

Financial Model Escrow Agreement

This Escrow 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"); and
- (4) U.S. Bank National Association, as escrow agent (the "Escrow Agent").

RECITALS

Whereas:

- (A) Simultaneously with the execution of this Agreement, the Enterprises and Developer have entered into a Project Agreement for the Central 70 Project dated as of November 21, 2017 (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 (the "Project") as more fully described in the Project Agreement.
- (B) It is a condition precedent to the execution of the Project Agreement that the parties hereto execute this Agreement.

Now, therefore, in consideration of the mutual covenants and agreements described below and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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.

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
- (ii) to a Person includes such Person's permitted successors, assigns and transferees.

2. DEPOSIT

2.1 Initial Deposit

- (a) Developer hereby deposits with the Escrow Agent:
 - (i) an unrestricted electronic version of the Base Financial Model;
 - (ii) the "Assumptions Book" submitted by the Preferred Proposer pursuant to Section 6.10.2 of the "Financial Proposal Submission Requirements" in the ITP; and
 - (iii) the audit report submitted by the Preferred Proposer pursuant to Section 6.10.3 of the "Financial Proposal Submission Requirements" in the ITP,

((i) through (iii), together with any supplements or amendments thereto or replacements thereof, the "Escrow Documents").
- (b) The Escrow Agent hereby acknowledges receipt of the Escrow Documents specified in Sections 2.1(a)(i) through (iii), and agrees that such Escrow Documents shall be held in escrow pursuant to this Agreement.

2.2 Supplements, Amendments and Replacements

The Escrow Agent agrees to accept and hold in escrow pursuant to this Agreement any supplements, amendments or replacements to the Escrow Documents jointly delivered to it by Developer and the Enterprises from time to time.

3. ESCROW DOCUMENTS

3.1 Holding of Escrow Documents

- (a) The Escrow Agent shall hold the Escrow Documents in escrow in a designated area on the premises located at the office of the Escrow Agent, 950 17th Street, Denver, CO 80202, or at such other equivalent location in the State as may be approved in writing by the Enterprises (acting reasonably), on a confidential and secure basis. Such designated area shall be locked at all times when such documents are not otherwise being accessed pursuant to this Agreement.
- (b) The Escrow Agent shall provide the Enterprises and Developer with joint access to the Escrow Documents at the designated location during Working Days subject to at least two Working Days' prior notice. Furthermore, with notice to Developer at least five Working Days in advance, the Enterprises shall be entitled to access (but not supplement, amend or replace) the Escrow Documents. Developer, but not the Enterprises, shall be deemed to waive its joint access right.
- (c) Other than each Party's professional advisors and consultants (which may accompany such Party when, or act on behalf of such Party for the purpose of, accessing the Escrow Documents), no third party shall be allowed access to any of the Escrow Documents, provided that employees of the Escrow Agent (which employees are not otherwise acting in any other capacity, including by providing collateral agency services, in connection with

the Project) shall have access to the Escrow Documents solely to fulfill the Escrow Agent's obligations under this Agreement.

3.2 Release of Escrow Documents

The Escrow Agent shall release the applicable Escrow Documents to either of the Enterprises or Developer upon delivery of joint instructions to the Escrow Agent by the Enterprises and Developer.

4. REPRESENTATION AND WARRANTY

As of the date of this Agreement and as of each date the Enterprises and Developer deposit with the Escrow Agent a supplement, amendment or replacement to or of any Escrow Document, Developer represents and warrants to the Escrow Agent and the Enterprises that:

- (a) it lawfully possesses each such Escrow Document provided to the Escrow Agent;
- (b) no agreements, liens or encumbrances prohibit, limit, or alter the rights and obligations of the Enterprises or the Escrow Agent under this Agreement;
- (c) it possesses all rights necessary with respect to each such Escrow Document to permit the Escrow Agent to perform its obligations, and the Enterprises to exercise their rights, under this Agreement in accordance with the terms hereof;
- (d) each such Escrow Document is readable and useable in its then current form and, if any portion of any such Escrow Document is encrypted, the necessary decryption tools and keys to read such material have been deposited with the Escrow Agent contemporaneously; and
- (e) such Escrow Documents (together with any such documents already in escrow) constitute a complete and correct set of the Escrow Documents required to be deposited pursuant to Sections 2.1 and 2.2.

