

**This Construction Contractor Direct Agreement** (this "Agreement") is dated as of November 21, 2017 and made among:

- (1) Colorado High Performance Transportation Enterprise ("HPTE"), a government-owned business within, and a division of, the Colorado Department of Transportation ("CDOT");
- (2) Colorado Bridge Enterprise, a government-owned business within CDOT ("BE" and, together with HPTE, each individually an "Enterprise" and, together, the "Enterprises");
- (3) Kiewit Meridiam Partners LLC, a limited liability company formed under the laws of the State of Delaware ("Developer");
- (4) Kiewit Infrastructure Co., a corporation incorporated under the laws of the State of Delaware ("Principal Subcontractor"); and
- (5) Kiewit Infrastructure Group Inc., a corporation incorporated under the laws of the State of Delaware ("Guarantor").

## RECITALS

### Whereas:

- (A) The Enterprises and Developer have entered into a Project Agreement for the Central 70 Project dated as of the Agreement Date (as the same may be amended, modified or supplemented from time to time in accordance with its terms, the "Project Agreement"), in connection with the design, construction, financing, operation and maintenance of a portion of the I-70 East corridor in Greater Denver, Colorado (the "Project") as more fully described in the Project Agreement.
- (B) The Principal Subcontractor and Developer have entered into a Construction Contract for the Project dated as of the Agreement Date (as the same may be amended, modified or supplemented from time to time in accordance with its terms, the "Principal Subcontract"), in connection with the design and construction of the Project as more fully described in the Principal Subcontract.
- (C) The Guarantor has provided to Developer a payment and performance guaranty dated as of the Agreement Date (as the same may be amended, modified or supplemented from time to time in accordance with its terms, the "Guaranty") of the Principal Subcontractor's obligations under the Principal Subcontract.
- (D) The Principal Subcontractor, Developer and Roy Jorgensen Associates, Inc. (the "O&M Contractor") have entered into an Interface Agreement for the Project dated as of the Agreement Date (as the same may be amended, modified or supplemented from time to time in accordance with its terms, the "Interface Agreement"), in order, inter alia, to clarify the respective responsibilities of the Principal Subcontractor, Developer and the O&M Contractor in connection with the Project.
- (E) The Principal Subcontractor has provided to Developer a letter of credit or multiple letters of credit securing the performance of the Principal Subcontractor's obligations under the Principal Subcontract (the "Letters of Credit").
- (F) It is a condition precedent to Financial Close under Schedule 1 (*Financial Close*) to the Project Agreement that the parties hereto execute this Agreement.

**Now, therefore**, in consideration of their mutual undertakings and agreements hereunder, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties undertake and agree as follows:

## 1. DEFINITIONS, INTERPRETATION AND RELATIONSHIP TO PROJECT AGREEMENT

### 1.1 Definitions

- (a) Capitalized terms used but not defined in this Agreement shall have the meanings given to them in Part A of Annex A (*Definitions and Abbreviations*) of the Project Agreement.
- (b) Except as otherwise specified herein, or as the context may otherwise require, the following terms have the respective meanings set out below for all purposes of this Agreement:

“ <u>Agreement Date</u> ”	means November 21, 2017.
“ <u>Enterprise Step-in</u> ”	has the meaning given to it in <u>Section 2.2(c)(iii)</u> .
“ <u>Enterprise Step-in Date</u> ”	has the meaning given to it in <u>Section 2.2(c)(iii)</u> .
“ <u>Enterprise Step-in Rights Period</u> ”	has the meaning given to it in <u>Section 2.2(c)</u> .
“ <u>Forbearance End Date</u> ”	means the date on which the Enterprises are first entitled to exercise rights of step-in, novation or other similar rights under this Agreement in accordance with <u>Section 12.1</u> of the Lenders Direct Agreement.
“ <u>Guaranty</u> ”	has the meaning given to it in the Recitals.
“ <u>Interface Agreement</u> ”	has the meaning given to it in the Recitals.
“ <u>Letters of Credit</u> ”	has the meaning given to it in the Recitals.
“ <u>O&amp;M Contractor</u> ”	has the meaning given to it in the Recitals.
“ <u>Principal Subcontract</u> ”	has the meaning given to it in the Recitals.
“ <u>Private Sector Parties</u> ”	means Developer, the Principal Subcontractor, and the Guarantor.
“ <u>Release Date</u> ”	means the later to occur of: (a) the Subordination Date (as defined in the Lenders Direct Agreement); and (b) the Termination Date.
“ <u>Subcontractor Bond</u> ”	means any Contractor Bond provided by the Principal Subcontractor in favor of Developer in accordance with <u>Section 9.3.2.b.</u> of the Project Agreement.

