



**TO:** Board of Directors of the Colorado Bridge Enterprise (“BE”)  
Board of Directors of the High Performance Transportation Enterprise (“HPTE”)

**FROM:** Nick Farber, HPTE Director  
Keith Stefanik, Deputy Chief Engineer  
Andrew Gomez, Colorado Attorney General’s Office

**DATE:** April 14, 2021

**RE:** Approval of Central 70 Refinancing Documents and Related Project Documents including the: (i) Fourth Amendment to the Project Agreement, (ii) 2021 Memorandum of Settlement, (iii) Amended and Restated Intra-Agency Agreement, and (iv) Related Financing Documents for the Central 70 Project

**Purpose**

The purpose of this memorandum is to summarize the proposed changes to the Central 70 commercial and financial documents, including the Fourth Amendment to the Project Agreement (the “PA Amendment”), the 2021 Memorandum of Settlement, the Amended and Restated Intra-Agency Agreement (the “IAA”), and related financing documents associated with the refinancing of debt on the Project.

Since May 2020, CDOT, HPTE and the BE (and HPTE and BE together, the “Enterprises”) and the Central 70 Developer, Kiewit Meridiam Partners LLC (“KMP”) (collectively the “Parties”), have worked toward a global settlement related to certain Union Pacific Railroad (“UPRR”) related project disputes that would not increase either CDOT’s or the Enterprises’ project funding sources, while keeping schedule impacts to a minimum. Now, the Parties have achieved that goal and Enterprises’ Board approval of the draft projects and refinancing documents is required. Capitalized terms used but not otherwise defined in this memorandum have the meaning given to them in the Project Agreement or the applicable project document.

**Action**

Staff requests that the BE and HPTE Board of Directors (“Boards”) approve each respective resolution as follows:

**The BE Board is asked to approve:**

- (1) **BE Resolution #BE-21-4-3:** the 2021 Memorandum of Settlement, the Fourth Amendment to the Project Agreement and the First Amendment to the Lenders’ Direct Agreement
- (2) **BE Resolution #BE-21-4-4:** the issuance of Colorado Bridge Enterprise Senior Revenue Bonds (Central 70 Project) Series 2021A (Taxable) and the Colorado Bridge Enterprise Project Infrastructure Bonds (Central 70 Project) Series 2021B , the execution and delivery by BE of the First Supplemental Trust Indenture , the Series 2021 Loan Agreement, the 2021 Bond Purchase Agreement, the Issuer Continuing Disclosure Undertaking, the amendment to the Series 2017 Loan Agreement and the distribution and use of Preliminary and Final Official Statements with respect to the Bonds
- (3) **BE Resolution #BE-21-4-5:** the Amended and Restated Intra-agency Agreement between CDOT-HPTE-BE

**The HPTE Board is asked to approve:**

- (1) **HPTE Resolution #355:** the 2021 Memorandum of Settlement, the Fourth Amendment to the Project Agreement and the First Amendment to the Lenders’ Direct Agreement
- (2) **HPTE Resolution #356:** the Amended and Restated Intra-Agency Agreement between CDOT-HPTE-BE

### **Background**

At the direction of the Colorado Transportation Commission, and acting in collaboration with CDOT, the Enterprises procured the design, construction, financing, and planned operation and maintenance of a 9.4-mile portion of the I-70 East Corridor in Greater Denver (“Central 70 Project”) as a public-private partnership with KMP. Commercial and financial close occurred in late 2017, with construction activities beginning in the summer of 2018. Construction has been ongoing ever since.

