

Resolution #BE-18-11-02

Approving the Second Amendment to the Central 70 Project Agreement and the First Amendment to the Issuer's Loan Agreement.

Approved by the Bridge Enterprise Board on November 14, 2018.

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" and, solely in its capacity as issuer under the Loan Agreement defined below, the "Issuer") 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, Section 42-4-805(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, 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, on November 15, 2017, the HPTE Board and the BE Board approved a final Project Agreement for the Central 70 Project (the “Project Agreement”) incorporating a main body and twenty-nine schedules, setting 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, an amendment to the Project Agreement (“First Amendment to the Project Agreement”), which was contemplated in the form of the Project Agreement approved by the HPTE Board and BE Board on November 15, 2017, updated the Project Agreement Milestone Completion and Substantial Completion Dates to account for the actual date of Financial Close that occurred on December 21, 2017; and

WHEREAS, on December 5, 2017, the BE Board, as Issuer, approved certain financial matters with respect to the Central 70 Project in Resolution #BE-17-12-1, including the Issuer’s Loan Agreement in which Issuer proposed to make a loan to the Developer, to finance a portion of the cost of the Central 70 Project and, as necessary, to pay certain costs of issuance associated therewith; and


WHEREAS, the Enterprises and the Developer now desire to effectuate a second amendment to the Project Agreement (“Second Amendment to the Project Agreement”), which is needed to account for an amended Project timeline, added Milestones, and additional details thereunder; and

WHEREAS, in conjunction with the execution of the Second Amendment to the Project Agreement, the BE Board, as Issuer, will enter into a first amendment to the Issuer’s Loan Agreement (the “First Amendment to the Issuer’s Loan Agreement”) to account for added Milestones; and

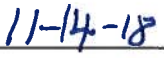
WHEREAS, the BE Board has reviewed the Second Amendment to the Project Agreement for the Central 70 Project and the First Amendment to the Issuer’s Loan Agreement, and now desires to approve and authorize execution of the same as part of the changes to the Project.

NOW THEREFORE BE IT RESOLVED, the BE Board hereby approves the Second Amendment to the Project Agreement for the Central 70 Project and the First Amendment to the Issuer's Loan 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 as may be approved by both the BE Director, or his designee, and the office of the Colorado Attorney General, provided that such changes shall not materially alter the terms and conditions of such agreements as presented to the BE Board, nor otherwise be inconsistent with this Resolution.

BE IT FURTHER RESOLVED, the BE Board hereby authorizes the BE Director or his designee to execute and deliver the Second Amendment to the Project Agreement for the Central 70 Project and the First Amendment to the Issuer's Loan 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.



Herman Stockinger, Secretary
Colorado Bridge Enterprise



Date

