



DATE: November 14, 2018

TO: Board of Directors of the Colorado Bridge Enterprise (“BE”)
Colorado Transportation Commission (“TC”)
High Performance Transportation Enterprise (“HPTE”)

FROM: Keith Stefanik, Central 70 Project Director
David Spector, HPTE Director

SUBJECT: Request for Approval of Second Amendment to Central 70 Project Intra-Agency Agreement

Purpose

The purpose of this memorandum is to summarize recent revisions to the Intra-Agency Agreement (“IAA”) among CDOT, HPTE, and BE for the Central 70 Project, and to request the Boards’ approval.

Action

The Central 70 Project team requests that the HPTE, BE and TC approve the Central 70 IAA.

Background

The Boards approved the first IAA on August 22, 2017, and an amended IAA on November 17, 2017. Since that time, changes to the larger Project Agreement have been made, which requires changes to the IAA. Changes are summarized below.

Revisions to IAA

The following revisions have been made to the IAA:

- Added Milestones 5 and 6 to capture amended Project timeline. (Table III-1 of Section III.4)
- Intention to use DRCOG CMAQ funds for CDOT MP Obligations. (Section III.5)
- Specific percentage split for Pro-Rata Construction Cost allocation between CDOT and BE for ease of reference (66%/34% split). (Section III.7)
- Remove reference to first Performance Payment being made following Substantial Completion Date due to amended Project timeline. Performance Payments now begin at Milestone 5. (Section IV.1)

Commission Options / Decision Matrix

- 1) **Staff Recommendation: Approve the Second Amendment to the Central Project 70 IAA.**
- 2) Review, but do not approve the Second Amendment to the Central 70 Project IAA. Provide feedback on desired changes.

Recommendation

The Central 70 Project team requests that the BE Board, HPTE Board and TC approve the Second Amendment to the Central 70 Project IAA.



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

THIS SECOND AMENDMENT (the “Amendment”) to the CENTRAL 70 PROJECT INTRA-AGENCY AGREEMENT is made this _____ day of _____, 2018 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. The Parties entered into that certain First Amendment to the IAA on November 15, 2017 (the “First Amendment”) pursuant to which the Parties agreed, *inter alia*, to make available additional BE contributions toward Pre-Development Costs on the Project and make certain other modifications regarding CDOT’s ongoing responsibilities to the Project.

C. In recognition of changes to the Project Agreement, the Parties desire to amend the IAA to reflect added Milestones and to account for changes to the Project timeline, with additional details thereunder.

D. The Parties further acknowledge that the total amounts pledged by BE and CDOT in respect of construction period Milestone Payment contributions (as further described in the IAA, as modified by this Amendment and the amendment to the Project Agreement) remains unchanged.

E. 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. Table III-1 of Section III.4 of the IAA shall be replaced with the following in its entirety:

Table III-1: Milestone Payment Contributions

Milestone	Milestone Payment	BE MP Obligation	CDOT MP Obligation
Completion of Milestone 1 (Sand Creek Bridge to Chambers Road)	\$50,000,000	\$0	\$50,000,000
Completion of Milestone 2 (Dahlia Street to Sand Creek Bridge)	\$95,000,000	\$86,845,502	\$8,154,498
Completion of Milestone 3 (Completion of phases 1 through 5 of the UPRR Crossing)	\$52,000,000	\$52,000,000	\$0
Completion of Milestone 4 (WB I-70 Brighton Boulevard to Dahlia Street and removal of existing viaduct bridge)	\$52,000,000	\$52,000,000	\$0
Completion of Milestone 5 (EB I-70 Brighton Boulevard to Dahlia Street)	\$53,400,000	\$53,400,000	\$0
Completion of Milestone 6 (SMA pavement and the Cover)	\$3,000,000	\$3,000,000	\$0
Substantial Completion	\$13,600,000	\$13,600,000	\$0
Total	\$319,000,000	\$260,845,502	\$58,154,498

2. Section III.5 of the IAA shall be replaced with the following in its entirety:

5. DRCOG Funds. The Board of Directors of the Denver Regional Council of Governments (“DRCOG”) previously approved a resolution establishing a commitment in principle to contribute \$50 million in federal Congestion Mitigation and Air Quality Improvement (“CMAQ”) funds to CDOT for the Project. As of the date hereof, \$6 million of CMAQ funds have been remitted to CDOT for the Project, with the remaining amounts expected to be paid in future fiscal years as set forth in Table III-2 (see Footnote 4) below. CDOT intends to commit such CMAQ funds to the Project to fund certain Pre-Development Costs and CDOT MP Obligations. Notwithstanding the foregoing, should DRCOG fail to provide funding in any subsequent fiscal year, CDOT shall be responsible for identifying and obtaining alternative funding to satisfy the CDOT Available Funds Obligation (as defined below).

3. Section III.7 of the IAA shall be replaced with the following in its entirety:

7. Pro-Rata Construction Cost Calculation. BE and CDOT agree to allocate certain costs, as detailed in this Agreement, based on a proportion of the total Project costs, with BE’s portion being calculated to include all such Project costs that meet the BE-Eligible Criteria (the “BE-Eligible Costs”), and CDOT’s portion being calculated to include all other Project costs (the “Pro-Rata Construction Cost Calculation”). The Parties agree and acknowledge that the Pro-Rata Construction Cost Calculation is intended to be based upon the Eligible Cost Breakdown, provided by the Developer on Form D-2 to Part H of the Instructions to Proposers contained in the RFP with its Proposal, which, for certainty, provided that BE-Eligible Costs and Non-BE-Eligible Costs be allocated as sixty-six percent (66%) and thirty-four percent (34%), respectively, based upon the CBE Funding Eligibility Criteria approved by Resolution #BE-15-8-2 of the BE Board of Directors on August 20, 2015. BE and CDOT may modify the methodology for establishing the Pro-Rata Construction Cost Calculation at any time prior to Financial Close by written amendment to this Agreement approved by the Parties.

4. The following section shall be added as new Section III.17 of the IAA:

17. Acknowledgement of Memorandum of Settlement. The Parties acknowledge that the Enterprises will enter into a Memorandum of Settlement, among themselves, the Developer and the Construction Contractor which will provide for, *inter alia*, a settlement of Supervening Events 1, 2, and 4 (as those terms are defined therein) submitted by Developer. Pursuant to Section III.11 of this Agreement, the Parties agree to allocate any Compensation due under the Memorandum of Settlement per the Pro-Rata Construction Cost Calculation.

5. Section IV.1 of the IAA shall be replaced with the following in its entirety:

1. Overview and Costs. Pursuant to the C-70 Project Agreement, the Enterprises are required to pay Performance Payments (comprised of a Capital

Performance Payment and an OMR Payment) to Developer in consideration of Work performed by Developer, and may be required to pay Compensation to the Developer in relation to a Supervening Event. To that end, the Parties agree to the division of costs as set forth in this Section IV of this Agreement.

6. The following sentence shall be added as the last sentence of Section IV.6 of the IAA:

6. For certainty, between Milestone 5 and Substantial Completion, CDOT will pay 100% of the OMRP, with no deductions and no contribution from Denver.

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: _____
Michael P. Lewis
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: _____
Andrew J. Gomez
Assistant Attorney General

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

Resolution # TC-X-X

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

WHEREAS, the Transportation Commission is responsible, pursuant to Section 43-1-106(8), C.R.S., for formulating the general policy with respect to the management, construction and maintenance of public highways and other transportation systems in the State; and

WHEREAS, on February 19, 2016 the Transportation Commission approved a governance structure between CDOT, CBE and HPTE in which CBE is the managing partner of Central 70 Project (“Project”) and CBE and HPTE will enter into an anticipated agreement (“Project Agreement”) with a private partner (“Developer”); and

WHEREAS, in June 2017, the Transportation Commission, in Resolution #TC-17-6-17, approved an Intra-Agency Agreement (the “Central 70 IAA”) between the Colorado Department of Transportation (“CDOT”), the Colorado High Performance Transportation Enterprise (“HPTE”), and the Colorado Bridge Enterprise (“BE”) 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, on November 16, 2017, the Transportation Commission, in Resolution #TC-17-11-16, approved the Amendment to the Central 70 Intra-Agency Agreement (the “First Amendment”) between CDOT, HPTE and BE, which outlined and memorialized that BE’s maximum contribution to the Project’s pre-development costs be increased by \$30 million to \$172,309,333; and

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

WHEREAS, in order to reflect changes being made in the second amendment to the Project Agreement, CDOT, BE, and HPTE desire to enter into a second amendment the Central 70 IAA in substantially the form attached hereto (the “Second Amendment”); and

WHEREAS, the attached Second Amendment memorializes an amended

Project timeline and incorporates new and re-structured milestones during the construction period; and

WHEREAS, the Second Amendment also makes explicit the Pro-Rata Construction Cost allocation between CDOT and BE for ease of reference and removes reference to the first Performance Payment being made following Substantial Completion Date due to the amended Project timeline.

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

Herman Stockinger, Secretary
Transportation Commission of Colorado

Date

Resolution – HPTE #282

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

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, on November 15, 2017, the Board, by Resolution #252, approved the *First Amendment to the Intra-Agency Agreement for the Central 70 Project* (the “First Amendment”) to memorialize BE’s maximum contribution to the Project’s pre-development costs and made certain other modifications regarding CDOT’s ongoing responsibilities to the Project; and

WHEREAS, in order to reflect changes being made in the second amendment to the Project Agreement, CDOT, BE, and HPTE desire to enter into a second amendment the Central 70 IAA in substantially the form attached hereto (the “Second Amendment”); and

WHEREAS, the attached Second Amendment memorializes an amended Project timeline and incorporates new and re-structured milestones during the construction period; and

WHEREAS, the Second Amendment also makes explicit the Pro-Rata Construction Cost allocation between CDOT and BE for ease of reference and removes reference to the first Performance Payment being made following Substantial Completion Date due to the amended Project timeline.

NOW THEREFORE BE IT RESOLVED, the Board hereby approves the Second 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 14, 2018

Simon Logan
Secretary, HPTE Board

Resolution #BE-18-X-X

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

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, on February 19, 2016 the Transportation Commission approved a governance structure between the Colorado Department of Transportation (“CDOT”), BE and the Colorado High Performance Transportation Enterprise (“HPTE”) in which BE is the managing partner of the Central 70 Project (“Project”) and BE and HPTE will enter into an anticipated agreement (“Project Agreement”) with a private partner (“Developer”); and

WHEREAS, in June 2017, the BE Board of Directors, in Resolution #BE-17-6-2, approved an 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, on November 15, 2017, the BE Board of Directors, in Resolution #BE-17-11-1, approved a First Amendment to the Central 70 IAA (the “First Amendment”) between CDOT, BE, and HPTE which, *inter alia*, increased BE’s maximum contribution to the Project’s pre-development costs to \$172,309,333; and

WHEREAS, the First Amendment did 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, in order to reflect changes being made in the second amendment to the Project Agreement, CDOT, BE, and HPTE desire to enter into a second amendment the Central 70 IAA in substantially the form attached hereto (the “Second Amendment”); and

WHEREAS, the attached Second Amendment memorializes an amended Project timeline and incorporates new and re-structured milestones during the construction period; and

WHEREAS, the Second Amendment also makes explicit the Pro-Rata Construction Cost allocation between CDOT and BE for ease of reference and removes reference to the first Performance Payment being made following Substantial Completion Date due to the amended Project timeline.

