

Resolution – HPTE #354

Approving the 2021 Memorandum of Settlement, the Fourth Amendment to the Project Agreement for the Central 70 Project, and the First Amendment to the Lenders' Direct Agreement

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 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, the BE Board of Directors (the “BE Board”) is similarly 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, 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 on November 21, 2017, the Enterprises and Kiewit Meridiam Partners LLC (the “Developer”), executed and delivered the Central 70 Project Agreement (as amended from time to time in accordance with the terms thereof, including by the First Amendment to the Project Agreement, dated December 21, 2017, the Second Amendment to the Project Agreement, dated May 9, 2019, and the Third Amendment to the Project Agreement, dated December 11, 2019, the “Project Agreement”), which sets forth, among other things, the rights and obligations of the Enterprises and the Developer with respect to the design, construction, financing, operation, maintenance, renewal and replacement of the Central 70 Project, during both the construction period and 30-year operating period, including, inter alia, provisions related to performance payments to be made by the Enterprises to the Developer during operations; and

WHEREAS, the Enterprises received from Developer multiple Supervening Event Submissions (the “Submissions”) that have affected the Project; and

WHEREAS, in an effort to settle the Supervening Event Submissions at the lowest possible cost to the Project and to minimize the long-term impacts to the Project, the Enterprises and Developer began working toward a resolution of the Submissions; and

WHEREAS, in consideration of releasing all claims related to the Submissions, the Enterprises and Developer have agreed to the 2021 Memorandum of Settlement; and

WHEREAS, relatedly, the Enterprises and the Developer now desire to effectuate a fourth amendment to the Project Agreement (“Fourth Amendment to the Project Agreement”), which is needed to account for an amended Project timeline, revisions to Project Milestones, and to account for additional details related to the 2021 Memorandum of Settlement; and

WHEREAS, another document, the First Amendment to the Lender’s Direct Agreement, which must be separately approved by the HPTE Board and the BE Board and executed by the Enterprises, 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 First Amendment to 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 in relation to the Fourth Amendment to the Project Agreement and the 2021 Memorandum of Settlement; and

WHEREAS, the HPTE Board has reviewed the 2021 Memorandum of Settlement, the Fourth Amendment to the Project Agreement for the Central 70 Project, and the First Amendment to the Lender’s Direct 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 HPTE Board hereby approves the 2021 Memorandum of Settlement, the Fourth Amendment to the Project Agreement for the Central 70 Project, and the First Amendment to the Lender’s Direct Agreement each in substantially the form presented to the HPTE Board prior to the meeting at which this Resolution is adopted, with such changes thereto as may be approved by both the HPTE Director, or his designee, and the office of the Colorado Attorney General, provided that such changes shall not substantially and materially alter the terms and conditions of such agreements as presented to the HPTE Board, nor otherwise be inconsistent with this Resolution.

BE IT FURTHER RESOLVED, the HPTE Board hereby authorizes the HPTE Director or his designee to execute and deliver the 2021 Memorandum of Settlement, the Fourth Amendment to the Project Agreement for the Central 70 Project, and the First

Amendment to the Lender's Direct 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.

Signed as of April 14, 2021

Simon Logan
Secretary, HPTE Board