As the Boards are aware, certain challenges related to the UPRR Crossing began in late 2018 affecting the Project timeline. See Board Memorandum dated November 14, 2018 (memorandum summarizing the Second Amendment to the Project Agreement & Settlement Agreement No. 1). Despite all Parties’ best intentions and a sincere desire to wholly alleviate and eliminate the potential for those delays, project schedule impacts continued beyond the timeline presented in the above referenced Board Memorandum. Currently, because of additional Eligible Costs incurred by KMP and a lower interest rate environment, a unique opportunity exists to refinance the Developer’s Transportation Infrastructure Finance and Innovation Act (“TIFIA”) loan amount. Doing so will allow the Project to generate additional financing proceeds, without increasing project funding sources to the Enterprises, to defray increases in Project costs, to restructure debt to minimize delays costs, and greatly minimize future risk to the project. This effort to restructure the Project’s private debt is made possible by P3 structure of the Project.

### **Project Documents (BE and HPTE):**

#### **Summary of 2021 Memorandum of Settlement**

In consideration of releasing all claims related to the current disputes, the Parties have agreed to the 2021 Memorandum of settlement. As a result, the Enterprises agree to make an additional payment in the amount of \$12.5 million at Substantial Completion. This amount is separate from the \$319 million Milestone Payments and funding will be allocated from the previously approved Project contingency and/or existing Project funding sources.

#### **Fourth Amendment to the Project Agreement**

The Parties’ efforts to refinance the existing TIFIA loan and raise additional TIFIA debt, senior debt, and equity (the “Debt Restructuring”), if achieved successfully, will not increase the Enterprises’ monthly Performance Payments payable to KMP. Because KMP is the TIFIA Borrower, they are required to lead the effort with TIFIA, but have agreed to share Financing Documents and solicit the Enterprises’ input throughout the Debt Restructuring process. The Parties have agreed that 100% of the Refinancing Gains generated by the Debt Restructuring will be used by the Developer to cover Project costs as part of this settlement.

As a part of the settlement, certain Milestone descriptions and dates, as well as Substantial Completion, are being revised. For ease of reference, please see the Fourth Amendment to the Project Agreement, pp. 2-7 for the changes related to added Milestones, payments, descriptions, and the new Baseline Substantial Completion Date. Of note, the Baseline Substantial Completion date will be moved to February 16, 2023 (see incentive payment within the next paragraph below payable to KMP if Substantial Completion is achieved by January 1, 2023), and Performance Payments will upon achievement of the new Milestone 5A, while the Construction Period continues (previously, Performance Payments commenced upon the achievement of Milestone 5). The Performance Payment Start Date of March 25, 2022, remains unchanged. Additional Milestones have been added by splitting scope associated with prior Milestones in an effort to better manage the upcoming Construction Work for the Project, and more closely match payments to the planned completion of significant portions of the Work.

The Performance Payments made by the Enterprises starting at Milestone 5A will be held in a Blocked Account until the achievement of Milestone 5B, which aligns with the scope that currently comprises Milestone 5, meaning the Developer will not have access the funds until the same scope as is required under the Project Agreement is completed. Importantly, should the Developer complete the Construction Work prior to January 1, 2023, the Enterprises have agreed to an incentive payment of \$2,500,000, which would be paid from project contingency and/or existing Project funding sources.

Finally, if the Debt Restructuring is approved, the Dispute Resolution Process (the “DRP”) will be withdrawn in its entirety. If the Debt Restructuring is not approved, or if financial close is not reached, the Parties have the ability to resume the DRP.

First Amendment to the Lenders’ Direct Agreement

The First Amendment to the Lenders’ Direct Agreement will be approved by HPTE and BE separately and executed by the Enterprises. The First Amendment to the Lenders’ Direct Agreement provides direct contractual privity between the Enterprises, KMP, and U.S. Bank National Association, acting as the “Collateral Agent” for the benefit of KMP’s lenders, including the bondholders and TIFIA. The First Amendment to the Lenders’ Direct Agreement addresses, among other things, the interactions between the Enterprises and the Collateral Agent when it exercises the Lenders’ rights to step-in and/or substitute KMP in the event of certain defaults by KMP. It also governs the treatment of certain payments to be made by the Enterprises to accounts held by the Collateral Agent for the benefit of KMP’s Lenders.