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

Herman Stockinger, Secretary
Colorado Bridge Enterprise

Date



DATE: November 14, 2018

TO: Board of Directors of the Colorado Bridge Enterprise (“BE”)
Board of Directors of the High Performance Transportation Enterprise (“HPTE”)

FROM: Keith Stefanik, Central 70 Project Director
David Spector, HPTE Director

SUBJECT: Central 70 Project Agreement - Second Amendment to the Project Agreement, Memorandum of Settlement, and First Amendment to Issuer’s Loan Agreement

Purpose

The purpose of this memo is to summarize the changes to the Central 70 Project Agreement (the “PA Second Amendment”) and the accompanying Memorandum of Settlement. Additionally, in conjunction with the PA Second Amendment, the BE Board of Directors is asked to review and approve the First Amendment to the Issuer’s Loan Agreement (the “LA First Amendment”). The PA Second Amendment, the Memorandum of Settlement (without Exhibits) and the LA First Amendment are attached for review, while the complete draft of the Exhibits for the Memorandum of Settlement are available for review on the CDOT website (due to number of pages) at the single link at the end of this memorandum.

Action

Staff requests that the BE and HPTE Boards of Directors (“Boards”) authorize execution of the PA Second Amendment for the Project and the Memorandum of Settlement. Staff also requests that the BE Board of Directors authorize the execution of the LA First Amendment, in which corresponding changes are necessary to line up with the PA Second Amendment.

Background

On June 22, 2018, the Enterprises received Supervening Event Submission 1.4 (the “S.E. #1”). Shortly thereafter on July 5, 2018, the Enterprises received Supervening Event Submission 2.2 (the “S.E. #2”). Then, on August 6, 2018, the Enterprises received Supervening Event Submission 4.4 (the “S.E. #4”) (together, the “KMP Submissions”). S.E. #1 related to the timely execution of the Union Pacific Railroad Agreement (the “UPRR RA”), while S.E. #2 related to incomplete yard expansion work (the “Phase 0 Work”). S.E. #4 related to the increases in steel and aluminum prices enacted by the Trump administration. In response to the KMP Submissions, the Enterprises and KMP (the “Parties”) began working toward a resolution of the claims. In order to settle the KMP Submissions at the lowest possible cost to the Project and to be proactive in minimizing any potential impacts to the Project, the Parties agreed to amend the PA. By doing so, KMP agreed to waive any potential claims related to the KMP Submissions, thereby minimizing any future risks.

Summary of Changes to the PA

1) Milestones

Among other amendments to the PA, the Parties agreed to redefine Milestone 3 and 4, and create new Milestone 5 and 6. Specifically, the amendment revises the Milestone Completion Conditions for Milestone 3 and 4 while holding the original PA Milestone Payment dates. Thus, payment amounts for Milestone 3 and 4 remain unchanged.

Additionally, Milestone 5 and 6 will be added to the PA. First, Milestone 5 will be defined as completion of all Construction Work (excluding SMA pavement within the Lowered Section, Cover Top and ITS and Tolling). Milestone 5 now becomes the original Substantial Completion Date (March 25, 2022). The Substantial Completion amount originally due upon completion (\$70 million) will be reduced and be applied thereafter to Milestone 5 and 6 and Substantial Completion. For Milestone 5, \$53.4 million will be made upon completion. Importantly, full Availability Payments will begin upon completion of Milestone 5 while the Construction Period continues. And, while the Availability Payment for Milestone 5 will occur on the

original timeline, the Enterprises will not make payment for performance, as the value of that portion of the payment will be withheld and be paid upon completion of Milestone 6 and Substantial Completion.

Second, Milestone 6 will be defined as completion of all Construction Work for the Cover Top and SMA pavement. A new Milestone Payment of \$3 million will be made upon completion, with a Target Date of August 20, 2022.

Finally, Substantial Completion will be revised to have a completion date of September 21, 2022. Upon Substantial Completion, toll lanes will be operational and the Operating Period will commence. Because of the PA amendment, the Operating Period will be reduced to 29½ years (previously 30 years) to make up for the six-month delay. The new Milestone Payment of \$13.6 million will be made upon completion. As was the case with the original PA, the sum of \$319 million for Milestone Payments remains the same.

2) Timeline of Project

As a result of the PA Second Amendment, Project completion will be moved from March 25, 2022 to September 21, 2022 -- a six-month difference. And, as stated previously, the Operating Period will be shortened to 29½ years. Otherwise, no major timelines are implicated with the PA amendment. Importantly, the Project will still be on target for completion in calendar year 2022.

Summary of Memorandum of Settlement

In consideration of releasing all claims related to the KMP Submissions, the Parties have agreed to the Memorandum of Settlement. As a result, the Enterprises agree to make a payment in the amount of \$7,798,015 at Substantial Completion. This amount is separate and apart from the \$319 million Milestone Payments and funding will be appropriated from the previously approved project contingency. For ease of reference, a visual summary of the PA Second Amendment and the Memorandum of Settlement begins on the following page.

First Amendment to the Issuer's Loan Agreement

The LA First Amendment will be separately approved by the BE Board and is an agreement whereby BE agrees to lend KMP (and KMP agrees to borrow) the proceeds of the Bonds. Because the LA First Amendment includes repayment schedule and prepayment terms, an amendment is necessary to include the added Milestones and amended definitions surrounding Substantial Completion.

Board Options/Decision Matrix

- 1) Staff Recommendation: Approve the PA Second Amendment, Memorandum of Settlement and LA First Amendment.
- 2) Review, but do not approve the PA Second Amendment and other agreements. Provide feedback on desired changes. Staff will work with Developer to negotiate any such changes and will report back to the Boards. Selecting this alternative would likely have an adverse effect on the timing of the Project.

Recommendation

Staff recommends approval of the PA Second Amendment 70 Project Agreement, Memorandum of Settlement, and LA First Amendment.

Next Steps

If the Boards approve the PA Second Amendment and associated agreements, the Construction Period will move forward in a timely fashion and on par with all Project timelines.

Attachments

Visual Summary of PA Second Amendment and Memorandum of Settlement (attached, beginning on following page)

Attachment 07-Second Amendment to the Central 70 Project Agreement

Attachment 08-First Amendment to the Issuer's Loan Agreement

Attachment 011-C70 Memorandum of Settlement

C70 Memorandum of Settlement Exhibits: <https://www.codot.gov/about/transportation-commission/documents/2018-agendas-and-supporting-documents/november-2018-1/hidden-files-for-internet-posting/012-c70-memorandum-of-settlement-exhibits-board.pdf>

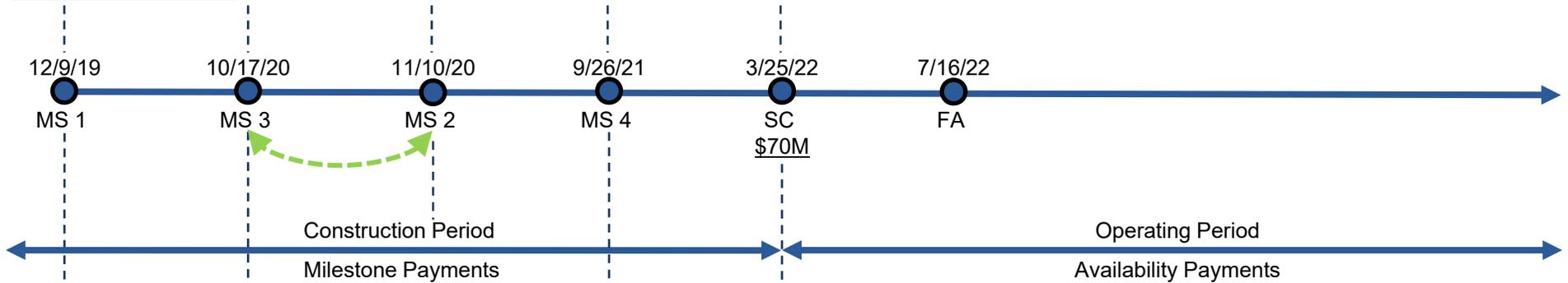
THIS MEMORANDUM IS INTENDED TO BE A SUMMARY FOR BOARD CONSIDERATION ONLY, AND NEITHER DEVELOPER NOR OTHER THIRD PARTIES ARE ENTITLED TO RELY ON THIS MEMORANDUM.



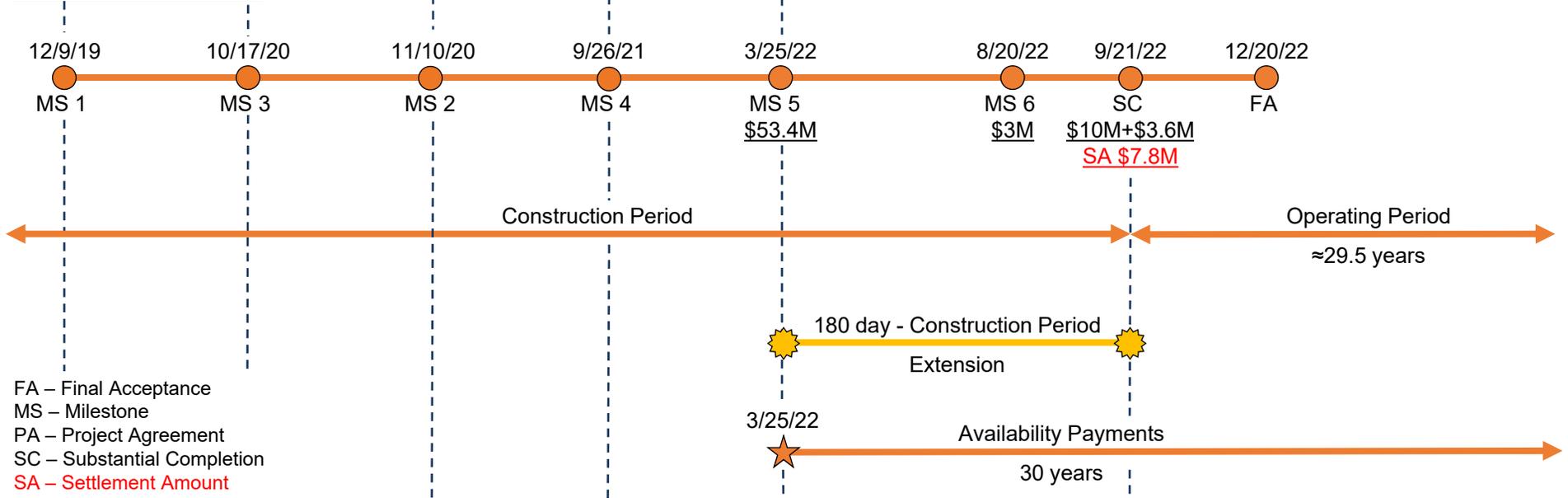
Central 70

Project Timelines

Current Timeline



Amended Timeline



FA – Final Acceptance
 MS – Milestone
 PA – Project Agreement
 SC – Substantial Completion
 SA – Settlement Amount

Central 70 Project: Second Amendment to the Project Agreement

This Second Amendment to the Project Agreement (this “Amendment”) is made, entered into and effective as of the date it is approved and signed by the Colorado State Controller or its designee below (the “Amendment Date”) 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”); and
- (3) Kiewit Meridiam Partners LLC, a limited liability company formed under the laws of the State of Delaware (“Developer”).

