

**Resolution #BE-17-11-2**

Approving the Project Agreement for the Central 70 Project among HPTE, the Colorado Bridge Enterprise and Kiewit Meridiam Partners LLC; Approving the Construction Contractor Direct Agreement; Approving the O&M Contractor Direct Agreement; and Approving the Financial Model Escrow Agreement.

**Approved by the Transportation Commission on November 16, 2017.**

**WHEREAS**, the General Assembly created the Colorado Bridge Enterprise (“BE”) pursuant to Section 43-4-805, C.R.S., as a government-owned business within CDOT to accelerate the repair and reconstruction of deficient bridges further defined as structures that are “poor”; and

**WHEREAS**, the General Assembly created the Colorado High Performance Transportation Enterprise (“HPTE”) pursuant to Section 43-4-806, C.R.S., as a government-owned business within the Colorado Department of Transportation (“CDOT”) to pursue innovative means of more efficiently financing important surface transportation projects that will improve the safety, capacity, and accessibility of the surface transportation system; 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**, the HPTE Board of Directors (the “HPTE Board”) is similarly empowered, pursuant to Section 43-4-806(6)(g), C.R.S., to enter into contracts or agreements with any private or public entity to facilitate a public-private partnership; and

**WHEREAS**, BE and HPTE (together, the “Enterprises”) are, at the direction of the Colorado Transportation Commission and in collaboration with CDOT, jointly procuring the design, construction, financing, operations, and maintenance of the reconstruction of the 9.4-mile portion of the I-70 East Corridor in the Denver area (the “Central 70 Project” or the “Project”) as a public-private partnership; and

**WHEREAS**, the HPTE Board and BE Board have each reviewed multiple drafts of the Project Agreement and related agreements over the course of the procurement and, on March 3, 2017, the HPTE Board and BE Board each received and reviewed a final draft form of the Project Agreement, which were subsequently released to four shortlisted proposer teams as the Final Request for Proposals (“Final RFP”); and

**WHEREAS**, on June 1, 2017, and August 1, 2017, the Enterprises received, respectively, technical and financial proposals in response to the Final RFP from each of the four shortlisted proposer teams; and

**WHEREAS**, the Enterprises, in collaboration with CDOT, conducted a robust evaluation of the four proposals and, on August 24, 2017, issued a notice identifying Kiewit Meridiam Partners (“KMP”) as the preferred proposer; and

**WHEREAS**, the equity partners of KMP, Meridiam I-70 East CO, LLC (as holder of a 60% direct membership interest) and Kiewit C70 Investors, LLC (as holder of a 40% direct membership interest) formed a special purpose vehicle, Kiewit Meridiam Partners, LLC (the “Developer”) for purposes of completing the Project; and

**WHEREAS**, the Project Agreement for the Central 70 Project (the “Project Agreement”) attached hereto, incorporating a main body and twenty-nine schedules, sets forth the rights and obligations of the Enterprises and the Developer with respect to the design, construction, operations, maintenance, renewal and replacement of the Project, during both the construction period and 30-year operating period, including, *inter alia*, provisions related to the design and construction requirements for the Project, milestone payments to the Developer during construction, performance payments to the Developer during operations, financial close procedures, risk allocation between the Enterprises and the Developer, change procedures, insurance and indemnity requirements, defaults, and termination provisions; and

**WHEREAS**, in conjunction with the execution of the Project Agreement, the Enterprises will also enter into a Construction Contractor Direct Agreement with the Developer, Kiewit Infrastructure Co. (a “Principal Subcontractor” to the Developer), and Kiewit Infrastructure Group, Inc. (as “Guarantor” to the Developer), as well as an O&M Contractor Direct Agreement with the Developer and Roy Jorgenson Associates, Inc. (a “Principal Subcontractor” to the Developer), each of which provide for direct contractual privity between the Enterprises and the Construction Contractor and O&M Contractor, respectively, and which provide the Enterprises with certain substitution and step-in rights following the occurrence of certain events as provided for in the Project Agreement; and

**WHEREAS**, also in conjunction with the execution of the Project Agreement, the Enterprises will enter into a separate Financial Model Escrow Agreement with the Developer and U.S. Bank National Association, as Escrow Agent under the Project Agreement, which agreement will provide the terms and conditions under which the Developer’s Financial Model, which is presumed exempt from disclosure under the Colorado Open Records Act, will be released and made available to the Developer, Enterprises, and/or third parties as required to effectuate the requirements of the Project Agreement; and

**WHEREAS**, the BE Board has reviewed the Project Agreement for the Central 70 Project, the Construction Contractor Direct Agreement, the O&M Contractor Direct Agreement, and the Financial Model Escrow Agreement and now desires to approve and authorize execution of the same as part of the Commercial Close for the Project.

**NOW THEREFORE BE IT RESOLVED**, the BE Board hereby approves the Project Agreement for the Central 70 Project, the Construction Contractor Direct Agreement, the O&M Contractor Direct Agreement, and the Financial Model Escrow Agreement, each in substantially the form presented to the BE Board prior to the meeting at which this Resolution is adopted, with such changes thereto, not inconsistent with this Resolution, as may be approved by both the BE Director, or his designee, and the office of the Colorado Attorney General.

**BE IT FURTHER RESOLVED**, the BE Board hereby authorizes the BE Director or his designee to execute and deliver the Project Agreement for the Central 70 Project, the Construction Contractor Direct Agreement, the O&M Contractor Direct Agreement, and the Financial Model Escrow Agreement, and to deliver such 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, effecting Commercial Close of the Central 70 Project.

Herman T. Stockinger

Herman Stockinger, Secretary  
Colorado Bridge Enterprise

11-16-17

Date