

Resolution HPTE #252

Approving the First Amendment to the Intra-Agency Agreement between the Colorado Department of Transportation, the Colorado High Performance Transportation Enterprise and the Colorado Bridge Enterprise for the Central 70 Project.

WHEREAS, the General Assembly created the Colorado High Performance Enterprise (“HPTE”), pursuant to Section 43-4-806, C.R.S., as a government-owned business within 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, on February 19, 2016 the Transportation Commission approved a governance structure between the Colorado Department of Transportation (“CDOT”), the Colorado Bridge Enterprise (“BE”) and HPTE in which BE is the managing partner of Central 70 Project (“Project”) and BE and HPTE will enter into an anticipated agreement (“Project Agreement”) with a private partner (“Developer”); and

WHEREAS, on June 21, 2017, the HPTE Board of Directors (the “Board”), by Resolution #234, approved the *Central 70 Project Intra-Agency Agreement* (the “Central 70 IAA”) between CDOT, BE and HPTE to further define their roles and responsibilities with respect to funding the construction of the Project, management of the Project and cooperation on the operation and maintenance of the Project and financial obligations to each party with respect to the Project; and

WHEREAS, specifically with regard to HPTE, the Central 70 IAA outlines that HPTE will be responsible for contracting tolling equipment for the Project during the construction period of the Project and outlines the methodology under which HPTE, with contributions from CDOT and the City and County of Denver as describes in the Central 70 IAA, will make a monthly Operations, Maintenance, and Renewal Payment (“OMRP”) to the Developer as provided for in the Project Agreement; and

WHEREAS, the attached First Amendment to the Central 70 Intra-Agency Agreement (the “Amendment”) between CDOT, HPTE and BE does not change any of HPTE’s contributions outlined the Central 70 IAA, but memorializes that BE’s maximum contribution to the Project’s pre-development costs shall be increased by \$30 million to \$172,309,333; and

WHEREAS, BE’s contribution of an additional \$30 million to pre-development costs will still bring BE’s contribution to the Project at or under the \$850 million commitment the BE Board of Directors made in BE Resolution #BE-15-2-3; and

WHEREAS, the Amendment does not change the requirement that CDOT, and not HPTE or BE, shall be solely responsible for identifying and obtaining additional funding sources to cover any shortfalls after BE contributes the amended amount to the Project’s pre-development costs; and

WHEREAS, the Amendment also makes certain other modifications regarding CDOT's ongoing responsibilities to the Project, the makeup of the Project's Executive Oversight Committee, and the consent rights of the Developer regarding modifications to agreements for backup loans made by CDOT pursuant to the Central 70 IAA.

NOW THEREFORE BE IT RESOLVED, the Board hereby approves the First Amendment to the Central 70 Project Intra-Agency Agreement between CDOT, HPTE, and BE and authorizes the HPTE Director or his designee to execute the Amendment on behalf of HPTE, with such revisions or modifications, not inconsistent with this Resolution, and at such time, as the HPTE Director may determine to be necessary or appropriate.

Signed as of November 15, 2017

Kari V. Grant
Secretary, HPTE Board

**FIRST AMENDMENT TO
CENTRAL 70 PROJECT
INTRA-AGENCY AGREEMENT**

THIS FIRST AMENDMENT (the "Amendment") to the CENTRAL 70 PROJECT INTRA-AGENCY AGREEMENT is made this _____ day of _____, 2017 by and between the COLORADO DEPARTMENT OF TRANSPORTATION ("CDOT"), an executive agency of the State of Colorado ("State"), the COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE, a government-owned business and a division of CDOT ("HPTE") and the COLORADO BRIDGE ENTERPRISE, a government-owned business within CDOT ("BE"). CDOT, HPTE and BE are hereinafter referred to as a "Party" and collectively as the "Parties." HPTE and BE are hereinafter referred to individually as an "Enterprise" and collectively as the "Enterprises."

RECITALS

A. The Parties entered into that certain *Central 70 Project Intra-Agency Agreement* dated August 22, 2017 (the "IAA"), pursuant to which the Parties agreed, *inter alia*, to allocate certain Pre-Development Costs (as defined in the IAA) and other payment obligations necessary to implementing the Project amongst themselves.

B. In recognition of anticipated cost savings to BE over the full term of the C-70 Project Agreement with the Developer, Kiewit Meridiam Partners, the Parties desire to amend Section III.2 of the IAA to make available additional BE contributions toward Pre-Development Costs on the Project.

C. The Parties further acknowledge that the total amount payable by BE in respect of Pre-Development Costs, construction period Milestone Payments, and repayment of the CPP (as further described in the IAA, as modified by this Amendment, and the C-70 Project Agreement) remains compliant with the \$850 million (discounted August 2015 dollars) BE funding commitment to the Project.

D. The Parties also desire to reaffirm CDOT's obligations to make payments in respect of CDOT's mitigations commitments under the Record of Decision for the Project and to Utility Owners under the terms of the Project Utility Relocation Agreements, to the extent any such commitments and work are not to be undertaken by the Developer under the terms of the C-70 Project Agreement, and to clarify that such payments are to be made from funds made available for Pre-Development Costs under the IAA and this Amendment.

E. The Parties further desire to clarify that to the extent any CDOT Backup Loans (as defined in the IAA) is made to either HPTE or BE pursuant to any CDOT HPTE Backup Loan Agreement or CDOT BE Backup Loan Agreement, respectively (each a "CDOT Backup Loan Agreement"), such executed CDOT Backup Loan Agreement shall not be amended without the prior consent of the Developer.