The Enterprises and Developer are hereinafter referred to collectively as the “Parties”, and “Party” means either the Enterprises (taken together) or Developer.

RECITALS

Whereas:

- (A) The Enterprises and Developer entered into the Project Agreement for the Central 70 Project, dated as of November 21, 2017 (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 “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 as more fully described in the Project Agreement.
- (B) In accordance with that certain [Memorandum of Settlement], dated [●], 2018, by and among the Enterprises, Developer and the Construction Contractor, the Parties have agreed to make the amendments to the Project Agreement set forth in this Amendment.

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 AND INTERPRETATION

- 1.1. Terms used but not defined herein shall have the respective meanings ascribed to such terms in the Project Agreement.
- 1.2. Sections 2 (excluding only Section 2.1.3.a) and 42.2 of the Project Agreement are incorporated by reference as if set forth herein.

2. AMENDMENTS

In accordance with Section 43.1 of the Project Agreement, with effect on and from the Amendment Date, the Project Agreement shall be amended as provided in this Section 2.

2.1. Amendments to Definitions

In Part A of Annex A (*Definitions and Abbreviations*) of the Project Agreement:

- (i) The definition of “Baseline Substantial Completion Target Date” is amended by deleting it in its entirety and replacing it with the following:
“Baseline Substantial Completion Target Date” means September 21, 2022.
- (ii) The definition of “Construction Price” is amended by deleting it in its entirety and replacing it with the following:
“Construction Price” means \$[●].
- (iii) The definition of “Expiry Date” is amended by deleting it in its entirety and replacing it with the following:

Central 70 Project: Second Amendment to the Project Agreement

“Expiry Date” means the 30th anniversary of the Milestone Completion Target Date for Milestone 5.

- (iv) The definition of “Final Acceptance Deadline Date” is amended by deleting it in its entirety and replacing it with the following:

“Final Acceptance Deadline Date” means the date which is 90 Calendar Days after the Substantial Completion Date, as such deadline may be extended from time to time pursuant to:

- a. Section 15.3.1.c.iii, as a result of the occurrence of a Supervening Event; or
- b. a Change documented in a Change Order.

- (v) The definition of “Longstop Date” is amended by deleting it in its entirety and replacing it with the following:

“Longstop Date” means the date that occurs 585 Calendar Days after the Milestone Completion Target Date for Milestone 5 (for certainty, as the Milestone Completion Target Date for Milestone 5 may be extended from time to time), as such Longstop Date may be extended from time to time pursuant to:

- a. Section 15.3.1.c.iii, as a result of the occurrence of a Supervening Event; or
- b. a Change documented in a Change Order.

- (vi) The definition of “Milestone 3” is amended by deleting it in its entirety and replacing it with the following:

“Milestone 3” means completion of phases 1 through 5 of the UPRR Crossing to the extent that trains are operating on the phase 4 and 5 structure.

- (vii) The definition of “Milestone 4” is amended by deleting it in its entirety and replacing it with the following:

“Milestone 4” means:

- a. the Construction Work between Brighton Blvd and Dahlia Street (Station 2000+00 to 2091+00) comprising westbound I-70 and 46th Avenue/Stapleton Drive (north of I-70), excluding:
 - i. the SMA pavement; and
 - ii. the Construction Work for Planning Area 1 and Planning Area 2 of the Cover,

but including those portions of the Construction Work for the Cover that are necessary to safely transfer traffic traveling beneath the Cover on to the infrastructure included within Milestone 4, including, for certainty:
- iii. the Elements of the Cover referred to in paragraphs c. and d. of the definition of Cover O&M Work in this Part A of Annex A (*Definitions and Abbreviations*); and
- iv. the Elements referred to in paragraph e. of the definition of Cover O&M Work in this Part A of Annex A (*Definitions and Abbreviations*) that are below the protection course; and
- b. the removal of existing I-70 viaduct bridge (Brighton Boulevard to Colorado Boulevard) (E-17-FX).

- (viii) Part A of Annex A is amended by adding the following definition of “Milestone 5”:

Central 70 Project: Second Amendment to the Project Agreement

“Milestone 5” means:

- a. the Construction Work west of Brighton Blvd;
- b. the completion of phase 6 of the UPRR Crossing, UPRR Pepsi Lead Crossing and the UPRR York Street Crossing; and
- c. the Construction Work between Brighton Blvd and Dahlia Street (Station 2000+00 to 2091+00) comprising eastbound I-70 and 46th Avenue/Stapleton Drive (south of I-70), excluding:
 - i. the Construction Work of that portion of 46th Avenue/Stapleton Drive (south of I-70) between Columbine Street and Clayton Street;
 - ii. the SMA pavement; and
 - iii. the Construction Work for Planning Area 1 and Planning Area 2 of the Cover,

but including those portions of the Construction Work for the Cover that are necessary to safely transfer traffic traveling beneath the Cover on to the infrastructure included within Milestone 5, including, for certainty:

- iv. the Elements of the Cover referred to in paragraphs c. and d. of the definition of Cover O&M Work in this Part A of Annex A (*Definitions and Abbreviations*); and
- v. the Elements referred to in paragraph e. of the definition of Cover O&M Work in this Part A of Annex A (*Definitions and Abbreviations*) that are below the protection course.

(ix) Part A of Annex A is amended by adding the following definition of “Milestone 6”:

“Milestone 6” means:

- a. the Construction Work consisting of the SMA pavement between Brighton Blvd and Dahlia Street (Station 2000+00 to 2091+00) comprising westbound I-70 and 46th Avenue (north of I-70);
- b. the Construction Work consisting of the SMA pavement between Brighton Blvd and Dahlia Street (Station 2000+00 to 2091+00) comprising eastbound I-70 and 46th Avenue (south of I-70);
- c. the Construction Work for Planning Area 1 and Planning Area 2 of the Cover; and
- d. the Construction Work for the portion of 46th Avenue (south of I-70) between Columbine Street and Clayton Street.

(x) The definition of “Milestone Completion Target Date” is amended by deleting it in its entirety and replacing it with the following:

“Milestone Completion Target Date” means each of:

- a. for Milestone 1, December 9, 2019;
- b. for Milestone 2, November 10, 2020;
- c. for Milestone 3, October 17, 2020;
- d. for Milestone 4, September 26, 2021;
- e. for Milestone 5, March 25, 2022; and
- f. for Milestone 6, August 20, 2022,

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as such dates in respect of each of Milestone 5 and Milestone 6 may be extended from time to time pursuant to:

- g. Section 15.3.1.c.iii, as a result of the occurrence of a Supervening Event, or
- h. a Change documented in a Change Order.

- (xi) The definition of “Noncompliance Default Event” is amended by deleting it in its entirety and replacing it with the following:

“Noncompliance Default Event” means the occurrence of any of the following:

- a. during the Construction Period, the cumulative number of Noncompliance Points accrued during:
 - i. any rolling 12 month period equals or exceeds 135; or
 - ii. any rolling 36 month period equals or exceeds 270; or
- b. during the Operating Period, the cumulative number of Noncompliance Points accrued during:
 - i. any rolling 12 month period equals or exceeds 180; or
 - ii. any rolling 36 month period equals or exceeds 360;

provided that, for certainty, any Noncompliance Point that is being disputed in good faith by Developer shall be disregarded for purposes of determining whether the Noncompliance Default Event has occurred until such time as it has been Agreed or Determined that the relevant Noncompliance Point was validly assigned; and provided further that any Noncompliance Points assigned in connection with reference #1.68 and reference #1.69 in Table 6A.1 of Schedule 6 shall be disregarded for purposes of determining whether a Noncompliance Default Event has occurred under clause (a) or clause (b) above.

- (xii) The definition of “Payment Milestone” is amended by deleting it in its entirety and replacing it with the following:

“Payment Milestone” means any of Milestone 1, Milestone 2, Milestone 3, Milestone 4, Milestone 5 or Milestone 6.

- (xiii) The definition of “Payment Month” is amended by deleting it in its entirety and replacing it with the following:

“Payment Month” means:

- a. each month that commences after the Performance Payment Start Date; and
- b. the month during which Performance Payment Start Date occurs.

- (xiv) Part A of Annex A is amended by adding the following definition of “Performance Payment Start Date” in alphabetical order within such Part A:

“Performance Payment Start Date” means the date that is the later to occur of:

- a. the Milestone Completion Target Date for Milestone 5; and
- b. the Milestone Completion Date for Milestone 5.

- (xv) Part A of Annex A is amended by adding the following definition of “Substantial Completion Deadline Date” in alphabetical order within such Part A:

“Substantial Completion Deadline Date” means the date that occurs 360 Calendar Days after the Milestone Completion Date with respect to Milestone 5, as such Substantial Completion Deadline Date may be extended from time to time pursuant to:

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- a. Section 15.3.1.c.iii, as a result of the occurrence of a Supervening Event;
or
- b. a Change documented in a Change Order.

2.2. Amendments to Section 15.3 (Resolution)

2.2.1. Section 15.3.1.c.iii of the Project Agreement is amended by deleting it in its entirety and replacing it with the following:

- iii. with respect to any such Relief Event or Compensation Event that affects or will affect the Critical Path:
 - A. if such Relief Event or Compensation Event occurred prior to the Milestone Completion Target Date for either Milestone 5 or Milestone 6, then, as applicable, the Milestone Completion Target Date for Milestone 5 and/or Milestone 6 shall be extended by the number of Calendar Days equal to the applicable Milestone Delay Period;
 - B. if such Relief Event or Compensation Event occurred after the Milestone Completion Target Date for Milestone 5 but prior to the Milestone Completion Date for Milestone 5, then the Longstop Date shall be extended by the number of Calendar Days equal to the Milestone Delay Period;
 - C. if such Relief Event or Compensation Event occurred prior to the Milestone Completion Date for Milestone 5 (regardless of whether such event occurred prior to or after the Milestone Completion Target Date for Milestone 5), then the Substantial Completion Deadline Date shall be extended by the number of Calendar Days equal to the Milestone Delay Period;
 - D. if such Relief Event or Compensation Event occurred after the Milestone Completion Date for Milestone 5 but prior to the Substantial Completion Date (including under the circumstances described in paragraph B. above), then the Baseline Substantial Completion Date and the Substantial Completion Deadline Date shall each be extended by the number of Calendar Days equal to the Schedule Delay Period; and
 - E. if such Relief Event or Compensation Event occurred after the Substantial Completion Date but prior to the Final Acceptance Date, then the Final Acceptance Deadline Date shall be extended by the number of Calendar Days equal to the Schedule Delay Period.

2.3. Amendments to Section 32.1 (Developer Defaults and Cure Periods)

2.3.1. Developer Default number (5) in Section 32.1.1 of the Project Agreement is amended in the column titled "Developer Default" in the table appearing in such Section by deleting it in its entirety and replacing it with the following:

- (5) Either (a) Milestone Completion with respect to Milestone 5 does not occur on or prior to the Longstop Date or (b) the Substantial Completion Date does not occur on or prior to the Substantial Completion Deadline Date.