## 1.2 Interpretation

- (a) Headings and other internal references
  - (i) Headings are inserted for convenience only and shall not affect interpretation of this Agreement.
  - (ii) Except as the context may otherwise provide, the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision of it.
  - (iii) Except as otherwise expressly provided or as the context may otherwise provide, a reference to any Section within this Agreement is a reference to such Section of this Agreement.
- (b) Common terms and references
  - (i) The singular includes the plural and vice versa.
  - (ii) Words preceding “include”, “includes”, “including” and “included” shall be construed without limitation by the words that follow.
  - (iii) The word “promptly” means as soon as reasonably practicable in light of then-prevailing circumstances.

(c) References to agreements, documents and Persons

Except as otherwise expressly provided in this Agreement, a reference:

- (i) to an agreement or other document shall be construed to be a reference to such agreement or other document (including any schedules, annexes or exhibits thereto) as it may be amended, modified or supplemented from time to time in accordance with its terms and the terms of the Project Agreement;
- (ii) to a Person includes such Person's permitted successors, assigns and transferees; and
- (iii) where the Principal Subcontractor is at any time a consortium, partnership, joint venture or any other unincorporated grouping acting together for a common purpose, to the "Principal Subcontractor" shall be deemed to include reference to each and every member or partner of the same and the liability of each and every such member or partner under this Agreement shall be deemed to be joint and several.

(d) Discretion

Except as otherwise expressly provided in this Agreement, where this Agreement provides that any consent, approval or like assent is to be made or given in the "discretion" of a Person, it shall be made or given only in the sole and absolute discretion of such Person (which discretion includes the ability to refrain from giving, or to impose conditions on, such consent, approval or like assent), which discretionary decision regarding any consent, approval or like assent shall be final and binding and not subject to dispute other than with respect to:

- (i) a good faith dispute concerning whether the consent, approval or like assent was discretionary; or
- (ii) a breach of the implied covenant of good faith and fair dealing.

**1.3 Relationship to Project Agreement**

- (a) In the event of any conflict, ambiguity or inconsistency between the provisions of (i) any of the Project Agreement, the Principal Subcontract, the Guaranty or the Interface Agreement and (ii) the provisions of this Agreement, the provisions of this Agreement shall prevail.
- (b) Notwithstanding the foregoing, nothing in this Agreement amends or modifies (i) any of Developer's obligations under the Project Agreement, (ii) any of the Principal Subcontractor's obligations under the Principal Subcontract or the Interface Agreement or (iii) any of the Guarantor's obligations under the Guaranty.

**2. UNDERTAKINGS**

**2.1 Performance Standards**

- (a) The Principal Subcontractor represents and warrants to the Enterprises that it has performed, and hereby undertakes to perform, such portion of the Work that is the subject of the Principal Subcontract pursuant to and in compliance with the terms, conditions and requirements of:
  - (i) the Principal Subcontract; and
  - (ii) the Project Agreement, to the extent applicable in accordance with its terms or the terms of the Principal Subcontract,

provided that, without prejudice to Section 12.2(c) of the Lenders Direct Agreement, the Enterprises shall not be entitled to exercise against the Principal Subcontractor any rights or remedies to which they become entitled as a result of a breach of any of the representations and warranties or undertakings made pursuant to this Section 2.1(a) until the earliest of:

- (iii) the Forbearance End Date; and
  - (iv) the Release Date.
- (b) The Enterprises agree that the Principal Subcontractor and the Guarantor shall:
- (i) be entitled in any action or proceedings by the Enterprises in connection with, or as a result of having exercised their rights pursuant to, this Agreement to raise equivalent rights of defense of liability (except for set off or counterclaim) as they would have against Developer under, respectively, the Principal Subcontract and the Guaranty; and
  - (ii) have no liability under, or as a result of the Enterprises exercising their rights pursuant to, this Agreement that is of greater severity or of longer duration than they would have had if the Enterprises had been, respectively, a party to the Principal Subcontract as joint employer together with Developer and a joint beneficiary of the Guaranty together with Developer.

## 2.2 Step-in Rights

- (a) The Principal Subcontractor shall not exercise, or seek to exercise, any right which may be or becomes available to it to:
- (i) terminate, or treat as terminated or repudiated, the Principal Subcontract or its engagement thereunder; or
  - (ii) suspend the performance of any of its obligations under the Principal Subcontract, without first giving to the Enterprises at least 60 Calendar Days' (or, in the case of a payment default, 45 Calendar Days') prior notice in accordance with Section 2.2(b), provided that, if the expiry period of such notice occurs prior to the expiry of the Enterprise Step-in Rights Period, the Principal Subcontractor shall not be entitled to exercise, or seek to exercise, any such right(s) unless and until:
    - (iii) the Enterprises deliver a notice to the Principal Subcontractor pursuant to Section 2.2(c) during the Enterprise Step-in Rights Period initiating an Enterprise Step-in and subsequently the Enterprises fail to remedy the circumstances that gave rise to the delivery of the notice from the Principal Subcontractor by the date which is 30 Calendar Days after the Enterprise Step-in Date, in which case the Principal Subcontractor shall be entitled to exercise, or seek to exercise, any right then available to it under the Principal Subcontract as referred to in Sections 2.2(a)(i) and 2.2(a)(ii);
    - (iv) if the Enterprise Step-in Rights Period has begun but not yet expired, the occurrence of the 60<sup>th</sup> Calendar Day (or, in the case of a payment default, the 45<sup>th</sup> Calendar Day) after the Enterprises' receipt of a notice from the Principal Subcontractor pursuant to Section 2.2(a) without the Enterprises having delivered a notice to the Principal Subcontractor pursuant to Section 2.2(c) during the Enterprise Step-in Rights Period initiating an Enterprise Step-in, in which case the Principal Subcontractor shall be entitled to exercise, or seek to exercise, the right referred to in Section 2.2(a)(ii) if then available to it under the Principal Subcontract; or
    - (v) the Enterprise Step-in Rights Period has expired without the Enterprises having delivered a notice to the Principal Subcontractor pursuant to Section 2.2(c) during the Enterprise Step-in Rights Period initiating an Enterprise Step-in, in which case the Principal Subcontractor shall be entitled to exercise, or seek to exercise, any right then available to it under the Principal Subcontract as referred to in Section 2.2(a)(i) and 2.2(a)(ii).
- (b) Any notice given by the Principal Subcontractor to the Enterprises pursuant to Section 2.2(a) shall specify:

- (i) the potential grounds for the Principal Subcontractor to exercise any right described in Sections 2.2(a)(i) or 2.2(a)(ii), together with details regarding any other unperformed obligations of, and uncured breaches by, Developer under the Principal Subcontract of which the Principal Subcontractor is aware;
  - (ii) all amounts due and payable by Developer to the Principal Subcontractor under the Principal Subcontract, if any, on or before the date of such notice and which remain unpaid at such date, and the nature of Developer's obligation to pay such amounts; and
  - (iii) the amount of any payments that the Principal Subcontractor reasonably foresees shall become due and payable from Developer to the Principal Subcontractor under the Principal Subcontract prior to the expiry of the Enterprise Step-in Rights Period.
- (c) At any time during the period:
- (i) on and from the earlier of:
    - (A) the date of the Enterprises' receipt of a notice (if any) from the Principal Subcontractor pursuant to Section 2.2(a); and
    - (B) the Forbearance End Date;
  - (ii) to and including (whether the earlier of the dates referred to in Section 2.2(c)(i) is the date referred to in Section 2.2(c)(i)(A) or the date referred to in Section 2.2(c)(i)(B)) the later of:
    - (A) the 60<sup>th</sup> Calendar Day (or, in the case of a payment default, the 45<sup>th</sup> Calendar Day) after the Enterprises' receipt of a notice (if any) from the Principal Subcontractor pursuant to Section 2.2(a); and
    - (B) the 15<sup>th</sup> Calendar Day after the Forbearance End Date,
 (the "Enterprise Step-in Rights Period"), the Enterprises shall give notice to the Principal Subcontractor and the Guarantor as to whether the Enterprises (or their designee):
    - (iii) shall from the date specified in such notice (the "Enterprise Step-in Date") (which specified date shall be no later than the last Calendar Day of such Enterprise Step-in Rights Period) assume all rights and obligations of, and succeed to the interests of, Developer under the Principal Subcontract, the Guaranty, the Interface Agreement, any Letters of Credit and any Subcontractor Bond to the exclusion and in place of Developer (an "Enterprise Step-in"), provided that, following any such assumption and succession, each of the Principal Subcontract, the Guaranty, the Interface Agreement, any Letters of Credit and any Subcontractor Bond shall remain in full force and effect; or
    - (iv) waive their rights to effect an Enterprise Step-in pursuant to Section 2.2(c)(iii).
- (d) Each of the Principal Subcontractor and the Guarantor acknowledges and agrees that the Enterprises, in their discretion, shall have the right to require them:
- (i) following the occurrence of the Release Date, to consent to any assignment and transfer of the benefit of this Agreement, the Guaranty, the Interface Agreement and the Principal Subcontract (including the benefit of all warranties and guarantees, express or implied, provided under the Principal Subcontract) pursuant to Section 34.2.1 of the Project Agreement;
  - (ii) to enter into a novation agreement or contract amendment to effect any Enterprise Step-in or any assignment and transfer referred to in Section 2.2(d)(i), provided that any such agreement, amendment, assignment or transfer shall be made subject to such terms and conditions as required by State Law to obtain the consent of the Colorado State Controller; and

- (iii) to cause the issuer of any Subcontractor Bond or any Letters of Credit to enter into such agreements or other documents as reasonably necessary to grant the Enterprises the benefits previously available to Developer thereunder following any Enterprise Step-in or any assignment and transfer referred to in Section 2.2(d)(i).
- (e) Each of the Principal Subcontractor and the Guarantor acknowledges and agrees they shall not take any action (or refrain from taking any action) in a manner that is calculated or intended to directly or indirectly prejudice or frustrate any of the activities contemplated under Section 34.1 of the Project Agreement or any transfer or assignment contemplated under Section 34.2 of the Project Agreement and Section 2.2(d).
- (f) If either:
  - (i) any assignment and transfer referred to in Section 2.2(d)(i) occurs; or
  - (ii) an Enterprise Step-in occurs,the Enterprises shall accept liability for Developer's obligations under the relevant Principal Subcontract and the Interface Agreement and shall as soon as practicable thereafter cure any outstanding breach by Developer which is capable of cure by Enterprises, in each case subject to Developer's rights under the terms of the relevant Principal Subcontract; provided that, with respect to any such breach that is incapable of being cured by the Enterprises, the Enterprises shall promptly following any such assignment and transfer or Enterprise Step-in, as applicable, provide a plan with respect to such breach specifying the action(s) they have taken or shall take in order to mitigate the material adverse effects (if any) of such breach on the Principal Subcontractor or in relation to the Principal Subcontractor and to prevent such breach (if capable of repetition) from occurring in the future.
- (g) For certainty, but without prejudice to the Principal Subcontractor's rights and remedies under this Agreement, the Enterprises shall not be under any obligation to the Principal Subcontractor, nor shall the Principal Subcontractor have any claim or cause of action against the Enterprises, unless and until any assignment and transfer referred to in Section 2.2(d)(i) or an Enterprise Step-in occurs.
- (h) Developer acknowledges and agrees that the Principal Subcontractor and the Guarantor shall each be entitled to rely on any notice or instruction given to it by the Enterprises' exercising their rights under this Agreement as conclusive evidence that the Enterprises are entitled to exercise such rights.

