



Date: December 5, 2017

To: Colorado Bridge Enterprise Board of Directors
High Performance Transportation Enterprise Board of Directors

From: David Spector, HPTE Director
Brent E. Butzin, HPTE General Counsel

Subject: Approval of Central 70 Financing Documents and Related Project Documents, including (i) Resolution #BE-17-12-1 Approving the issuance of Colorado Bridge Enterprise Senior Revenue Bonds (Central 70 Project) Series 2017, the execution and delivery of the Trust Indenture, the Loan Agreement, the Bond Purchase Agreement, the Continuing Disclosure Undertaking, the 2017 Supplemental Trust Indenture and the Central 70 Note, and the distribution and use of Preliminary and Final Official Statements respect to the Bonds; and (ii) Resolution #BE-17-12-2/Resolution HPTE #254 Approving the execution and delivery of the First Amendment to the Project Agreement and the Lenders Direct Agreement

Purpose

The purpose of this memo is to summarize the Central 70 financing documents and related project agreements and to recommend approval of these documents and the related issuance of the bonds. The complete drafts of each of these documents are available for your review on the website (because of document size).

Actions

(1) Bridge Enterprise (BE) Board is asked to adopt:

- (a) a resolution that supports the staff recommendation to approve the issuance of Colorado Bridge Enterprise Senior Revenue Bonds (Central 70 Project) Series 2017 (Private Activity/AMT) (subject to the provisions and limitations set forth in the resolution), the execution and delivery by BE of a Trust Indenture, a Loan Agreement, a Bond Purchase Agreement, a Continuing Disclosure Undertaking, a 2017 Supplemental Trust Indenture and a Central 70 Note, and the use and distribution of a Preliminary Official Statement and a Final Official Statement with respect to the Bonds; and
- (b) a resolution that supports the staff recommendation to approve the execution and delivery of a First Amendment to the Project Agreement and a Lenders Direct Agreement.

(2) High Performance Transportation Enterprise (HPTE) Board is asked to adopt a resolution that supports the staff recommendation to approve the execution and delivery of a First Amendment to the Project Agreement and a Lenders Direct Agreement.

Financing Overview

Pursuant to the provisions of the Project Agreement, BE agreed to assist the developer, Kiewit Meridiam Partners LLC (KMP), with the issuance of "private activity bonds", the proceeds of which would be used by KMP to finance a portion of the costs of the Central 70 Project. KMP has requested that BE issue its Colorado Bridge Enterprise Senior Revenue Bonds (Central 70 Project) Series 2017 (Private Activity/AMT) (Bonds) and loan the proceeds of the Bonds to KMP pursuant to a Loan Agreement (LA). KMP will use the proceeds of the Bonds and the related loan to finance a portion of the costs of the Central 70 Project. The Bonds will be payable solely from the Trust Estate created by the Trust Indenture (TI) which will consist primarily of the loan payments to be received from KMP under the LA. The Bonds, when issued, will be special, limited obligations of BE, payable solely from and secured solely by the Trust Estate, and will not, and shall not be deemed to constitute an obligation, moral or otherwise, of BE (except the pledge of the Trust Estate), HPTE, Colorado Department of Transportation (CDOT), or the State of Colorado (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 BE, 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. The owners of the Bonds may not look to any revenues of BE (including the Bridge Surcharges), HPTE, CDOT or the State for repayment of the Bonds and the only sources of repayment of the Bonds will be revenues provided by KMP pursuant to the LA. The Bonds will not constitute an indebtedness of BE, HPTE, CDOT or the State or a multiple-fiscal year obligation of BE, HPTE, CDOT or the State within the meaning of any provisions of the State Constitution or the laws of the State. The payment of the Bonds will not be secured by any encumbrance, mortgage, or other pledge of property of BE, HPTE, CDOT or the State, other than the Trust Estate, and no property of BE, HPTE, CDOT or the State, subject to such exception, will be liable to be forfeited or taken in payment of the Bonds.

KMP's source of funds to make the loan payments (which will be used to pay the debt service on the Bonds and to repay a loan to be provided to KMP by the U.S. Department of Transportation (TIFIA Loan)) will come from "availability payments" to be made by BE and HPTE under the Project Agreement. The "availability payments" will consist of capital performance payments and operation, maintenance and renewal payments (OMR payments). The capital performance payments are expected to be made by BE and the OMR payments are expected to be made by HPTE and CDOT. The capital performance payments will be sized to be sufficient to pay, among other things, the debt service on the Bonds and the TIFIA Loan. BE's obligation to make the capital performance payments to KMP will be paid from revenues of BE (which consist substantially of the Bridge Surcharges) (BE Revenues).

In 2010, BE issued its Colorado Bridge Enterprise Revenue Bonds Senior Taxable Build America Series 2010A (BE 2010A Bonds) in the aggregate principal amount of \$300 million. The BE 2010A Bonds were issued pursuant to the Master Trust Indenture, dated as of December 15, 2010 (BE Master Indenture), by and between BE and Zions Bank, a division of ZB, National Association, as successor trustee (BE Trustee), and the 2010 Supplemental Trust Indenture, dated as of December 15, 2010, by and between BE and the BE Trustee. The BE 2010A Bonds have a senior lien on the BE Revenues and are currently outstanding in the aggregate principal amount of \$300 million. BE has agreed to secure its obligation to pay capital performance payments to KMP under the Project Agreement with a subordinate lien on BE Revenues.