2.4. Amendments to Schedule 3

2.4.1. Section 1(c) of Part 4 of Schedule 3 of the Project Agreement is amended by deleting it in its entirety and replacing it with the following:

- (c) subject only to any incomplete Milestone Completion Punch List Items in respect of the relevant Payment Milestone which are permitted to be completed after the relevant Milestone Completion Date, Developer shall have completed the Construction Work related to the relevant Payment Milestone in accordance with this Agreement including:

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- (i) the repair, replacement or correction and full remediation of all Defects and the remediation of all Nonconforming Work pursuant to Section 6.5 of Schedule 8 (*Project Administration*); and
- (ii) any such Construction Work related to Local Agency Roadways, including such that:
 - (iii) in the case of all Payment Milestones, the infrastructure constituting the relevant Payment Milestone is in a condition that can be operated for safe vehicular travel in all lanes and at all points of entry and exit; and
 - (iv) in the case of Milestone 4, Milestone 5 and Milestone 6, the traffic shall have been properly transferred on to the infrastructure constituting such Payment Milestone pursuant to Schedule 10 (*Design and Construction Requirements*);

2.5. Amendments to Schedule 4

2.5.1. The title to Part 2 of Schedule 4 of the Project Agreement is amended by renaming such section “**Part 2: Performance Payments.**”

2.5.2. Section 1 of Part 2 of Schedule 4 of the Project Agreement is amended by deleting it in its entirety and replacing it with the following:

1. Performance Payments

The Enterprises shall pay Performance Payments to Developer commencing on the Performance Payment Start Date, as calculated in accordance with Part 2 of Schedule 6 (*Performance Mechanism*).

2.5.3. Section 2.1 of Part 2 of Schedule 4 of the Project Agreement is amended by deleting it in its entirety and replacing it with the following:

2.1 No later than the tenth Working Day in each Payment Month (other than the First Payment Month if the Performance Payment Start Date occurs after the tenth Working Day of such month), Developer shall submit a payment request for the Performance Payment payable in respect of the Payment Month in which such payment request is submitted, together with:

- (a) through the Substantial Completion Date, a Monthly Deductions Report in accordance with Section 2 of Part 1 of Schedule 4; or
- (b) during the Operating Period, a Monthly Deductions Report in accordance with Section 3 of this Part 2.

2.5.4. Section 2.2 of Part 2 of Schedule 4 of the Project Agreement is amended by deleting it in its entirety and replacing it with the following:

2.2 If the Performance Payment Start Date occurs after the tenth Working Day of the First Payment Month, Developer shall submit a separate Payment Request for the Performance Payment payable in respect of the First Payment Month at the same time as, pursuant to Section 2.1 of this Part 2, it submits a Payment Request for the Performance Payment payable in respect of the second Payment Month.

2.5.5. Section 2.3 of Part 2 of Schedule 4 of the Project Agreement is amended by deleting it in its entirety and replacing it with the following:

2.3 Each Payment Request shall set out, as applicable:

- (a) the amount of the Performance Payment payable in respect of the relevant Payment Month;
- (b) the calculation of the amount of the Operations Goal Deduction in respect of the relevant Payment Month as calculated in accordance with Section 1.2(d) of Part 2 of Schedule 6 (*Performance Mechanism*);

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- (c) the Agreed or Determined amount of any Monthly Noncompliance Deductions, Construction Period Deductions, and/or Operating Period Closure Deductions that accrued in any month prior to the relevant Payment Month which have not been reflected in any prior Payment Request (including as a result of the accrual or amount thereof having been in dispute);
- (d) any amount required to be reflected in such Payment Request pursuant to the proviso to Section 2.4 of Part 1 of this Schedule 4;
- (e) if such Payment Request is in respect of the first Payment Month following the Substantial Completion Date and the Substantial Completion Deduction Amount exceeded the Substantial Completion Milestone Payment, an amount equal to such excess, provided that each Payment Request submitted after such Payment Request shall include any portion of such amount that has not been taken into account in a prior Payment Request;
- (f) any other amounts due under this Agreement from Developer to the Enterprises or from the Enterprises to Developer and not previously included in a Payment Request or Milestone Payment Request (including, if applicable, any amount payable by the Enterprises to the Developer pursuant to Section 1.3.1.c of Schedule 15 (*Federal and State Requirements*));
- (g) any adjustments to reflect over-payments and/or under-payments (each such adjustment stated separately) of any amount due prior to the relevant Payment Month (for which adjustment has not already been made);
- (h) any interest payable by the Enterprises or Developer in respect of any amount that previously became payable to, respectively, Developer or the Enterprises and not previously included in a Payment Request or Milestone Payment Request; and
- (i) the net amount owing to Developer by the Enterprises or by Developer to the Enterprises in respect of the relevant Payment Month.

2.6. Amendments to Schedule 5

2.6.1. Section 1 of Schedule 5 of the Project Agreement is amended by deleting it in its entirety and replacing it with the following:

1. The table in this Section 1 sets out the amount (each a “Milestone Payment”) payable by the Enterprises in respect of the achievement of each Payment Milestone and Substantial Completion, subject to the provisions of this Schedule 5. For certainty, the descriptions of the Payment Milestones in the table below are for reference only; the full definitions of each Payment Milestone are set out in Part A of Annex A (*Definitions and Abbreviations*) to the Project Agreement and the conditions to achievement of each Payment Milestone and Substantial Completion are set out in, respectively, Parts 4 and 5 of Schedule 3 (*Commencement and Completion Mechanics*).

Milestone Payment Table

Event	Milestone Payment
Completion of Milestone 1 (Sand Creek Bridge to Chambers Road)	\$50,000,000
Completion of Milestone 2 (Dahlia Street to Sand Creek Bridge)	\$95,000,000
Completion of Milestone 3 (UPRR Crossing)	\$52,000,000

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Event	Milestone Payment
Completion of Milestone 4 (Removal of I-70 viaduct)	\$52,000,000
Completion of Milestone 5 (EB I-70 Brighton Boulevard to Dahlia Street)	\$53,400,000
Completion of Milestone 6 (SMA pavement and the Cover)	\$3,000,000
Substantial Completion	\$13,600,000
TOTAL	\$319,000,000

2.7. Amendments to Schedule 6

2.7.1. Part 2 of Schedule 6 of the Project Agreement is amended by deleting it in its entirety and replacing it with the following:

1. Monthly Performance Payments

1.1 Monthly Performance Payments Prior to Substantial Completion

The Performance Payment (“PP”) payable in respect of any Payment Month (m) commencing prior to the Substantial Completion Date shall be calculated in accordance with the following formula:

$$PP_m = \text{MaxPP}_m$$

Where:

MaxPP_m = the Maximum Performance Payment in respect of Payment Month (m), which shall be calculated in accordance with the following formula:

$$\text{MaxPP}_m = \left(\frac{d_m}{d_y} \right) \times \text{MaxPP}_y$$

Where:

(i) d_m = the number of Calendar Days in Payment Month (m) from and including the first day of Payment Month (m) (or, in the case of the First Payment Month, from and excluding the Performance Payment Start Date) to and including the earlier of the final day of Payment Month (m) or the Substantial Completion Date (or to and excluding the Termination Date, if earlier than either);

(ii) d_y = the number of Calendar Days in Contract Year (y); and

(iii) MaxPP_y = the amount of the Maximum Performance Payment calculated in accordance with Section 2 of this Part 2 in respect of Contract Year (y).

1.2 Monthly Performance Payments During the Operating Period

The Performance Payment (“PP”) payable in respect of any Payment Month (m) during the Operating Period shall be calculated in accordance with the following formula:

$$PP_m = \text{MaxPP}_m - \text{MPD}_{m-1} - \text{OGD}_m$$

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Where:

- (a) PP_m = 0, if $MPD_{m-1} \geq MaxPP_m$;
- (b) $MaxPP_m$ = the Maximum Performance Payment in respect of Payment Month (m), which shall be calculated in accordance with the following formula:

$$MaxPP_m = \left(\frac{d_m}{d_y} \right) \times MaxPP_y$$

Where:

- (i) d_m = the number of Calendar Days in Payment Month (m) from and including the first day of Payment Month (m) (or, in the case of the first Payment Month following Substantial Completion, from and excluding the Substantial Completion Date) to and including the final day of Payment Month (m) (or to and excluding the Termination Date, if earlier);
- (ii) d_y = the number of Calendar Days in Contract Year (y); and
- (iii) $MaxPP_y$ = the amount of the Maximum Performance Payment calculated in accordance with Section 2 of this Part 2 in respect of Contract Year (y);
- (c) MPD_{m-1} = the Monthly Performance Deduction for month (m-1) (for clarity, month (m-1) in respect of Payment Month (m) is defined as the OP Deduction Month in respect of Payment Month (m)) calculated in accordance with Section 1 of Part 3 of this Schedule 6, provided that:
 - (i) for certainty, $MPD_{m-1} = 0$ where Payment Month (m) is the first Payment Month following Substantial Completion; and
 - (ii) where Payment Month (m) is the Final Payment Month, MPD_{m-1} shall equal the aggregate of the Monthly Performance Deduction for each of (A) the month immediately preceding the Final Payment Month and (B) the Final Payment Month (provided that, for purposes of calculating the Monthly Performance Deduction for the Final Payment Month, references in Part 3 of this Schedule 6 to OP Deduction Month (m) shall be deemed to be references to the Final Payment Month); and
- (d) OGD_m = the “Operations Goal Deduction” in respect of Payment Month (m) which shall be calculated as follows:

$$OGD_m = ROMESBGD_m + RWDBEGD_m + RWOJTG D_m$$

Where:

- (i) $ROMESBGD_m$ =
 - (A) in respect of each Payment Month (m) in which the first Payment Request is submitted after the amount of the five year Routine O&M Work ESB Goal deduction has been Agreed or Determined

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in respect of the previous five Contract Year period in accordance with Section 1.3.2.a of Schedule 15 (*Federal and State Requirements*), such amount; and

(B) subject to the proviso to this Section 1.2(d), in respect of each other Payment Month (m), nil;

(ii) RWDBEGD_m =

(A) in respect of each Payment Month (m) in which the first Payment Request is submitted after the amount of the five year Renewal Work DBE Goal deduction has been Agreed or Determined in respect of the previous five Contract Year period in accordance with Section 1.3.2.b of Schedule 15 (*Federal and State Requirements*), such amount; and

(B) subject to the proviso to this Section 1.2(d), in respect of each other Payment Month (m), nil; and

(iii) RWOJTGd_m =

(A) in respect of each Payment Month (m) in which the first Payment Request is submitted after the amount of the annual Renewal Work OJT Goal deduction has been Agreed or Determined in respect of the previous Contract Year in accordance with Section 1.3.2.c of Schedule 15 (*Federal and State Requirements*), such amount; and

(B) subject to the proviso to this Section 1.2(d), in respect of each other Payment Month (m), nil.

provided that, if OGD_m in any Payment Month (m) exceeds the amount of the Performance Payment otherwise payable in respect of such Payment Month (for certainty, determined as MaxPP_m – MPD_{m-1}, taking into account Section 1.2(a) of this Part 2), such excess shall be included by Developer in the next Payment Request submitted by it until the full amount of the deductions Agreed or Determined in accordance with Sections 1.3.2.a, b and c of Schedule 15 (*Federal and State Requirements*) have been deducted from Performance Payments.