**Financing Documents (BE Only):**

The refinancing involves the following key components: (1) a new, upsized TIFIA loan with the USDOT with a lower interest rate; (2) new senior revenue bonds issued via BE as the conduit issuer; and (3) additional equity investment by the Developer. In addition to refinancing the TIFIA loan at today’s lower interest rates, a new Eligible Cost determination by FHWA also allows for an increase in the overall size of the TIFIA loan. Because the TIFIA loan size is capped at 33% of total Eligible Costs by the federal government, the additional senior bond debt fills out the additional debt capacity that can be repaid at today’s interest rates with no increase to the Enterprises’ Performance Payment obligations. KMP is also required to add additional private equity to maintain the same key financial ratios that were in place at the start of the Project and meet ongoing Project Agreement requirements.

Series 2021 Bonds Overview

The new BE Series 2021A senior bonds allow KMP to maximize the total refinancing amount currently available due to lower interest rates, after the maximum TIFIA loan amount is established. The final amount of Senior Debt issued will vary depending on interest rates as of the date of financial close, and will be maximized to the amount that can be paid from the existing Performance Payments, without increase. As with the original senior bonds issued for the project, BE is issuing the bonds only as the conduit issuer. The bonds are not debt obligations of BE and are payable solely by KMP from the pledged Capital Performance Payments. BE will not have any payment obligations with respect to the 2021A bonds.

The separate Series 2021B Project Infrastructure Bonds are being put in place as a financing bridge because there are restrictions on the use of federal funds (here, the new TIFIA loan) to directly pay other federal debt (here, the existing TIFIA loan). The short-term, 30-month fixed maturity bonds being issued by BE as conduit will have interest fully capitalized - meaning the Developer has prefunded all interest payable during the time the short term bonds are outstanding - and will be paid off in full through a draw on the new TIFIA Loan prior to maturity. BE will not have any payment obligations with respect to the 2021B short term bonds.

First Supplemental Trust Indenture

The First Supplemental Trust Indenture (“Supplemental Indenture”) is the agreement between BE, as the issuer of the Bonds, and U.S. Bank National Association, as trustee (Trustee) pursuant to which the Bonds will be issued. The Supplemental Indenture sets forth the terms of the Bonds, including, among other things, the maturity dates, principal amounts, interest rates, yields, prices and redemption provisions of the Bonds. The Supplemental Indenture will pledge and grant a lien to the Bondholder’s on the Trust Estate. The Supplemental Indenture will also establish certain funds and accounts, set forth certain representations and covenants of BE, as the issuer of the Bonds, events of default and remedies, the representations, warranties and responsibilities of the Trustee and certain other provisions.

Series 2021 Loan Agreement

The Series 2021 Loan Agreement (“LA”) is the agreement between BE and KMP whereby BE agrees to lend to KMP, and KMP agrees to borrow from BE, the proceeds of the Bonds. The LA sets forth the terms of the loan (including the repayment schedule and prepayment terms), certain representations and warranties of BE, certain representations, warranties and covenants of KMP, the events of default and remedies, and certain other provisions.

Amendment to Series 2017 Loan Agreement

At the time of issuance of the Series 2017 Bonds, BE and KMP entered into a Loan Agreement (the “Series 2017 Loan Agreement”), whereby BE lent to KMP, and KMP borrowed from BE, the proceeds of the Series 2017 Bonds. The Series 2017 Loan Agreement sets forth the terms of the loan (including the repayment schedule and prepayment terms), certain representations and warranties of BE, certain representations, warranties and covenants of KMP, the events of default and remedies, and certain other provisions. In connection with entering into the 2021 Memorandum of Settlement certain amendments need to be made to the Serie 2017 Loan Agreement in order to make its provisions consistent with the items agreed to in the 2021 Memorandum of Settlement.