5. TERM AND TERMINATION

- (a) This Agreement shall continue in full force and effect until the earlier of the Expiry Date (notice of which shall be provided to the Escrow Agent by Developer) and the date on which Developer and the Enterprises provide the Escrow Agent with joint notice of their intent to terminate this Agreement.
- (b) Upon termination of this Agreement, the Escrow Agent shall promptly return the Escrow Documents to Developer.

6. RIGHTS OF ESCROW AGENT

- (a) If conflicting demands are made or notices served upon the Escrow Agent with respect to this escrow, the parties hereto expressly agree that the Escrow Agent shall have the absolute right at its election to do any of the following:
 - (i) suspend access to the Escrowed Documents;
 - (ii) file a suit in interpleader and obtain an order from the court requiring the parties to interplead and litigate in such court their several claims and rights amongst themselves;
 - (iii) deliver all Escrow Documents with seals intact to another location to be selected by the Enterprises within 30 days after the Escrow Agent delivers notice thereof to Developer and the Enterprises.
- (b) Without limiting Section 6(a), after the Enterprises deliver to the Escrow Agent a notice that a Developer Default has occurred and is continuing (upon which the Escrow Agent may conclusively rely, and until such notice is withdrawn by a subsequent notice from the Enterprises to the Escrow Agent), the Escrow Agent shall accept instructions pursuant to this Agreement solely from the Enterprises, including with respect to matters that otherwise would require joint action or instruction pursuant to this Agreement.

7. GENERAL PROVISIONS

7.1 Fees and expenses

- (a) Developer shall be responsible for all fees and expenses of the Escrow Agent in connection with this Agreement as set forth in the Fee Letter, dated as of November 6, 2017, by and between the Escrow Agent and the Developer.
- (b) Except as otherwise expressly provided in Section 7.1(a) or, as between the Enterprises and Developer, pursuant to the Project Agreement, each party shall bear its own costs and expenses (including legal and other advisers' fees and expenses) in connection with the preparation, negotiation, execution and performance of this Agreement.

7.2 Liability of Escrow Agent

- (a) The Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no duties shall be implied. The Escrow Agent has no fiduciary or discretionary duties of any kind. The Escrow Agent shall have no liability under and no duty to inquire as to the provisions of any agreement other than this Agreement, including without limitation any other agreement between any or all of the parties hereto or any other persons even though reference thereto may be made herein, other than to the limited extent required to give effect to Section 1.1. The Escrow Agent shall not be liable for any action taken or omitted by it in good faith except to the extent caused by the Escrow Agent's negligence or willful misconduct. Escrow Agent's sole responsibility shall be for the safekeeping of the Escrow Documents in accordance with the terms of this Agreement. Escrow Agent shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein or otherwise given or notified to it pursuant to the terms of this Agreement. Escrow Agent may rely upon any notice, instruction, request or other instrument, not only as to its due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein, which Escrow Agent shall believe to be genuine and to have been signed or presented by the person or parties purporting to sign the same. In no event shall Escrow Agent be liable for incidental, indirect, special, consequential or punitive damages or penalties (including, but not limited to, lost profits), even if the Escrow Agent has been advised of the likelihood of such damages or penalty and regardless of the form of action. Escrow Agent shall not be responsible for delays or failures in performance resulting from acts beyond its control, including without limitation acts of God, strikes, lockouts, riots, acts of war or terror, epidemics, governmental regulations, fire, communication line failures, computer viruses, power failures, earthquakes or other disasters. Escrow Agent may consult legal counsel selected by it in the event of any dispute or question as to the construction of any of the provisions hereof or of any other agreement or of its duties hereunder, or relating to any dispute involving any party hereto. Developer shall promptly pay, upon demand, the reasonable fees and expenses of any such counsel. Developer and Enterprises agree to perform or procure the performance of all further acts and things, and execute and deliver such further documents, as may be required by law or as Escrow Agent may reasonably request in connection with its duties hereunder.
- (b) The Escrow Agent is authorized to comply with final orders issued or process entered by any court with respect to the Escrow Documents, in its sole discretion without determination by the Escrow Agent of such court's jurisdiction in the matter.
- (c) From and at all times after the date of this Agreement, Developer shall, to the fullest extent permitted by law, indemnify and hold harmless Escrow Agent and each director, officer, employee, attorney, agent and affiliate of Escrow Agent (collectively, the "Indemnified Parties") against any and all actions, claims (whether or not valid), losses, damages, liabilities, penalties, costs and expenses of any kind or nature (including without limitation reasonable attorneys' fees, costs and expenses) incurred by or asserted against any of the Indemnified Parties, whether direct, indirect or consequential, as a result of or arising from or in any way relating to any claim, demand, suit, action or proceeding (including any inquiry or investigation) by any person, including, without limitation, Developer and Enterprises,