2. **Maximum Performance Payment in each Payment Year**

The Maximum Performance Payment (“MaxPP”) in respect of any Contract Year (y) shall be calculated in accordance with the following formula:

$$\text{MaxPP}_y = (\text{Base}_{\text{CPP}} \times (1.02)^n) + \left(\text{Base}_{\text{OMRP}} \times \left(\frac{\text{CPI}_y}{\text{CPI}_{2017}} \right) \right)$$

Where:

(a) Base_{CPP} = the Base Capital Performance Payment in July 1, 2017 Dollars set out in the table in Section 2(f) of this Part 2;

(b) Base_{OMRP} = the Base OMR Payment in July 1, 2017 Dollars set out in the table in Section 2(f) of this Part 2;

(c) CPI_y = CPI as of July 1 of Contract Year (y);

(d) CPI₂₀₁₇ = CPI as of July 1, 2017;

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(e) n = the number of Contract Years from and including the Contract Year commencing on July 1, 2017 to and excluding Contract Year (y); and

(f)

Base Capital Performance Payment (in nominal dollars as of July 1, 2017)	\$27,946,550
Base OMR Payment (in nominal dollars as of July 1, 2017)	\$7,115,042

2.7.2. Table 6A.1 of Schedule 6 of the Project Agreement is amended by adding the following Noncompliance Events:

Ref	Activity Type	Heading	Noncompliance Event – Failure to:	Cure Period (Calendar Days, except where specified otherwise)	Grace Period (Calendar Days)	Number of Points
1.68	Project Delivery	Milestone Completion with respect to Milestone 6	Achieve Milestone Completion with respect to Milestone 6 by the Milestone Completion Target Date with respect to Milestone 6	1	N/A	1
1.69	Project Delivery	Substantial Completion	Achieve Substantial Completion by the Baseline Substantial Completion Target Date	1	N/A	10

2.8. Amendments to Schedule 11

2.8.1. Reference #18 (applicable to reference #18.1 to 18.18) contained in Appendix A-1 of Schedule 11 is amended by deleting it and replacing it with the following:

18. COVER (Note. The requirements in REF 18.1 to 18.18 of Section 18 (Cover) of Appendix A-2 (Performance and Measurement Criteria After Construction) shall apply to this Section 18 (Cover) of this Appendix A-1 (Performance and Measurement Criteria During Construction) at completion of Milestone 4.)

2.8.2. The portions Appendix D of Schedule 11 applicable to the New Structure Nos. identified below are deleted.

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Existing Structure No.	New Structure No.	Structure Location and Description	Operations and Maintenance Responsibility (O&M Period During Construction)	Operations and Maintenance Responsibility (Operating Period)
N/A	MISC-E-17-IT	Sanitary Sewer Bridge over I-70 (at York Street)	Developer (at completion of Milestone 4)	Developer
N/A	MISC-E-17-IU	Storm Sewer Bridge over I-70 (at York Street)	Developer (at completion of Milestone 4)	Developer

2.8.3. The portions Appendix D of Schedule 11 applicable to the New Structure Nos. identified below are amended by deleting each row and replacing it with the following. For certainty, those portions of Appendix D of Schedule 11 applicable to structures not referenced below shall remain unchanged.

Existing Structure No.	New Structure No.	Structure Location and Description	Operations and Maintenance Responsibility (O&M Period During Construction)	Operations and Maintenance Responsibility (Operating Period)
N/A	E-17-AEY	York Street over I-70	Developer (as per <u>Section 2.2.2</u> of this <u>Schedule 11</u>)	Developer (as per <u>Section 3.2.2</u> of this <u>Schedule 11</u>)
N/A	E-17-AEZ	Josephine Street over I-70	Developer (as per <u>Section 2.2.2</u> of this <u>Schedule 11</u>)	Developer (as per <u>Section 3.2.2</u> of this <u>Schedule 11</u>)
N/A	E-17-AEL	Cover (Columbine to Clayton)	Developer (as per <u>Section 2.2.2</u> of this <u>Schedule 11</u>)	Developer (as per <u>Section 3.2.2</u> and <u>Section 3.2.3</u> of this <u>Schedule 11</u>)
N/A	E-17-AEN	Fillmore Street over I-70	Developer (as per <u>Section 2.2.2</u> of this <u>Schedule 11</u>)	Developer (as per <u>Section 3.2.2</u> of this <u>Schedule 11</u>)
N/A	E-17-AEO	Steele Street over I-70	Developer (as per <u>Section 2.2.2</u> of this <u>Schedule 11</u>)	Developer
N/A	E-17-AEP	Cook Street over I-70	Developer (as per <u>Section 2.2.2</u> of this <u>Schedule 11</u>)	Developer (as per <u>Section 3.2.2</u> of this <u>Schedule 11</u>)
N/A	E-17-AFA	BNSF Market Lead over I-70	Developer (as per <u>Section 2.2.2</u> of this <u>Schedule 11</u>)	Developer (excluding ballast, track, and railroad signals)
N/A	E-17-AFC	Monroe Street over I-70	Developer (as per <u>Section 2.2.2</u> of this <u>Schedule 11</u>)	Developer (as per <u>Section 3.2.2</u> of this <u>Schedule 11</u>)

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3. REPLACEMENT OF FINANCIAL MODEL

The Financial Model attached in digital format as Exhibit A to this Amendment is hereby Approved by the Enterprises and, in accordance with Section 28.6 of the Project Agreement, is the Financial Model for the purposes of the Project Agreement until further amendment pursuant to Section 28 or 29 of the Project Agreement.

4. DOCUMENTS OTHERWISE UNCHANGED

Except as herein provided, the Project Agreement shall remain unchanged and in full force and effect in accordance with its terms. As of the Amendment Date, each reference to the Project Agreement, and references in the Project Agreement to such agreement itself, shall reference the Project Agreement as amended hereby and as the same may be further amended, modified or supplemented from time to time.

5. CHOICE OF LAW

5.1. This Amendment 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 Amendment, to the extent capable of execution.

5.1.1. Sections 37 and 38 of the Project Agreement are incorporated by reference as if set forth herein.

6. BINDING EFFECT; SUCCESSORS AND ASSIGNS

This Amendment shall be binding upon and inure to the benefit of each Enterprise and Developer and each of their respective permitted successors and assigns.

7. SEVERABILITY

7.1. Notwithstanding Section 2.4.1 of the Project Agreement (as incorporated herein pursuant to Section 1.23 of this Amendment), if any provision (or part of any provision) of this Amendment is ruled invalid (including due to Change in Law) 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.

7.2. If any provision (or part of any provision) of this Amendment 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 Amendment, and this Amendment shall be construed as if such invalid, illegal, or unenforceable provision (or part thereof) had never been contained herein.

8. COSTS AND EXPENSES OF THE PARTIES

Except as otherwise expressly provided in the Project Agreement, each Party shall bear its own costs and expenses in connection with the preparation, negotiation, execution and performance of this Amendment.

9. COUNTERPARTS

This Amendment may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by each of the Parties and, to the extent required by Law,

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the Colorado State Controller or its delegate, shall constitute a full and original instrument for all purposes.

[The remainder of this page left intentionally blank; signature page immediately follows.]

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IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the date it is approved and signed by the Colorado State Controller or their designee below.

KIEWIT MERIDIAM PARTNERS LLC

By: _____
Paulo Andre
Project Manager

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: _____
[●]
[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. Developer is not authorized to begin performance until such time. If Developer begins performing prior thereto, the State of Colorado is not obligated to pay Developer for such performance and/or for any goods and/or services provided hereunder.

<p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p>Date: [●], 2018</p>
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Exhibit A
Financial Model

Attached in digital format.

FIRST AMENDMENT TO LOAN AGREEMENT

This FIRST AMENDMENT TO LOAN AGREEMENT (this “Amendment”) is made as of [●], 2018 (the “Effective Date”), by and between COLORADO BRIDGE ENTERPRISE, a government-owned business within the Colorado Department of Transportation, as Issuer (the “Issuer”), and KIEWIT MERIDIAM PARTNERS LLC, a Delaware limited liability company, as Borrower (the “Borrower”).

WHEREAS, the Issuer and the Borrower are party to that certain Loan Agreement, dated as of December 21, 2017 (the “Loan Agreement”); and

WHEREAS, the Issuer and the Borrower desire to amend the Loan Agreement as set forth herein.

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the Issuer and the Borrower as follows:

1. Defined Terms. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement.

2. Amendments to Loan Agreement.

(a) Exhibit A to Loan Agreement is hereby amended by adding the following definition of “Milestone 5”:

“**Milestone 5**” has the meaning assigned to it in the Project Agreement.

(b) Exhibit A to Loan Agreement is hereby amended by adding the following definition of “Milestone Completion”:

“**Milestone Completion**” has the meaning assigned to it in the Project Agreement.

(c) Exhibit A to Loan Agreement is hereby amended by adding the following definition of “Substantial Completion Deadline Date”:

“**Substantial Completion Deadline Date**” the meaning assigned to it in the Collateral Agency Agreement.

(d) Section 5.02(a)(i) of the Loan Agreement is hereby amended by deleting it in its entirety and replacing it with the following:

“(i) The transfer of amounts from the Series 2017 Bond Proceeds Sub-Account of the Construction Account to the Series 2017 Bond Mandatory Prepayment Sub-Account pursuant to Sections 5.02(i)(i)(C) and 5.15 of the Collateral Agency Agreement representing unspent Series 2017 Bond proceeds remaining on deposit in the Series 2017 Bond Proceeds Sub-Account of the Construction Account on a date that is five (5) years and sixty (60) days after the

Closing Date (such prepayment of the Series 2017 Loan and the Series 2017 Note and the related extraordinary mandatory redemption of the Series 2017 Bonds to be made with such unspent proceeds), provided that such prepayment of the Series 2017 Loan and the Series 2017 Note and the related extraordinary mandatory redemption of the Series 2017 Bonds shall not be required if the Borrower has obtained an opinion of Bond Counsel stating that the failure to redeem the Series 2017 Bonds will not adversely affect the exclusion of interest on such Series 2017 Bonds from gross income for federal income tax purposes;”

(e) Section 6.02(f)(ii) of the Loan Agreement is hereby amended by deleting it in its entirety and replacing it with the following:

“(ii) the Borrower and the Construction Contractor may enter into change orders or amendments, as applicable, under the Construction Contract, if such change or amendment will not require the payment by the Borrower, net of any payments received from or required to be paid by the Enterprises or any other party for payment of the change order or amendment, to exceed in any year an aggregate amount equal to or in excess of \$50,000,000; provided that any change order or amendment that results in exceeding the annual \$50,000,000 threshold will be permitted (x) without the consent of the Majority Holders if (A) it is required by applicable Law, or (B) the Lenders’ Technical Advisor has certified that, in its reasonable opinion, there are sufficient funds available to the Borrower to pay for such change order or amendment, together with other Project Costs, necessary to achieve Milestone Completion for Milestone 5 by the Longstop Date and Substantial Completion by the Substantial Completion Deadline Date and that such change order or amendment would not reasonably be expected to have a Material Adverse Effect), or (y) with the consent of the Majority Holders; and”

(f) Section 6.03(j) of the Loan Agreement is hereby amended by deleting it in its entirety and replacing it with the following:

“(j) provide the Trustee and the Enterprises with copies of (i) any Initial Warning Notices or Final Warning Notices, (ii) any Enterprise Change in an amount above \$15 million (Adjusted for Inflation after Substantial Completion of the Project) individually, (iii) any notices of an Enterprise Default or Developer Default, and (iv) any certificates certifying achievement of Milestone 5 or Substantial Completion;”

(g) Section 8.01(e) of the Loan Agreement hereby amended by deleting it in its entirety and replacing it with the following:

“(e) Failure by the Borrower to achieve Milestone Completion for Milestone 5 by the Longstop Date (as such date may be extended in accordance with the terms of the Project Agreement) or Substantial Completion by the Substantial Completion Deadline Date (as such date may be extended in accordance with the terms of the Project Agreement); or”.