Bond Purchase Agreement for the Series 2021 Bonds

The Bond Purchase Agreement (“BPA”) is the contract among BE, KMP and the bond underwriting syndicate (consisting of RBC Capital Markets, LLC and Barclays Capital Inc.) for the sale of the Bonds by BE to the underwriters. The BPA specifies the terms of the bonds (including, the maturity dates, principal amounts, interest rates, yields, prices and redemption provisions) that are acceptable to the underwriters in order for them to purchase the Bonds from BE. The BPA also contains the net purchase price of the Bonds, including the underwriters discount (compensation). Additionally, the BPA contains representations and warranties of the BE, KMP and the underwriters and sets forth the conditions that must be met in order for the underwriters to purchase the bonds on the settlement date of the Bonds.

Preliminary Official Statement

The Preliminary Official Statement (“POS”) is the initial disclosure document that will be used by the underwriters to market and sell the Bonds. Once the bonds are sold, and prior to financial close on the Bonds, a Final Official Statement (substantially identical to the POS, with the final pricing information inserted) (“Final OS”) will be prepared and delivered to investors. The primary function of the POS and Final OS is to provide to the initial purchasers of the Bonds all material facts (i.e. information that a reasonable investor likely would consider significant in the total mix of information available about the Bonds) that are necessary in order for the purchasers to make an informed decision to purchase, or not purchase, the Bonds. The POS and Final OS describe in detail, among other things, the Central 70 Project, the plan of finance, the terms of the Bonds, the sources of payment and security for the Bonds, the financing sources for the Central 70 Project, certain key Central 70 Project documents and agreements, descriptions each of the participants in the Central 70 Project, including, KMP, the Sponsors, BE, HPTE, CDOT, the construction contractors and O&M contractor, and the potential risks associated with investing in the Bonds.

Continuing Disclosure Undertaking

The Continuing Disclosure Undertaking establishes BE’s commitment to provide certain updated financial and operational information with respect to BE, HPTE and CDOT to the Municipal Securities Rulemaking Board, or its designee, on an annual basis and to provide notices of certain enumerated events.

Amended and Restated Intra-Agency Agreement

Given that there have been four amendments to the IAA between CDOT-HPTE-BE, the Parties have decided to amend and restate the IAA for ease of reference, which fully incorporates all changes to the agreement. As with other IAAs between CDOT and the Enterprises, this IAA follows a similar format and contains similar substantive provisions, including the backup loan structure. Changes to this version include amendments to the Project timeline and updating the matrix for Milestone Payment Contribution found at Table III-1, p. 8. For a more robust summary on the Central 70 IAA generally and its substantive provisions, please see the April 19, 2017 Memorandum, *Central 70 Intra-Agency Agreement*. This IAA will be presented separately to the Transportation Commission on April 15, 2021 for their approval.

### **Next Steps:**

If the Boards approve the Debt Restructuring documents, Staff and KMP will continue to work toward financial close, which is likely to occur in June 2021 following final approval of the Debt Restructuring by the USDOT and marketing of the Bonds. The BE Board's approval of the Bonds will be valid provided that the Bonds are issued no later than July 16, 2021. If the issuance is delayed beyond that for any reason, subsequent Board approval would be required.

It is important to note that none of the settlement-related project documents take effect unless and until financial close is reached on the Debt Restructuring. Also, the 2021 Memorandum of Settlement provides the Developer and Construction Contractor certain rights to terminate the settlement if, due to movement in interest rates or other financing parameters, the Debt Restructuring is not projected to generate at least \$37.5 million in new refinancing proceeds net of transaction and financing costs. This termination is optional and, if exercised by the Developer, the Developer would be required to pay the Enterprises a \$2.5 million termination payment to reimburse CDOT and the Enterprises their costs in pursuing the Debt Restructuring unless the termination was caused by the Enterprises.

### **Options/Decision Matrix**

- 1) **Staff Recommendation:** Approve the Debt Restructuring; including the accompanying Resolutions authorizing the execution of documents.
- 2) Review but do not approve the Debt Restructuring. Provide instructions on changes or revisions. Project financing would be delayed, and potentially restructured.