F. The Parties acknowledge they are each vested with the legal power to satisfy their respective obligations under this Amendment.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS, AND THE VARIOUS TERMS, COVENANTS, AND CONDITIONS SET FORTH HEREIN, AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES TO THIS AMENDMENT HEREBY AGREE AS FOLLOWS:

TERMS AND CONDITIONS

1. The first sentence of Section II.4 of the IAA shall be replaced with the following:

There shall be constituted an Executive Oversight Committee (“EOC”), which will include the CDOT Chief Engineer, CDOT Chief Financial Officer, CDOT Director of Communications, CDOT Director of Project Support, CDOT Director of the Office of Policy and Government Relations, HPTE Director (or HPTE Director’s designee), BE Director (or BE Director’s designee), and representatives of the Colorado Attorney General’s Office, FHWA, and the City of Denver.

2. Section III.2 of the IAA shall be replaced with the following language in its entirety:

Pre-Development Costs. Except as otherwise specifically identified as a responsibility of HPTE or BE in this Section III, CDOT shall be primarily responsible for the performance of and payment of costs associated with preliminary design, environmental approvals, acquisition of right of way, managing the procurement of the Project in coordination with the Enterprises, and certain other pre-development activities associated with the Project (together the “Pre-Development Costs”). In consideration of the benefit of CDOT’s participation in the design and construction of the Project pursuant to Section III.14, BE has agreed to initially fund a portion of the Pre-Development Costs for the Project, provided that such contribution by BE shall not exceed \$172,309,333. CDOT agrees and acknowledges that BE’s \$172,309,333 contribution shall be in full satisfaction of any obligations the Enterprises might have with respect to funding of Pre-Development Costs of the Project, with any amount in excess thereof being paid by CDOT. If Pre-Development Costs for the Project exceed CDOT’s estimated contribution of \$171,045,502, CDOT, and not the Enterprises, shall be solely responsible for identifying and obtaining additional funding sources to cover any shortfalls.

3. Section III.14.c of the IAA shall be replaced with the following language in its entirety:

c. CDOT shall be responsible for completion of the environmental review process under the National Environmental Policy Act (“NEPA”) and related statutes, as well as any subsequent compliance, modifications to the ROD and oversight of the completion of mitigation measures. CDOT shall be responsible for making payments due

in respect of any mitigation commitments that are to be undertaken by CDOT, and not by the Developer pursuant to the terms of the C-70 Project Agreement, from moneys available for Pre-Development Costs. CDOT shall be responsible for costs incurred by the Enterprises, including as a result of any delays that are compensable under the terms of the C-70 Project Agreement, as such relate to compliance with NEPA and the ROD.

4. Section III.14.h of the IAA shall be replaced with the following language in its entirety:

h. CDOT shall be responsible for administering and enforcing the URAs, including, but not limited to, undertaking Reasonable Efforts to enforce Claims against Utility Owners in respect of any Unexcused Utility Owner Delay Compensation Event claimed by the Developer against the Enterprises. CDOT agrees to promptly remit amounts recovered, less the reasonable cost and expense incurred by CDOT in pursuing such claim, to the Enterprises for payment to the Developer in accordance with the C-70 Project Agreement. CDOT shall be responsible for making payments due to any Utility Owner pursuant to the terms of the URAs and the C-70 Project Agreement from moneys available for Pre-Development Costs.

5. The following sentence shall be added at the end of Section VII.3 of the IAA:

Amendments or modifications to any executed CDOT HPTE Backup Loan Agreement shall require Developer's consent during the term of this Agreement.

6. The following sentence shall be added at the end of Section VII.4 of the IAA:

Amendments or modifications to any executed CDOT BE Backup Loan Agreement shall require Developer's consent during any time that the Central 70 Note remains outstanding.

7. General Provisions. All capitalized terms used in this Amendment but not otherwise defined in this Amendment shall have the meaning for such terms as set forth in the IAA. With the exception of those terms and conditions specifically modified and amended herein, the IAA shall remain in full force and effect in accordance with all of its terms and conditions. In the event of any conflict between the terms and provisions of the IAA and the term and provisions of this Amendment, the terms and provisions of this Amendment shall supersede and control. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, and all of such counterparts shall constitute one agreement.

[Signature pages follow.]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the Effective Date.

FOR THE COLORADO DEPARTMENT OF TRANSPORTATION:

STATE OF COLORADO
JOHN W. HICKENLOOPER, Governor

By: _____
Shailen P. Bhatt
Executive Director

FOR THE COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE:

By: _____
David I. Spector
HPTE Director

FOR THE COLORADO BRIDGE ENTERPRISE:

By: _____
Joshua Laipply, P.E.
Chief Engineer

APPROVED:

CYNTHIA H. COFFMAN
Attorney General

By: _____
Brent E. Butzin
Assistant Attorney General

[Signature page 1 of 2 to the First Amendment to the Central 70 Project IAA]

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

Section 24-30-202, C.R.S. requires that the State Controller to approve all agreements. This Agreement is not valid until the State Controller, or such assistant as he may delegate, has signed it.

**STATE CONTROLLER
Robert Jaros, CPA, MBA, JD**

By: _____

Date: _____

[Signature page 2 of 2 to the First Amendment to the Central 70 Project IAA]