3. No Other Modifications. Except as otherwise amended by this Amendment, the Loan Agreement shall remain unchanged and in full force and effect in accordance with its terms. As of the Effective Date, each reference to the Loan Agreement, and references in the Loan Agreement to such agreement itself, shall reference the Loan Agreement as amended hereby and as the same may be further amended, modified or supplemented from time to time.

4. Successors and Assigns. This Amendment shall inure to the benefit of and shall be binding upon the Issuer, the Borrower, the Trustee, the Owners of the Series 2017 Bonds and the Collateral Agent and their respective successors and assigns, subject, however, to the limitations contained in the Loan Agreement.

5. Applicable Law and Venue. This Amendment shall be governed by and construed in accordance with the laws of the State. Exclusive jurisdiction and venue for any actions brought hereunder shall in the federal and State courts located in Denver, Colorado.

6. Counterparts. This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[The remainder of this page intentionally left blank; signature pages immediately follow.]

IN WITNESS WHEREOF, the parties have entered into this Amendment as of the date first above written.

COLORADO BRIDGE ENTERPRISE,
as Issuer

By: _____
Name:
Title:

LEGAL REVIEW ON BEHALF OF
COLORADO BRIDGE ENTERPRISE
Cynthia H. Coffman, Attorney General

By: _____
Name:
Title:

KIEWIT MERIDIAM PARTNERS LLC,
as Borrower

By: _____
Name: Paulo Andre
Title: Project Manager

Resolution – HPTE #283

Approving the Second Amendment to the Central 70 Project 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 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, updated the Project Agreement Milestone Completion and Substantial Completion Dates to account for the actual date of Financial Close that occurred on December 21, 2017; and

WHEREAS, the Enterprises and the Developer now desire to effectuate a second amendment to the Project Agreement (“Second Amendment to the Project Agreement”), which is needed to account for an amended Project timeline, added Milestones, and additional details thereunder; and

WHEREAS, the HPTE Board has reviewed the Second Amendment to the Project Agreement for the Central 70 Project 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 Second Amendment to the Project Agreement for the Central 70 Project in substantially the form 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 Second Amendment to the Project 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.

Signed as of November 14, 2018

Simon Logan
Secretary, HPTE Board

Resolution #BE-18-X-X

Approving the Second Amendment to the Central 70 Project Agreement and the First Amendment to the Issuer's Loan Agreement.

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 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 BE Board of Directors (the "BE Board" and, solely in its capacity as issuer under the Loan Agreement defined below, the "Issuer") is 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, Section 42-4-805(5)(c) and Section 43-4-807, C.R.S., provide, in part, that the Issuer may issue revenue bonds for the purpose of paying the cost of financing, repairing, reconstructing, replacing, and maintaining designated bridges; and

WHEREAS, the HPTE Board of Directors (the "HPTE Board") is similarly 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, 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, 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 KMP, 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, setting 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, updated the Project Agreement Milestone Completion and Substantial Completion Dates to account for the actual date of Financial Close that occurred on December 21, 2017; and

WHEREAS, on December 5, 2017, the BE Board, as Issuer, approved certain financial matters with respect to the Central 70 Project in Resolution #BE-17-12-1, including the Issuer’s Loan Agreement in which Issuer proposed to make a loan to the Developer, to finance a portion of the cost of the Central 70 Project and, as necessary, to pay certain costs of issuance associated therewith; and

WHEREAS, the Enterprises and the Developer now desire to effectuate a second amendment to the Project Agreement (“Second Amendment to the Project

Agreement”), which is needed to account for an amended Project timeline, added Milestones, and additional details thereunder; and

WHEREAS, in conjunction with the execution of the Second Amendment to the Project Agreement, the BE Board, as Issuer, will enter into a first amendment to the Issuer’s Loan Agreement (the “First Amendment to the Issuer’s Loan Agreement”) to account for added Milestones; and

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

BE IT FURTHER RESOLVED, the BE Board hereby authorizes the BE Director or his designee to execute and deliver the Second Amendment to the Project Agreement for the Central 70 Project and the First Amendment to the Issuer’s Loan 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.

Herman Stockinger, Secretary
Colorado Bridge Enterprise

Date

Memorandum of Settlement

This Memorandum of Settlement (this "Memorandum") is made, entered into as of the date it is approved and signed by the Colorado State Controller or its designee below 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
- (3) Kiewit Infrastructure Co., a corporation formed under the laws of the State of Delaware ("Construction Contractor").

The Enterprises, Developer and Construction Contractor are hereinafter referred to collectively as the "Parties", and "Party" means either the Enterprises (taken together), Developer or Construction Contractor.

RECITALS

Whereas:

- (A) The Enterprises and Developer entered into the Project Agreement for the Central 70 Project, dated as of November 21, 2017 (as amended from time to time in accordance with the terms thereof, including by the First Amendment to the Project Agreement, dated December 21, 2018, 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 as more fully described in the Project Agreement.
- (B) Developer and Construction Contractor entered into the Design and Construction Contract for the Central 70 Project, dated as of November 21, 2017 (as amended from time to time in accordance with the terms thereof, including by the First Amendment to the Design and Construction Contract, dated December 21, 2018, the "Construction Contract"), in connection with the design, construction, and operation and maintenance during construction of a portion of the I-70 East corridor in Greater Denver, Colorado as more fully described in the Construction Contract.
- (C) During the Construction Period, Construction Contractor provided notice to Developer that certain Supervening Events under the Construction Contract (the "CC SE Notices") occurred.
- (D) Following the receipt of the CC SE Notices, Developer provided notice to the Enterprises that certain Supervening Events under the Project Agreement (the "PA SE Notices") occurred.
- (E) Following the receipt of the PA SE Notices, the Enterprises provided responses to the Developer in accordance with the Project Agreement (the "PA SE Notice Responses").
- (F) Following receipt of the PA SE Notices and in accordance with the PA SE Notice Responses, and in regards to any claimed Supervening Event, the Enterprises make no admission regarding the existence or validity of any Supervening Event.
- (G) Pursuant to Section 15.3 of the Project Agreement, the Enterprises and Developer have engaged in discussions in an effort to determine any extension of time, relief and compensation to which Developer is entitled in respect of PA SE Notices.
- (H) Pursuant to Section 15.3 of Part 2 of the Construction Contract, Developer and Construction Contractor have engaged in discussions in an effort to determine any extension of time, relief and compensation to which Construction Contractor is entitled in respect of the CC SE Notices.

- (I) In accordance with Section 15.3.2 of the Project Agreement, the Enterprises and Developer have agreed to resolve such PA SE Notices and wish to set forth the details of such agreement in this Memorandum.
- (J) In accordance with Section 15.3.2 of Part 2 of the Construction Contract, Developer and Construction Contractor have agreed to resolve such CC SE Notices and wish to set forth the details of such agreement in this Memorandum.

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 AND INTERPRETATION

- 1.1. Terms used but not defined herein shall have the respective meanings ascribed to such terms in the Project Agreement. As used herein, the following terms shall have the following meaning:
 - 1.1.1. "A&R CAA" has the meaning set forth in Section 3.7.
 - 1.1.2. "BE" has the meaning set forth in the preamble.
 - 1.1.3. "CDOT" has the meaning set forth in the preamble.
 - 1.1.4. "CC Amendment" has the meaning set forth in Section 3.3.
 - 1.1.5. "CC SE Notices" has the meaning set forth in the recitals.
 - 1.1.6. "CC Monthly Payment" has the meaning given to it in the Construction Contract.
 - 1.1.7. "CC Monthly Payment Application" has the meaning given to it in the Construction Contract.
 - 1.1.8. "CC Relevant Event" has the meaning given to the term "Relevant Event" in the Construction Contract.
 - 1.1.9. "CC Settlement Payment" has the meaning set forth in Section 3.5.2.
 - 1.1.10. "Collateral Agency Agreement" means that certain Collateral Agency Agreement, dated as of December 19, 2017, by and among the Borrower, the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau, U.S. Bank National Association, in its capacity as the Intercreditor Agent, U.S. Bank National Association, in its capacity as the Collateral Agent and U.S. Bank National Association, in its capacity as the Securities Intermediary, as amended from time to time in accordance with the terms thereof.
 - 1.1.11. "Construction Contract" has the meaning set forth in the recitals.
 - 1.1.12. "Construction Contractor" has the meaning set forth in the preamble.
 - 1.1.13. "Developer" has the meaning set forth in the preamble.
 - 1.1.14. "Enterprises" has the meaning set forth in the preamble.
 - 1.1.15. "Event 1" means the events and circumstances claimed as Supervening Event(s) and described in (a) the notice provided to Developer by Construction Contractor on January 1, 2018 (SE Tracking No. 1.0), as further supplemented, and (b) the notice provided by Developer to the Enterprises on January 9, 2018 (SE Tracking No. 1.0), as further supplemented.
 - 1.1.16. "Event 2" means the events and circumstances claimed as Supervening Event(s) and described in (a) the notice provided to Developer by Construction Contractor on March 21, 2018 (SE Tracking No. 002.0 – Phase Zero Work Delay), as further supplemented, and (b) the notice provided by Developer to the Enterprises on March 23, 2018 (SE Tracking No. 2.0 – Phase Zero Work Delay), as further supplemented.

- 1.1.17. “Event 4” means the events and circumstances claimed as a Supervening Event and described in (a) the notice provided to Developer by Construction Contractor on August 6, 2018 (SE Tracking No. 004.0 (Rev. 1) – Section 232 Steel and Aluminum Tariffs) and (b) the notice provided by Developer to the Enterprises on August 10, 2018 (SE Tracking No. 004 – Section 232 Steel and Aluminum Tariffs).
- 1.1.18. “HPTE” has the meaning set forth in the preamble.
- 1.1.19. “IAA Amendment” has the meaning set forth in Section 3.8.
- 1.1.20. “Issuer Loan Agreement” means that certain Loan Agreement, dated as of December 21, 2017, by and between Colorado Bridge Enterprise, as issuer, and Developer, as borrower.
- 1.1.21. “Issuer Loan Agreement Amendment” has the meaning set forth in Section 3.7.
- 1.1.22. “Memorandum” has the meaning set forth in the preamble.
- 1.1.23. “PA Amendment” has the meaning set forth in Section 3.3.
- 1.1.24. “PA SE Notices” has the meaning set forth in the recitals.
- 1.1.25. “PA Settlement Payment” has the meaning set forth in Section 3.5.1.1.
- 1.1.26. “Project Agreement” has the meaning set forth in the recitals.
- 1.1.27. “Settlement Date” has the meaning set forth in Section 2.1.
- 1.1.28. “TIFIA Loan Agreement Amendment” has the meaning set forth in Section 3.7.
- 1.2. Sections 2 (excluding only Section 2.1.3.a) and 42.2 of the Project Agreement and Sections 2 (excluding only Section 2.1.3.a) and 42.2 of Part 2 of the Construction Contract are incorporated by reference as if set forth herein.