### **Recommendations**

The staff recommends that the Boards adopt the respective resolutions authorizing the Debt Restructuring.

### **Attachments** (To view Attachments A-K listed below, please click [here](#) due to number of pages)

- HPTE-BE Board Joint Session Presentation
- Attachment A: Form of Fourth Amendment to the Project Agreement, including the following attachment:
  - Form of First Amendment to Lenders Direct Agreement
- Attachment B: 2021 Memorandum of Settlement, including the following attachments:
  - Form of Fourth Amendment to Construction Contract between KMP and the Construction Contractor (For Information Only)
  - Form of Second Amendment to Maintenance Contract between KMP and the O&M Contractor (For Information Only)
- Attachment C: Amended and Restated Intra-agency Agreement
- Attachment D: Form of First Supplemental Trust Indenture
- Attachment E: Form of Series 2021 Loan Agreement
- Attachment F: Form of Amendment to Series 2017 Loan Agreement
- Attachment G: Form of Bond Purchase Agreement
- Attachment H: Form of Preliminary Official Statement with respect to Colorado Bridge Enterprise Senior Revenue/Project Infrastructure Bonds (Central 70 Project) Series 2021
- Attachment I: Form of Continuing Disclosure Undertaking
- Attachment J: Form of Collateral Agency Agreement (For Information Only)
- Attachment K: Exhibits to Collateral Agency Agreement (For Information Only)

### **Resolutions**

- 1) Resolution (BE-21-4-3) approving the 2021 Memorandum of Settlement, the Fourth Amendment to the Project Agreement, and the First Amendment to the Lenders' Direct Agreement
- 2) Resolution (BE-21-4-4) approving the Amended and Restated Intra-Agency Agreement between HPTE-CDOT-BE
- 3) Resolution (BE-21-4-5) approving the issuance of Colorado Bridge Enterprise Senior Revenue Bonds (Central 70 Project) Series 2021A and the Colorado Bridge Enterprise Project Infrastructure Bonds (Central 70 Project) Series 2021B, the execution and delivery by BE of the First Supplemental Trust Indenture, the Series 2021 Loan Agreement, the 2021 Bond Purchase Agreement the Continuing Disclosure Undertaking, the amendment to Series 2017 Loan Agreement and the distribution and use of Preliminary and Final Official Statements with respect to the Bonds
- 4) Resolution (HPTE #355) approving the 2021 Memorandum of Settlement, the Fourth Amendment to the Project Agreement, and the First Amendment to the Lenders' Direct Agreement
- 5) Resolution (HPTE #356) approving the Amended and Restated Intra-Agency Agreement between HPTE-CDOT-BE



# HPTE Board BE Board

*Joint Session - April 14, 2021*

**Central to Communities, Commerce, Connections and Colorado.**





Central 70



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# Joint Session Agenda

1. Central 70 Project Status Update (Brief)
2. Proposed Settlement Information
3. Project Schedule History
4. Path Forward to Financial Close
5. Staff Recommendation
6. Questions
7. Resolution(s) Approval for BE Board & HPTE Board



## Project Status Update - Stats

- Project is 69.5% complete thru February 2021
  - Design = 99% ; Construction= 66.3%
- Quebec St. to Chambers Rd.
  - Segment is Substantially Complete
- Colorado Blvd. to Quebec St.
  - Final configuration projected September 2021
- Brighton Blvd. to Colorado Blvd.
  - Traffic switch to lowered section anticipated late May 2021





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# Project Status Update - Progress Photos







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# Project Status Update - Progress Photos







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# Project Status Update - Progress Photos





## Project Status Update - Upcoming Work

- Advertised as “Mile High Shift”
- Anticipated late-May 2021
- Shifts I-70 traffic from the viaduct into the lowered section
- Future I-70 WB lanes are wide enough to accommodate all six lanes of I-70 traffic
- Traffic will remain in this configuration until future EB lanes are constructed (late 2022)