### **3. ENTERPRISES' REMEDIES**

The rights and benefits conferred upon the Enterprises by this Agreement are in addition to: (a) any other rights and remedies they may have against Developer, the Principal Subcontractor and/or the Guarantor; and (b) any other rights and benefits they may have with respect to any Subcontractor Bond, any other Contractor Bond or any Letters of Credit.

### **4. CHOICE OF LAW; JURISDICTION AND VENUE; DISPUTE RESOLUTION**

#### **4.1 Choice of Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, other than any provision thereof that permits or requires the application of the laws of another jurisdiction, and regardless of any other jurisdiction's choice of law rules. Any provision incorporated herein by reference which purports to negate this provision or any other special provision set out in Section 5.12, in whole or in part, shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution.

#### **4.2 Jurisdiction and Venue**

All suits or actions related to this Agreement shall be filed and proceedings held in the State and exclusive venue shall be in State or Federal court in the City of Denver, and each party hereto irrevocably waives:

- (a) any objection which it may have at any time to the laying of venue of any such suit, action or proceeding brought in any such court;
- (b) any claim that any such suit, action or proceeding has been brought in an inconvenient forum; and
- (c) the right to object that such court does not have any jurisdiction with respect to such suit, action or proceeding.

### **5. GENERAL PROVISIONS**

#### **5.1 Amendments and Waivers**

- (a) This Agreement may only be amended by a written amendment duly executed by all parties together with, to the extent required by Law, the Colorado State Controller or its designee, unless the amendment to this Agreement is expressly allowed or required to be made in any other manner pursuant to this Agreement.
- (b) Except to the extent otherwise expressly provided in this Agreement:
  - (i) any waiver of, or consent to any departure from, the requirements of any provision of this Agreement shall be approved (in the discretion) of the party giving it and shall be effective only if it is in writing by such party, and only in the specific instance, for the specific time, subject to the specific conditions and for the specific purpose for which it has been given;
  - (ii) no failure on the part of any party to exercise, and no delay in exercising, any right or power under this Agreement shall operate as a waiver of such right or power; and
  - (iii) no single or partial exercise of any right or power under this Agreement, including any right to give or withhold any consent or approval, nor any abandonment or discontinuance of steps to enforce such a right or power, shall preclude or render unnecessary any other or further exercise of such right or the exercise of any other right.

#### **5.2 Successors and Assigns**

- (a) No party to this Agreement may assign or transfer any part of its rights or obligations hereunder without the prior written consent of the other parties.
- (b) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

#### **5.3 Severability**

- (a) If any provision (or part of any provision) of this Agreement is ruled invalid by a court having proper jurisdiction, then the parties shall:
  - (i) promptly meet and negotiate a substitute for such provision or part thereof which shall, to the greatest extent legally permissible, effect the original intent of the parties; and
  - (ii) if necessary or desirable, and to the extent the parties agree to do so, apply to the court which declared such invalidity for an interpretation of the invalidated provision (or part thereof) to guide the negotiations.
- (b) If any provision (or part of any provision) of this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such provision (or part thereof) shall

not affect the validity, legality and enforceability of any other provision of (or the other part of such provision) or any other documents referred to in this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision (or part thereof) had never been contained herein.

**5.4 Entire Agreement**

Subject to Section 1.3(b), this Agreement constitutes the entire agreement among the parties hereto concerning the subject matter hereof and supersedes all prior negotiations, representations, and agreements, either oral or written, among the parties with respect to their subject matter.