2. ESTABLISHMENT OF SETTLEMENT DATE

- 2.1. The “Settlement Date” shall be the date on which the following conditions have been satisfied:
 - 2.1.1. The Enterprises and Developer shall have duly executed and delivered the PA Amendment.
 - 2.1.2. Developer and Construction Contractor shall have duly executed and delivered the CC Amendment.
 - 2.1.3. The Lenders shall have consented to the execution and delivery of the PA Amendment, CA Amendment, A&R CAA and IAA Amendment as and to the extent required by the Financing Documents.
 - 2.1.4. Developer and the Lenders shall have duly executed and delivered the A&R CAA.
 - 2.1.5. Roy Jorgensen Associates, Inc. shall have consented to the execution and delivery of the PA Amendment.
 - 2.1.6. The Colorado State Controller or its designee shall have duly executed and delivered the PA Amendment and this Memorandum.

3. TERMS OF SETTLEMENT

- 3.1. **Releases.** On the Settlement Date, Construction Contractor and Developer shall provide the releases set forth in Section 4 with respect to Event 1, Event 2 and Event 4.
- 3.2. **Retractions.**
 - 3.2.1. Construction Contractor hereby retracts the notice provided to Developer with respect to Event 4.
 - 3.2.2. Developer hereby retracts the notice provided to the Enterprises with respect to Event 4.

- 3.3. **Amendment to Project Agreement.** The Enterprises and Developer shall enter into the Second Amendment to the Project Agreement in the form attached hereto as Exhibit A (the “PA Amendment”).
- 3.4. **Amendment to Construction Contract.** Developer and Construction Contractor shall enter into the Second Amendment to the Construction Contract in the form attached hereto as Exhibit B (the “CC Amendment”).¹
- 3.5. **Settlement Payments.**
- 3.5.1. Subject to Section 2:
- 3.5.1.1 Upon Substantial Completion, the Enterprises shall pay to Developer an amount equal to [\$7,798,015] (the “PA Settlement Payment”), which amount shall be reflected, but separately accounted for, in the Payment Request submitted by the Developer in respect of the first Payment Month following the Substantial Completion Date in accordance with Section 2 of Part 2 of Schedule 4 (*Payments*) of the Project Agreement.
- 3.5.1.2 Neither the PA Settlement Payment nor the agreement among the Parties set forth in this Memorandum to resolve Event 1, Event 2 and Event 4 shall be deemed a Relevant Event for purposes of the Reconciliation process provided for in Section 15.6.2 of the Project Agreement. Nothing in this Memorandum shall be construed to affect the treatment of, or the rights and obligations of the Parties with respect to, any Relevant Event.
- 3.5.1.3 Neither the PA Settlement Payment nor any other payment obligation of the Enterprises to the Developer shall be subject to adjustment to reflect costs incurred by the Developer and/or Construction Contractor from delays in payment of the PA Settlement Payment, nor shall such delay in payment of the PA Settlement Payment be taken into account for purposes of any Compensable Costs calculation, whether or not such delay in payment of the PA Settlement Payment occurs as a result of the occurrence of any Delay Relief Event or Compensation Event.
- 3.5.1.4 In the event the Substantial Completion Deduction Amount exceeds the amount of the Substantial Completion Milestone Payment, such amount will be reflected as an excess in the Payment Request submitted by the Developer in respect of the first Payment Month following the Substantial Completion Date pursuant to Section 2.3(e) of Part 2 of Schedule 4 (*Payments*) of the Project Agreement, and such excess amount shall be subject to set-off by the Enterprises from the PA Settlement Payment in the manner provided for in Section 5 of Part 3 of Schedule 4 (*Payments*).
- 3.5.2. Subject to Section 2:
- 3.5.2.1 Developer shall pay to Construction Contractor an amount equal to [\$7,316,693] promptly following receipt of the PA Settlement Payment from the Enterprises, but in any event within 30 days (the “CC Settlement Payment”).
- 3.5.2.2 Nothing in this Memorandum shall be construed to affect the treatment of, or the rights and obligations of the Parties with respect to, any CC Relevant Event.
- 3.5.2.3 Neither the CC Settlement Payment nor any other payment obligation of the Developer to the Construction Contractor shall be subject to adjustment to reflect costs incurred by the Construction Contractor from delays in payment of the CC Settlement Payment, nor shall such delay in payment of the CC Settlement Payment be taken into account for purposes of any Compensable Costs

¹ NTD: Pursuant to Section 17.1.4 of the Project Agreement, Developer is required to deliver a copy of the CC Amendment to the Enterprises promptly following the execution of the same.

calculation, whether or not such delay in payment of the CC Settlement Payment occurs as a result of the occurrence of any Delay Relief Event or Compensation Event.

3.5.2.4 In the event the Substantial Completion Deduction Amount exceeds the amount of the CC Monthly Payment to be paid using a portion of the Milestone Payment to be paid upon achieving Substantial Completion, such amount will be reflected as an excess in the CC Monthly Payment Application submitted by the Construction Contractor in respect of such CC Monthly Payment, and such excess amount shall be subject to set-off by the Developer from the CC Settlement Payment in the manner provided for in Section 5 of Part 3 of Schedule 4 (*Payments*) to the Construction Contract. If the remaining payments due and owing to the Construction Contractor are insufficient to set-off the entirety of such excess amount, the Construction Contractor shall pay to the Developer any amounts that cannot be set-off within 10 Working Days of Developer's demand therefore.

3.6. **Consents**

3.6.1. Developer hereby requests Construction Contractor to consent to the PA Amendment and pursuant to Section 8.1.5 of Part 2 of the Construction Contract, Construction Contractor hereby consents to the execution and delivery of the PA Amendment and hereby waives any prior notice required by the Construction Contract.

3.6.2. Developer hereby requests the Enterprises to consent to the CC Amendment and pursuant to Section 17.1.3 of the Project Agreement the Enterprises hereby consent to the execution and delivery of the CC Amendment and hereby waive any prior notice required by the Project Agreement. The Enterprises acknowledge and agree that this Memorandum and Exhibit B shall serve as notice of the CC Amendment.

3.6.3. Developer hereby requests the Enterprises to consent to the A&R CAA and the Enterprises hereby consent to the execution and delivery of the A&R CAA and hereby waive any prior notice required by the Project Agreement. The Enterprises acknowledge and agree that this Memorandum and Exhibit C shall serve as notice of the A&R CAA.²

3.6.4. Developer hereby requests the Enterprises to consent to the TIFIA Loan Agreement Amendment and the Enterprises hereby consent to the execution and delivery of the TIFIA Loan Agreement Amendment and hereby waive any prior notice required by the Project Agreement. The Enterprises acknowledge and agree that this Memorandum and Exhibit D shall serve as notice of the TIFIA Loan Agreement Amendment.

3.6.5. Subject to Section 2, the Enterprises hereby request Developer to consent to the IAA Amendment and pursuant to Section 11.2.3 of the Project Agreement the Developer hereby consents to the execution and delivery of the IAA Amendment and hereby waives any prior notice required by the Project Agreement. Developer hereby acknowledges and agrees that this Memorandum and Exhibit F shall serve as notice of the IAA Amendment.

3.7. **Amendments to Financing Documents.** Developer shall enter into (1) that certain Amended & Restated Collateral Agency Agreement substantially in the form attached hereto as Exhibit C (the "A&R CAA") and (2) that certain amendment to the TIFIA Loan Agreement substantially in the form attached hereto as Exhibit D (the "TIFIA Loan Agreement Amendment"). Developer and BE shall each enter into that certain amendment to the Issuer Loan Agreement substantially in the form attached hereto as Exhibit E (the "Issuer Loan Agreement Amendment").

² NTD: Pursuant to Section 29.6 of the Project Agreement, Developer is required to deliver a conformed copy of the A&R CAA to the Enterprises within 10 Working Days of the date of its execution certified as a true copy by an officer of Developer.

- 3.8. **Amendments to Intra-Agency Agreement.** The Enterprises and the Colorado Department of Transportation shall enter into that certain Second Amendment to Central 70 Project Intra-Agency Agreement substantially in the form attached hereto as Exhibit F (the “IAA Amendment”).

4. **RELEASES**

Subject to Section 2:

- 4.1. **Construction Contractor’s Release.** Construction Contractor, for the greater assurance of Developer and the Enterprises, and in consideration of the time relief provided, and the amounts to be paid, by Developer to Construction Contractor pursuant to this Memorandum, hereby waives and has remised, released and forever discharged, and by these presents does for itself, its successors and assigns, remise, waive and release and forever discharge Developer and the Enterprises of and from all and all manner of action and actions, cause and causes of actions, suits, debts, agreements, promises, variances, trespasses, damages, judgments, claims and demands whatsoever at law or in equity, which Construction Contractor, its successors and assigns ever had, now has or hereafter can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the Settlement Date against Developer or the Enterprises, their officers, agents, employees, consultants, successors and assigns arising out of, by reason of, under or in connection with (i) Event 1, (ii) Event 2, (iii) Event 4, and (iv) otherwise relating to UPRR (except with respect to drainage design and construction changes related to 100% Trackwork Plans and Specifications in respect of the UPRR Crossing) that the Construction Contractor is aware has occurred or that the Construction Contractor has determined is likely to occur on or prior to the date hereof (regardless of whether or not the Construction Contractor has submitted a notice pursuant to Section 15.1.2.a of Part 2 of the Construction Contract as of the Settlement Date), in each case including all claims whether or not they presently are or could by investigation be known, whether or not they have yet arisen or been asserted or have been the subject of notice to Developer or the Enterprises, and whether or not they are in litigation or are under consideration by Developer or the Enterprises, and including claims arising out of a breach of contract or termination of contract and claims based on claims against Construction Contractor by other contractors or by any other third person or entities.
- 4.2. **Developer’s Release.** Developer, for the greater assurance of the Enterprises and the Construction Contractor, and in consideration of the time relief provided, and the amounts to be paid, by the Enterprises to Developer pursuant to this Memorandum, hereby waives and has remised, released and forever discharged, and by these presents does for itself, its successors and assigns, remise, waive and release and forever discharge the Enterprises and the Construction Contractor of and from all and all manner of action and actions, cause and causes of actions, suits, debts, agreements, promises, variances, trespasses, damages, judgments, claims and demands whatsoever at law or in equity, which Developer, its successors and assigns ever had, now have or hereafter can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the Settlement Date against the Enterprises or the Construction Contractor, their officers, agents, employees, consultants, successors and assigns arising out of, by reason of, under or in connection with, or otherwise relating to: (i) Event 1, (ii) Event 2, (iii) Event 4, and (iv) the UPRR (except with respect to any changes directly related to the design and construction of drainage Elements set forth in the 100% Trackwork Plans and Specifications in respect of the UPRR Crossing, which remain subject to further negotiation between the Enterprises and Developer), that the Developer is aware has occurred or that Developer has determined is likely to occur on or prior to the date hereof (regardless of whether or not Developer has submitted a notice pursuant to Section 15.1.2.a of the Project Agreement as of the Settlement Date), in each case including all claims whether or not they presently are or could by investigation be known, whether or not they have yet arisen or been asserted or have been the subject of notice to the Enterprises, and whether or not they are in litigation or are under consideration by the Enterprises, and including claims arising out of a breach of contract or termination of contract and claims based on claims against Developer by other contractors or by any other third person or entities.
- 4.3. **The Enterprises’ Release.** Each of the Enterprises, for the greater assurance of Developer and Construction Contractor, and in consideration of each of Developer’s and Construction Contractor’s

obligations under this Memorandum, hereby waives and has remised, released and forever discharged, and by these presents does for itself, its successors and assigns, remise, waive and release and forever discharge Developer and Construction Contractor of and from all and all manner of action and actions, cause and causes of actions, suits, debts, agreements, promises, variances, trespasses, damages, judgments, claims and demands whatsoever at law or in equity, which such Enterprise, its successors and assigns ever had, now have or hereafter can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the Settlement Date against Developer, Construction Contractor or their officers, agents, employees, consultants, successors and assigns arising out of, by reason of, under or in connection with, or otherwise relating to: (i) Event 1, (ii) Event 2, (iii) Event 4, and (iv) the UPRR (except with respect to any changes directly related to the design and construction of drainage Elements set forth in the 100% Trackwork Plans and Specifications in respect of the UPRR Crossing, which remain subject to further negotiation between the Enterprises and Developer), that the Enterprises are aware has occurred or that the Enterprises have determined is likely to occur on or prior to the date hereof, in each case including all claims whether or not they presently are or could by investigation be known, whether or not they have yet arisen or been asserted or have been the subject of notice to the Enterprises, and whether or not they are in litigation or are under consideration by the Enterprises, and including claims arising out of a breach of contract or termination of contract and claims based on claims against the Enterprises by any third person or entities

- 4.4. **No Release of Certain Claims.** Notwithstanding anything to the contrary in this Memorandum, the releases set forth in Section 4 do not include, and do not extend to, changes directly related to the design and construction of drainage Elements set forth in the 100% Trackwork Plans and Specifications in respect of the UPRR Crossing.