Bond Details

The Bonds will be issued in an aggregate principal amount not to exceed \$160 million and the proceeds of the Bonds will be used to fund a portion of the costs of the Central 70 Project. The final maturity on the Bonds will be established closer to bond pricing, and will begin to amortize principal after the majority of the principal on the TIFIA loan has been repaid. The Bonds are expected to be redeemable at the option of KMP no later than 10 years from date of issuance. The Bonds will be secured by a senior lien on the Trust Estate, which will consist mainly of loan payments to be made by KMP under the LA.

Bond pricing is expected to take place on or about December 14, 2017, with closing to occur before the end of the year.

Trust Indenture

The TI 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 TI 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 TI will pledge and grant a lien to the Bondholder's on the Trust Estate. The TI 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.

Loan Agreement

The 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.

Bond Purchase Agreement

The Bond Purchase Agreement (BPA) is the contract among BE, KMP and the bond underwriting syndicate (consisting of RBC Capital Markets, LLC, Barclays Capital Inc. and SMBC Nikko) 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.

Continuing Disclosure Undertaking

The Continuing Disclosure Undertaking is the agreement pursuant to which BE will agree to assist the underwriters of the Bonds with complying with Rule 15c2-12 of the Securities Exchange Act of 1934, as amended (Rule). BE, as an obligated party (as such term is defined under the Rule), will agree to provide certain financial and operating information with respect to BE, HPTE and CDOT to the bondholders on an annual basis. BE will also agree to provide notice of certain enumerated events to the bondholders.

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 the issuance of 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 the underwriters. 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 describes 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.

As the “issuer” of the Bonds, BE must approve the use and distribution of the POS and Final OS by the underwriters, but the information in the POS and the Final OS, except certain information provided by BE, HPTE and CDOT, is the responsibility of KMP. At the time of the sale of the Bonds and on the date of delivery of the Bonds, BE, HPTE and CDOT will provide certificates to the underwriters that the information provided by BE, HPTE and CDOT that was included in the POS and the Final OS did not contain any untrue statement of a material fact or omit to state any material fact necessary to make such information not misleading. The information to be provided by BE, HPTE and CDOT for inclusion in the POS and the Final OS will include certain financial and operating information with respect to BE, HPTE and CDOT, certain information about the Central 70 Project, information about certain of the agreements to be entered into with respect to the Central 70 Project and the issuance of the Bonds, and information regarding outstanding litigation related to the Central 70 Project.

2017 Supplemental Trust Indenture and Central 70 Note

The 2017 Supplemental Trust Indenture (2017 Supplement) between BE and the BE Trustee, is the agreement pursuant to which the Central 70 Note will be issued to KMP. A form of the Central 70 Note, which will evidence BE's obligation to make capital performance payments to KMP, is attached to the 2017 Supplemental. The 2017 Supplement will set forth the terms of the Central 70 Note and certain representations, warranties and covenants of BE with respect to the Central 70 Note. The 2017 Supplement also amends certain provisions of the BE Master Indenture.

First Amendment to Project Agreement

The First Amendment to the Project Agreement, which was contemplated in the form of Central 70 Project Agreement approved by the BE and HPTE Boards in November, updates the Project Agreement Milestone Completion and Substantial Completion Dates to account for the actual date of Financial Close. The First Amendment also implements the interest rate and pricing protocol set forth in Schedule 1 to the Project Agreement to finalize the Base Case Financial Model, the Developer's Base Case Equity IRR, and the Maximum Performance Payment (MPP) payable to the Developer monthly during the construction.

Lenders Direct Agreement

The Lenders Direct Agreement will be separately approved by the Boards and executed by the Enterprises. The Lenders Direct Agreement provide direct contractual privity between the Enterprises, the Developer, and US Bank National Association, acting as the “Collateral Agent” for the benefit of the Developer's lenders, including the bondholders and TIFIA. 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 the Developer in the event of certain defaults by the Developer. 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 the Developer's Lenders.

Options/Decision Matrix

- 1) **Staff Recommendation:** Approve the issuance of the Bonds; the execution and delivery of the Trust Indenture, the Loan Agreement, the Bond Purchase Agreement, the Continuing Disclosure Undertaking, the 2017 Supplemental Trust Indenture, the Central 70 Note, the First Amendment to the Project Agreement and the Lender's Direct Agreement; and the use and distribution of Preliminary and Final Official Statements with respect to the Bonds.

- 2) Review but do not approve the issuance of the Bonds, the execution and delivery of the documents, and the use and distribution of Preliminary and Final Official Statement. 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 issuance of the Bonds; the execution and delivery of the Trust Indenture, the Loan Agreement, the Bond Purchase Agreement, the Continuing Disclosure Undertaking, the 2017 Supplemental Trust Indenture, the Central 70 Note, the First Amendment to the Project Agreement and the Lender's Direct Agreement; and the use and distribution of Preliminary and Final Official Statements with respect to the Bonds.

Attachments

Attachment A: Resolution (BE-17-X-X) approving the issuance of the Bonds, forms of documents and use and distribution of Preliminary and Final Official Statements with respect to the Bonds

Attachment B: Resolution (BE-17-X-X/HPTE #XXX) approving the First Amendment to the Project Agreement and Lenders Direct Agreement

Attachment C: Form of Trust Indenture

Attachment D: Form of Loan Agreement

Attachment E: Form of Bond Purchase Agreement

Attachment F: Form of Continuing Disclosure Undertaking

Attachment G: Forms of 2017 Supplemental Trust Indenture and Central 70 Note

Attachment H: Form of First Amendment to the Project Agreement

Attachment I: Form of Lenders Direct Agreement

Attachment J: Form of Preliminary Official Statement with respect to Colorado Bridge Enterprise Senior Revenue Bonds (Central 70 Project) Series 2017

Attachment K: Form of Collateral Agency Agreement (For Information Only)

Attachment L: Exhibits to Collateral Agency Agreement (For Information Only)