**5.5 Notices and Communications**

- (a) Any notice shall be given in writing by means of physical (including delivery by courier and postage pre-paid certified or registered mail), digital or electronic communication, but excluding the use of social media, messengering, broadcast and equivalent services, to the relevant party at the following addresses, as applicable:

**Enterprises**

**HPTE**

David I. Spector  
 HPTE Director  
 4201 E. Arkansas Ave.  
 Denver, CO 80222  
 (303) 757-9607  
 david.spector@state.co.us

**BE**

Joshua Laipply, P.E.  
 Chief Engineer  
 4201 E. Arkansas Ave.  
 Denver, CO 80222  
 (303) 757-9204  
 joshua.laipply@state.co.us

**Copy to**

Brent Butzin  
 Assistant Attorney General  
 Transportation Unit  
 Ralph L. Carr Colorado  
 Judicial Center  
 1300 Broadway, 10th Floor  
 Denver, CO 80203  
 (720) 508-6638  
 Brent.Butzin@coag.gov

**Developer**

Christopher Hodgkins  
 Kiewit Meridiam Partners  
 LLC  
 160 Inverness Drive West,  
 Suite 110  
 Englewood, CO 80112  
 (212) 798-8686  
 I70E@meridiam.com

**Principal Subcontractor**

Craig Briggs  
 Kiewit Infrastructure Co.  
 160 Inverness Drive West,  
 Suite 110  
 Englewood, CO 80112  
 (303) 325-0304  
 Craig.briggs@kiewit.com

**Guarantor**

Toby Schropp  
 General Counsel  
 Kiewit Infrastructure Group  
 Inc.  
 355 Farnam Street  
 Omaha, NE 68131  
 (402) 342-2052  
 toby.schropp@kiewit.com

- (b) A notice shall be deemed to have been delivered and received:
  - (i) upon receipt (confirmed by automatic answer back, read receipt or equivalent evidence of receipt), if validly transmitted by digital or electronic distribution before 3:00 p.m. (local time at the place of receipt) on a Working Day;
  - (ii) on the next Working Day following receipt (confirmed by automatic answer back, read receipt or equivalent evidence of receipt), if validly transmitted by digital or electronic distribution on or after 3:00 p.m. (local time at the place of receipt) on a Working Day;
  - (iii) upon receipt, if physically delivered in person; or
  - (iv) if delivered by courier or postage pre-paid certified or registered mail, on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the United States Postal Service or independent courier.
- (c) The parties shall notify each other in writing of any change of address and/or contact information, such notification to become effective five Working Days after notification.



**5.6 Counterparts**

This Agreement (or an amendment or waiver in respect to this Agreement) may be executed in one or more counterparts (including by electronic signature and/or scanned or digital transmission). Any single counterpart or a set of counterparts executed, in either case, by each of the parties and, to the extent required by Law, the Colorado State Controller or its designee, shall constitute a full and original instrument for all purposes.

**5.7 No Third Party Beneficiaries**

It is not intended by any of the provisions of this Agreement to create any third party beneficiary rights hereunder. Notwithstanding the foregoing, the duties, obligations and responsibilities of the parties with respect to third parties shall remain as imposed by Law.

**5.8 No Partnership**

Nothing in this Agreement is intended or shall be construed to create any partnership, joint venture or similar relationship or among the parties. None of the parties shall hold itself out contrary to the terms of this Section 5.8.

**5.9 No Interference**

Developer joins in this Agreement to acknowledge and consent to the arrangements set out and agrees not to knowingly do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.

**5.10 No Personal Liability**

Each Enterprise's authorized representatives, including the Enterprise Representative, are acting solely as agents and representatives of the Enterprises when carrying out the provisions of or exercising the power or authority granted to them under this Agreement, and, as such, none of them shall not be liable either personally or as employees of the Enterprises for actions in their ordinary course of employment.

**5.11 Costs and Expenses of the Parties**

Except as otherwise expressly provided in this Agreement, the Project Agreement, the Principal Subcontract, the Guaranty, the Interface Agreement or the Letters of Credit, each party shall bear its own costs and expenses in connection with the preparation, negotiation, execution and performance of this Agreement and all other related agreements.