5. GENERAL

- 5.1. This Memorandum strictly constitutes an agreement among the Parties to resolve Event 1, Event 2 and Event 4. Nothing contained herein shall be deemed to constitute an admission of any kind by any party and acceptance by the Parties of this Memorandum is strictly for settlement purposes only. Notwithstanding any other provision of this Memorandum regarding any claimed Supervening Event, the Enterprises makes no admission regarding the existence or validity of any Supervening Event, and this Memorandum shall in no event be used by the Developer or the Construction Contractor to document or support any future claim that an event constitutes a Supervening Event.
- 5.2. Each of the Parties retain all remedies available in law or equity for breach of this Memorandum by any Party, including, without limitation, the right of a non-breaching Party to seek specific performance and injunctive or other equitable relief as a remedy for any such breach.
- 5.3. Except as may be necessary to enforce the terms of this Memorandum, the Parties and any other person who is an intended beneficiary hereunder, agree that she or he shall not commence or proceed with any action, claim, suit, proceeding or litigation against any other Party, directly or indirectly, regarding or relating to the matters described in this Memorandum, or take any action inconsistent with the terms of the Memorandum.
- 5.4. Each Party represents and acknowledges that it has been represented by an attorney with respect to this Memorandum and any and all matters covered by or related to such Memorandum. Each Party further represents and warrants to each other that the execution and delivery of this Memorandum has been duly authorized by each of the Parties after consultation with counsel, that the persons signing this Memorandum on their behalf below have been fully authorized by their respective Parties to do so, and that the undersigned do fully understand the terms of this Memorandum and have the express authority to enter into this Memorandum.
- 5.5. Each Party hereby represents and warrants that it has the full power and authority to execute and deliver this Memorandum and to perform its obligations hereunder, and the execution, delivery and performance of this Memorandum by it has been duly authorized by the necessary action on the part of each such Party. This Memorandum has been duly executed and delivered by each Party

hereto and is the valid and binding obligation of each such Party, enforceable against it in accordance with its terms.

5.6. No officer, agent or employee of any other Party, shall be charged personally by any other Party with any liability or held liable to it under any term or provision of this Memorandum, or because of its execution or attempted execution or because of any breach thereof.

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

6. CHOICE OF LAW

6.1. This Memorandum 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 Memorandum, to the extent capable of execution.

6.2. Sections 37 and 38 of the Project Agreement are incorporated by reference as if set forth herein.

7. COLORADO OPEN RECORDS ACT

Section 20 of the Project Agreement is incorporated by reference as if set forth herein.

8. GOVERNMENTAL IMMUNITY

No term or condition of this Memorandum 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.

9. AMENDMENTS

Except as specifically provided herein, the Project Agreement and the Construction Contract remain unmodified and in full force and effect. No amendment, modification, termination or waiver of any provision of this Memorandum shall in any event be effective unless the same shall be in writing and signed by each Party hereto.

10. THIRD PARTY BENEFICIARIES

Except for the releases provided in Section 4 of this Memorandum, nothing contained in this Memorandum is intended for the benefit of any third parties or entities.

11. BINDING EFFECT; SUCCESSORS AND ASSIGNS

This Amendment shall be binding upon and inure to the benefit of each Enterprise, Developer and Construction Contractor and each of their respective permitted successors and assigns.

12. SEVERABILITY

12.1. Notwithstanding Section 2.4.1 of the Project Agreement or Section 2.4.1 of Part 2 of the Construction Contract (each as incorporated herein pursuant to Section 1.2 of this Memorandum), if any provision (or part of any provision) of this Memorandum is ruled invalid (including due to Change in Law) by a court having proper jurisdiction, then the Parties shall:

12.1.1. 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

12.1.2. 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.

12.2. If any provision (or part of any provision) of this Memorandum 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 Memorandum, and this Memorandum shall be construed as if such invalid, illegal, or unenforceable provision (or part thereof) had never been contained herein.

13. COSTS AND EXPENSES OF THE PARTIES

Except as otherwise expressly provided in the Project Agreement, each Party shall bear its own costs and expenses in connection with the preparation, negotiation, execution and performance of this Memorandum.

14. FURTHER ASSURANCES

- 14.1. Each of the Parties covenant to, from time to time, execute and deliver such further documents and instruments and take such other actions as may be reasonably required or appropriate to evidence, effectuate, or carry out the intent and purposes of this Memorandum or to perform its obligations under this Memorandum and the transactions contemplated thereby.
- 14.2. The Parties agree to reasonably cooperate with one another to effectuate an efficient and equitable implementation of this Memorandum.

15. COUNTERPARTS

This Memorandum may be executed in one or more counterparts. 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 delegate, shall constitute a full and original instrument for all purposes.

[The remainder of this page left intentionally blank; signature page immediately follows.]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the date [it is approved and signed by the Colorado State Controller or their designee below].

KIEWIT MERIDIAM PARTNERS LLC

By: _____
Paulo Andre
Project Manager

KIEWIT INFRASTRUCTURE CO.

By: _____
Craig Briggs
Senior 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: _____
[●]
[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 Memorandum is not valid until signed and dated below by the State Controller or its delegate. Developer and Construction Contractor are not authorized to begin performance until such time. If Developer or Construction Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Developer or Construction Contractor, as applicable, for such performance and/or for any goods and/or services provided hereunder.

<p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p>Date: [●], 2018</p>
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Resolution – HPTE #284

Approving and Authorizing the Execution of the Memorandum of Settlement in Relation to the Supervening Event Submissions of 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 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, 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 Project Agreement for the Central 70 Project (the “Project Agreement”) 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, on November 21, 2017, the Enterprises and Kiewit Meridiam Partners LLC (the “Developer”), executed and delivered the Central 70 Project Agreement; and

WHEREAS, the Enterprises received from Developer three Supervening Event Submissions (the “Submissions”) that could have affected, and possibly delayed, the Project timeline; and

WHEREAS, in order to settle the Supervening Event Submissions at the lowest possible cost to the Project and to be proactive in minimizing any potential impacts to the Project, the Enterprises and Developer began working toward a resolution of the three Submissions; and

WHEREAS, in consideration of releasing all claims related to the Submissions, the Enterprises and Developer have agreed in principle to the attached Memorandum of Settlement.

NOW THEREFORE BE IT RESOLVED, the HPTE Board hereby approves the Memorandum of Settlement for the Central 70 Project in substantially the form 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 Memorandum of Settlement 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, any amendments thereto added by the Colorado Office of the State Controller.

Signed as of November 14, 2018

Simon Logan
Secretary, HPTE Board

Resolution #BE-18-X-X

Approving and Authorizing the Execution of the Memorandum of Settlement in Relation to the Supervening Event Submissions of the Central 70 Project

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 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 BE Board of Directors (the “BE Board”) is 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, 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, 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, the Project Agreement for the Central 70 Project (the “Project Agreement”) 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, on November 21, 2017, the Enterprises and Kiewit Meridiam Partners LLC (the “Developer”), executed and delivered the Central 70 Project Agreement; and

WHEREAS, the Enterprises received from Developer three Supervening Event Submissions (the “Submissions”) that could have affected, and possibly delayed, the Project timeline; and

WHEREAS, in order to settle the Supervening Event Submissions at the lowest possible cost to the Project and to be proactive in minimizing any potential impacts to the Project, the Enterprises and Developer began working toward a resolution of the three Submissions; and

WHEREAS, in consideration of releasing all claims related to the Submissions, the Enterprises and Developer have agreed in principle to the attached Memorandum of Settlement.

NOW THEREFORE BE IT RESOLVED, the BE Board hereby approves the Memorandum of Settlement for the Central 70 Project in substantially the form presented to the BE 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 BE Director, or his designee, and the office of the Colorado Attorney General.

BE IT FURTHER RESOLVED, the BE Board hereby authorizes the BE Director or his designee to execute and deliver the Memorandum of Settlement 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, any amendments thereto added by the Colorado Office of the State Controller.

Herman Stockinger, Secretary
Colorado Bridge Enterprise

Date



Central 70



COLORADO
Department of Transportation
Statewide Bridge Enterprise



Transportation Commission HPTE Board Colorado Bridge Enterprise Board

Joint Session

November 14, 2018



Joint Session Agenda

- 1. Project information and history for Joint Session request**
 - a. Prior engagement with Boards
 - b. Supervening Event description and path forward
 - c. Schedule for execution of Agreements

- 2. Explanation of Resolutions and Agreements**
 - a. Central 70 Intra-Agency Agreement (IAA)
 - b. Second Amendment to Project Agreement
 - i. First Amendment to Issuer's Loan Agreement
 - c. Memorandum of Settlement
 - d. Resolutions

Second Amendment to Intra-Agency Agreement

- ✓ HPTE
- ✓ Bridge Enterprise
- ✓ Transportation Commission

Summary:

- Agreement between CDOT, HPTE and BE that adds additional Milestones
- Monuments Pro-Rata Construction Cost Calculation
- Defines cost responsibility for settlement payment

Second Amendment to the Project Agreement

- HPTE
- Bridge Enterprise
- Transportation Commission

Summary:

- Project contract time extended six months
- Re-define several milestones and re-appropriate individual milestone payments
- Adds additional Milestones
- Milestone Payment total remains at \$319m



First Amendment to Issuer's Loan Agreement

- HPTE
- Bridge Enterprise
- Transportation Commission

Summary:

- Adds the additional Milestones
- Corresponding changes to definitions around Substantial Completion

Memorandum of Settlement

- HPTE
- Bridge Enterprise
- Transportation Commission

Summary:

- Memorializes \$7.8m payment to Developer
- Settles Supervening Events #1, #2 and #4 submitted by Developer
- Project contingency used for payment; no additional funding required