whether threatened or initiated, asserting a claim for any legal or equitable remedy against any person under any statute or regulation, or under any common law or equitable cause or otherwise, arising from or in connection with the negotiation, preparation, execution, performance or failure of performance in connection with this Agreement or any transactions contemplated herein, whether or not any such Indemnified Party is a party to any such action, proceeding, suit or the target of any such inquiry or investigation; provided, however, that no Indemnified Party shall have the right to be indemnified hereunder for any liability finally determined by a court of competent jurisdiction, subject to no further appeal, to have resulted solely from the negligence or willful misconduct of such Indemnified Party. Developer further agrees to indemnify each Indemnified Party for all costs, including without limitation reasonable attorney's fees, incurred by such Indemnified Party in connection with the enforcement of Developer's indemnification obligations hereunder. Each Indemnified Party shall, in its sole discretion, have the right to select and employ separate counsel with respect to any action or claim brought or asserted against it, and the reasonable fees of such counsel shall be paid upon demand by Developer. The obligations of Developer under this Section shall survive any termination of this Agreement and the resignation or removal of Escrow Agent.

7.3 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, 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.

7.4 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.

7.5 Amendments and Waivers

- (a) This Agreement may only be amended by a written amendment duly executed by all parties' designees, unless the amendment to this Agreement is expressly allowed or required to be made in any other manner pursuant to this Agreement and Law.
- (b) Except to the extent otherwise expressly provided in this Agreement:
 - (i) any waiver of, or consent to depart 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.

7.6 Successors and Assigns

- (a) Except to the extent expressly provided hereunder, 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.

7.7 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, 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.

7.8 Entire Agreement

This Agreement constitutes the entire agreement among the Enterprises, Developer and the Escrow Agent 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.

7.9 Notices and Communications

- (a) Any notice shall be given in writing by means of physical, 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

Escrow Agent
 Gretchen L. Middents

Kiewit Meridiam Partners LLC 160 Inverness Drive West, Suite 110 Englewood, Colorado 80112 (212) 798-8686 I70E@meridiam.com	Global Corporate Trust Services 950 17 th Street, DN-CO- T12C Denver, CO 80202 Phone (303) 585-4596 gretchen.middents@ usbank.com
--	---

- (b) A notice shall be deemed to have been submitted:
- (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 by courier; 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 will notify each other in writing of any change of address and/or contact information, such notification to become effective five Working Days after notification.

7.10 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 shall constitute a full and original instrument for all purposes.

7.11 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.

7.12 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 this Section 7.12.

7.13 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.

[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

U.S. BANK NATIONAL ASSOCIATION

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