## Proposed Settlement Information

- Since May 2020, Enterprises and KMP have been working towards a settlement related to UPRR project disputes while striving to keep project schedule impacts to a minimum
- Increased KMP Eligible Costs combined with the lower interest rate environment creates a unique opportunity to refinance KMP's TIFIA loan
- Additional financing proceeds will be generated and provided to KMP to defray increased costs associated with the UPRR project disputes
- Proposed Settlement does not increase CDOT/Enterprises project funding sources or the Performance Payment amount



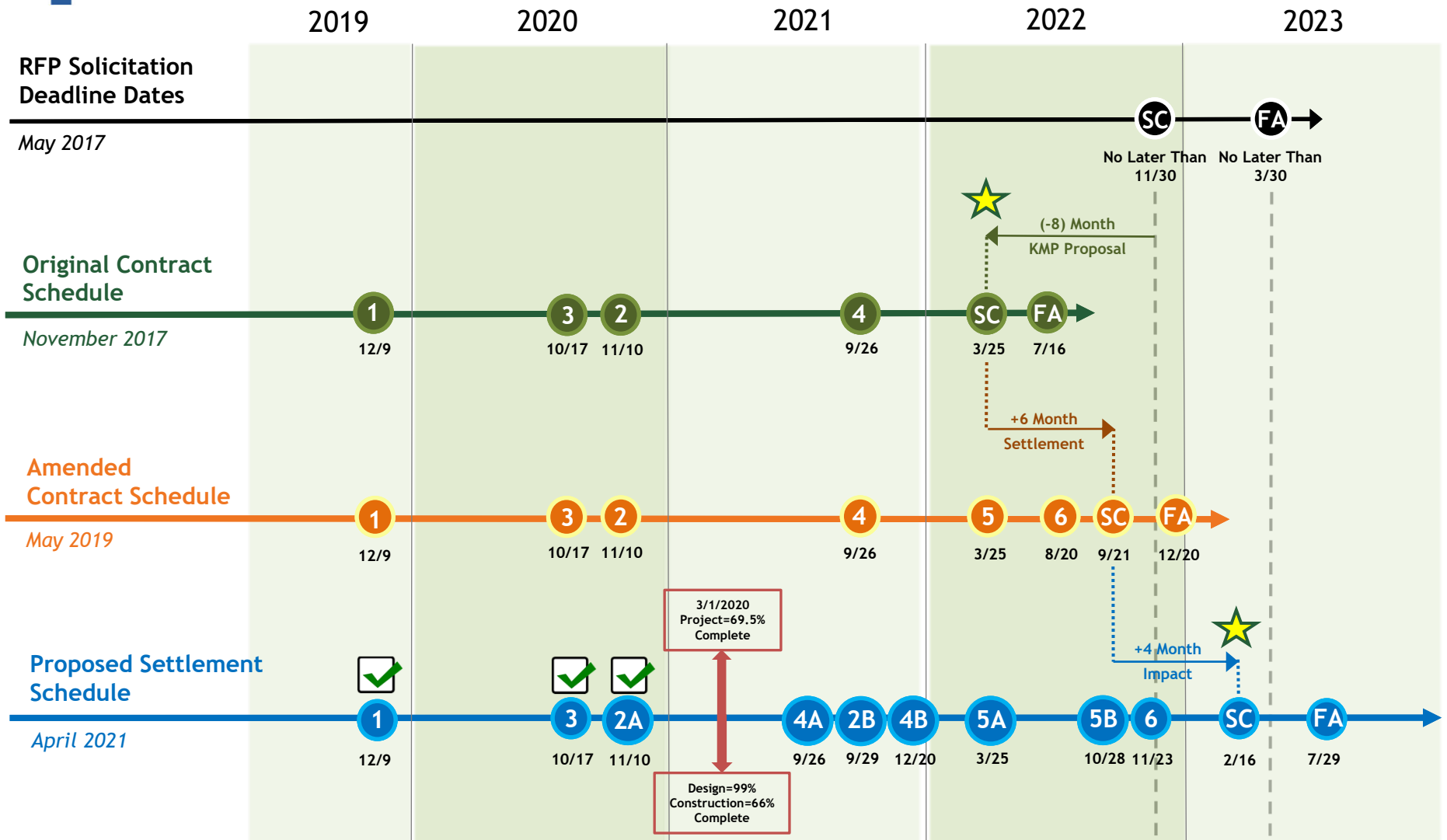


## Proposed Settlement Information

- Enterprises will contribute \$12.5M from existing project funding sources towards settlement
- Enterprises will contribute \$2.5M incentive payment if KMP achieves Substantial Completion by January 1, 2023
- Enterprises will provide schedule relief by restructuring Milestone Payment definitions and timing (total Milestone Payments remain at \$319M)
- Enterprises will begin Performance Payments as originally scheduled
- BE will also not have any additional payment obligations with respect to the bonds



## Project Schedule History



MS#1 (East Segment) - MS#2A & 2B (Center Segment) - MS#3 (UPRR Phase 4B) - MS#4A (UPRR Phase 5) - MS#4B (Viaduct Removal) - MS#5A (Mass Excavation) - MS#5B (Ultimate Configuration) - MS#6 (Cover Top) - SC (Substantial Completion) - FA (Final Acceptance)



## Path Forward to Financial Close

- The Memorandum of Settlement provides KMP and the Construction Contractor rights to terminate the settlement if the Debt Restructuring is not projected to generate at least \$37.5 million in new refinancing proceeds net of transaction and financing costs at the time of Financial Close
- This termination is optional and, if exercised by KMP, they would be required to pay the Enterprises a \$2.5 million termination payment
- The termination payment reimburses Enterprises for costs while pursuing the Debt Restructuring (unless the termination was caused by the Enterprises)
