

Resolution #BE-2021-05-03

Approving Certain Additional 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 May 20, 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 pursuant to Resolution #BE-2021-04-05 adopted by the BE Board on April 14, 2021 (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 with the proceeds of the 2021 TIFIA Loan; and

WHEREAS pursuant to the Original Resolution, the BE Board approved selling the Bonds 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 as an alternative to selling the Bonds to the Underwriters pursuant to the Bond Purchase Agreement, the Developer has requested that the Issuer authorize the selling of the Bonds only to Barclays Capital Inc. (or any affiliate of Barclays Capital Inc.) and/or only to RBC Capital Markets, LLC (or any affiliate of RBC Capital Markets, LLC), as the sole underwriter or initial purchaser, pursuant to one or more purchase agreements substantially in the form of the Bond Purchase Agreement approved by the BE Board pursuant to the Original Resolution; and

WHEREAS the BE Board desires to (a) authorize and approve , as an alternative to the selling of the Bonds to the Underwriters pursuant to Bond Purchase Agreement or the selling of the Bonds only to Barclays Capital Inc. (or any affiliate of Barclays Capital Inc.) and/or only to RBC Capital Markets, LLC (or any affiliate of RBC Capital Markets, LLC), as the sole underwriter or initial purchaser, pursuant to a purchase agreement(s) substantially in the form of the Bond Purchase Agreement approved pursuant to the Original Resolution, 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, as an alternative to selling the Bonds to the Underwriters pursuant to the Bond Purchase Agreement, the selling of the Bonds only to Barclays Capital Inc. (or any affiliate of Barclays Capital Inc.) and/or only to RBC Capital Markets, LLC (or any affiliate of RBC Capital Markets, LLC), as the sole underwriter or initial purchaser of the Bonds.

BE IT FURTHER RESOLVED, the BE Board hereby delegates to the Director of BE (the “BE Director”), in consultation with the Developer, the determination of whether to sell the Bonds to the Underwriters or only to Barclays Capital Inc. (or any affiliate of Barclays Capital Inc.) and/or only to RBC Capital Markets, LLC (or any affiliate of RBC Capital Markets, LLC), subject to the provisions the Original Resolution and the provisions of this Resolution.

BE IT FURTHER RESOLVED, if the BE Director determines, in consultation with the Developer, to sell the Bonds only to Barclays Capital Inc. (or any affiliate of Barclays Capital Inc.) and/or only to RBC Capital Markets, LLC (or any affiliate of RBC Capital Markets, LLC), as the sole underwriter or initial purchaser of the Bonds, the BE Board hereby authorizes and directs the BE Director to execute and deliver one or more purchase agreements on behalf of the Issuer, in substantially the form of the Bond Purchase Agreement previously approved by the BE Board pursuant to the Original Resolution, with such changes therein and additions thereto, not inconsistent with the Original Resolution or this Resolution, as are approved by the BE Director (whose signature thereon shall constitute conclusive evidence of such approval).

BE IT FURTHER RESOLVED, if the BE Director determines, in consultation with the Developer, to sell the Bonds only to Barclays Capital Inc. (or any affiliate of Barclays Capital Inc.) or only to RBC Capital Markets, LLC (or any affiliate of RBC Capital Markets, LLC), as the sole underwriter or initial purchaser of the Bonds, the BE Board hereby approves and authorizes the distribution and use by Barclays Capital Inc. (or any affiliate of Barclays Capital Inc.) or RBC Capital Markets, LLC (or any affiliate of RBC Capital Markets, LLC), in connection with the marketing and sale of the Bonds, of the Preliminary Official Statement and/or the final Official Statement, in the forms previously approved by the BE Board pursuant to the Original Resolution.

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.

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 the Original Resolution and 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 entered into with RBC Capital Markets, LLC and Barclays Capital Inc., as the underwriters of the Bonds, a purchase agreement entered into with Barclays Capital Inc. (or any affiliate of Barclays Capital Inc.), as the underwriter or initial purchaser of the Bonds, and/or a purchase agreement entered into with RBC Capital Markets, LLC (or any affiliate of RBC Capital Markets, LLC), as the underwriter or initial purchaser of the Bonds, the Project Agreement, the Indenture, the CAA or the Memorandum of Settlement.

Herman F. Stockinger III

Herman Stockinger, Secretary
Colorado Bridge Enterprise

5/20/2021

Date