and authorizes, the distribution and use by the Underwriters in connection with the marketing and sale of the Bonds of a final Official Statement, 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 BE Director or her designee

(including, but not limited to, the Chief Engineer of CDOT); provided that BE takes no responsibility for, and nothing herein shall be construed as an acceptance of responsibility by BE with respect to, the Preliminary Official Statement or final Official Statement, other than (i) the statements under the captions “SUMMARY—THE SERIES 2021 BONDS—Bond Issuer,” “SUMMARY—THE PROJECT PARTICIPANTS—Bond Issuer,” “SUMMARY—FINANCING FOR THE PROJECT—General,” “—Milestone and Payment Performance Payments under the Central 70 Intra-Agency Agreement,” and “—Sources of Funding for Milestone Payments, Performance Payments, Payments under the Memoranda of Settlement and Termination Amounts;” “SECURITY AND SOURCES OF PAYMENT FOR THE SENIOR BONDS—Generally,” “FINANCING FOR THE PROJECT—General,” “—Central 70 Intra-Agency Agreement,” and “—Sources of Funding for Milestone Payments, Performance Payments and Termination Amounts—BE Payment Obligations;” “RISK FACTORS—Risks Related to the Developer, the Enterprises and CDOT—BE Payment Obligations,” “—Economic Conditions Affecting the Enterprises and CDOT,” and “—Risks Related to the Project—Litigation and Judicial Challenge,” “PROJECT PARTICIPANTS—Colorado Bridge Enterprise,” and “—Financial Audits of the Enterprises and CDOT,” “CONTINUING DISCLOSURE,” “LITIGATION,” “LEGAL MATTERS,” APPENDIX A-1-“AUDITED FINANCIAL STATEMENTS OF COLORADO BRIDGE ENTERPRISE FOR THE FISCAL YEAR ENDED JUNE 30, 2020 AND 2019,” and APPENDIX M- “FORMS OF CONTINUING DISCLOSURE AGREEMENTS—ISSUER CONTINUING DISCLOSURE UNDERTAKING”, and (ii) such other information included in the Preliminary Official Statement and the final Official Statement that the BE Director or her designee (including, but not limited to, the Chief Engineer of CDOT) determines (after consultation with counsel) is necessary or appropriate in the circumstances to be furnished by BE.

**BE IT FURTHER RESOLVED**, the BE 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 (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, 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.

**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 authorizes the BE Director, or her designee (including, but not limited to, the Chief Engineer of CDOT), or any other officer of BE, 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, the Project Agreement, the Indenture, the CAA or the Memorandum of Settlement.

*Herman F. Stockinger AIA*

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Herman Stockinger, Secretary  
Colorado Bridge Enterprise

4/14/2021

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Date