

Resolution – HPTE #254

Approving the First Amendment to the Central 70 Project Agreement and Approving the Lenders' Direct Agreement for the Central 70 Project

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 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 HPTE Board of Directors (the “HPTE Board”) is 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, the BE Board of Directors (the “BE Board”) is similarly 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, HPTE and BE (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 the Developer, 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, 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, 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, is needed and updates the Project Agreement Milestone Completion and Substantial Completion Dates to account for the actual date of Financial Close; and

WHEREAS, the First Amendment to the Project Agreement also implements the interest rate and pricing protocol set forth in Schedule 1 of 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; and

WHEREAS, another document, a Lender’s Direct Agreement, must be separately approved by the HPTE Board and the BE Board and executed by the Enterprises and the Lenders’ Direct Agreement provides direct contractual privity between the Enterprises, the Developer and U.S. Bank National Association, acting as the “Collateral Agent” for the benefit of the Developer’s lenders, including the bond holders and TIFIA; and

WHEREAS, The Lender’s 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; and

WHEREAS, the Lenders’ Direct Agreement 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.

NOW THEREFORE BE IT RESOLVED, the HPTE Board hereby approves the First Amendment to the Project Agreement and the Lenders' Direct Agreement for the Central 70 Project in substantially the forms presented to the HPTE 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 HPTE Director, or his designee, and the office of the Colorado Attorney General.

BE IT FURTHER RESOLVED, the HPTE Board hereby authorizes the HPTE Director or his designee to execute and deliver the First Amendment to the Project Agreement and the Lenders' Direct Agreement 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, effecting Financial Close of the Central 70 Project.

Signed as of December 5, 2017

Kari V. Grant
Secretary, HPTE Board