

Resolution #BE-18-11-03

Approving and Authorizing the Execution of the Memorandum of Settlement in Relation to the Supervening Event Submissions of the Central 70 Project.

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”) is empowered, pursuant to Section 43-4-805(5)(i), C.R.S., to enter into all other contracts or agreements that are necessary or incidental to the exercise of its powers and performance of its duties; and

WHEREAS, the HPTE Board of Directors (the “HPTE Board”) is similarly empowered, pursuant to Section 43-4-806(6)(h), C.R.S., to enter into all other contracts or agreements that are necessary or incidental to the exercise of its powers and performance of its duties; 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 Project Agreement for the Central 70 Project (the “Project Agreement”) 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, on November 21, 2017, the Enterprises and Kiewit Meridiam Partners LLC (the “Developer”), executed and delivered the Central 70 Project Agreement; and

WHEREAS, the Enterprises received from Developer three Supervening Event Submissions (the "Submissions") that could have affected, and possibly delayed, the Project timeline; and

WHEREAS, in order to settle the Supervening Event Submissions at the lowest possible cost to the Project and to be proactive in minimizing any potential impacts to the Project, the Enterprises and Developer began working toward a resolution of the three Submissions; and

WHEREAS, in consideration of releasing all claims related to the Submissions, the Enterprises and Developer have agreed in principle to the attached Memorandum of Settlement.

NOW THEREFORE BE IT RESOLVED, the BE Board hereby approves the Memorandum of Settlement for the Central 70 Project 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 and substantially 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 Memorandum of Settlement for the Central 70 Project 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, any amendments thereto added by the Colorado Office of the State Controller.



Herman Stockinger, Secretary
Colorado Bridge Enterprise

11-14-18

Date