- None of the settlement-related project documents take effect unless and until financial close is reached on the Debt Restructuring
- KMP currently anticipates Financial Close date of June 11, 2021
- KMP currently anticipates Bond Closing on June 17, 2021
- BE Board's approval of the Bonds will be valid provided that the Bonds are issued no later than July 16, 2021





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# Staff Recommendation

- HPTE Board & BE Board approve the Debt Restructuring through approval of accompanying Resolutions authorizing execution of the various documents



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# Questions?

## Central 70 Team Available:

- Nick Farber, HPTE Director
- Keith Stefanik, Deputy Chief Engineer
- Andrew Gomez, Attorney General's Office
- Bob Hays, Central 70 Project Director
- Brent Butzin, External Legal Counsel
- Michael Thomas, External BE Bond Counsel
- Nicole Doheny, External HPTE Financial Advisor



## BE - Requested Resolution Approvals

1. 2021 Memorandum of Settlement, Fourth Amendment to the Project Agreement and First Amendment to the Lender's Direct Agreement
2. Amended & Restated Intra-Agency Agreement
3. Issuance of Colorado Bridge Enterprise Senior Revenue Bonds (Central 70 Project) Series 2021A and the Colorado Bridge Enterprise Project Infrastructure Bonds (Central 70 Project) Series 2021B, the execution and delivery by BE of the First Supplemental Trust Indenture, the Series 2021 Loan Agreement, the 2021 Bond Purchase Agreement the Continuing Disclosure Undertaking, the amendment to Series 2017 Loan Agreement and the distribution and use of Preliminary and Final Official Statements with respect to the Bonds



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# HPTE - Requested Resolution Approvals

1. 2021 Memorandum of Settlement, Fourth Amendment to the Project Agreement and First Amendment to the Lender's Direct Agreement
2. Amended & Restated Intra-Agency Agreement