**5.12 Special Provisions****(a) Controller's Approval**

This Agreement shall not be valid until it has been approved by the Colorado State Controller or its designee.

**(b) Governmental Immunity**

No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §§24-10-101 *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 *et seq.*, as applicable now or hereafter amended.

**(c) Compliance with Law**

The Private Sector Parties shall strictly comply with all applicable Federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

(d) Binding Arbitration Prohibited

The State does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Agreement or incorporated herein by reference shall be null and void.

(e) Software Piracy Prohibition

State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Each of the Private Sector Parties hereby certifies and warrants that, during the term of this Agreement and any extensions, such Private Sector Party has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that a Private Sector Party is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, termination of this Agreement, as well as any remedy consistent with Federal copyright laws or applicable licensing restrictions.

(f) Employee Financial Interest / Conflict of Interest

The signatories aver that, to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. Neither Private Sector Party has any interest and shall acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of such Private Sector Party's services and no Private Sector Party shall employ any person having such known interests.

(g) Vendor Offset (C.R.S. §§24-30-202 (1) and 24-30-202.4)

Subject to C.R.S. §24-30-202.4 (3.5), the Colorado State Controller, or the Enterprises, may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for:

- (i) unpaid child support debts or child support arrearages;
- (ii) unpaid balances of tax, accrued interest, or other charges specified in C.R.S. §39-21-101, *et seq.*;
- (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education;
- (iv) amounts required to be paid to the Unemployment Compensation Fund pursuant to Article 70-82 of Title 8 of the C.R.S.; and
- (v) other unpaid debts owing to the State as a result of final agency determination or judicial action.

(h) Public Contracts for Services

Each Private Sector Party certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the CDOT program established pursuant to C.R.S. §8-17.5-102(5)(c). None of the Private Sector Parties shall knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a Subcontractor that fails to certify to such Private Sector Party that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Each Private Sector Party:

- (i) shall not use E-Verify Program or CDOT program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed;

- (ii) shall notify the Subcontractor and the contracting State agency within three Calendar Days if such Private Sector Party has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Agreement;
- (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three Calendar Days of receiving the notice; and
- (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. § 8-17.5-102(5), by the Colorado Department of Labor and Employment.

If a Private Sector Party participates in the CDOT program, such Private Sector Party shall deliver to the contracting State agency, institution of higher education or political subdivision a written, notarized affirmation, affirming that such Private Sector Party has examined the legal work status of such employee, and shall comply with all of the other requirements of the CDOT program. If a Private Sector Party fails to comply with any requirement of this provision or C.R.S. § 8-17.5-101, *et seq.*, the contracting State agency may terminate this Agreement for breach and, if so terminated, such Private Sector Party shall be liable for damages.

***[remainder of page left intentionally blank; signature page follows]***

**IN WITNESS WHEREOF**, the parties hereto, each intending to be legally bound by this writing, have caused this Agreement to be executed the date first above written.

**KIEWIT MERIDIAM PARTNERS LLC**

By: \_\_\_\_\_  
John Dionisio  
Authorized Person

**KIEWIT INFRASTRUCTURE CO.**

By: \_\_\_\_\_  
Craig Briggs  
Senior Vice President

**KIEWIT INFRASTRUCTURE GROUP INC.**

By: \_\_\_\_\_  
Scott Cassels  
President

**COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE**

By: \_\_\_\_\_  
David I. Spector  
Director

**COLORADO BRIDGE ENTERPRISE**

By: \_\_\_\_\_  
Joshua Laipply, P.E  
Chief Engineer

**APPROVED:**  
**Cynthia H. Coffman, Attorney General**

By: \_\_\_\_\_  
Brent E. Butzin  
Assistant Attorney General

**ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

C.R.S. § 24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or its delegate.

<p style="text-align: center;"><b>STATE CONTROLLER</b></p> <p style="text-align: center;"><b>Robert Jaros, CPA, MBA, JD</b></p> <p>By: _____</p> <p>Date: _____</p>
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