

FIRST AMENDMENT TO LENDERS DIRECT AGREEMENT

This FIRST AMENDMENT TO LENDERS DIRECT AGREEMENT (this “Amendment”) is made as of [●], 2021 (the “**Effective Date**”), among HIGH PERFORMANCE TRANSPORTATION ENTERPRISE (“**HPTE**”), a government-owned business within, and a division of, the Colorado Department of Transportation (“**CDOT**”), COLORADO BRIDGE ENTERPRISE, a government-owned business within CDOT (“**BE**”, and together with HPTE, the “**Enterprises**”), KIEWIT MERIDIAM PARTNERS LLC, a Delaware limited liability company (the “**Developer**”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, as the collateral agent (in such capacity, and together with its successors and assigns in such capacity, the “**Collateral Agent**”) for the benefit of the Lenders.

WHEREAS, the Enterprises, the Developer and the Collateral Agent are party to that certain Lenders Direct Agreement, dated as of December 19, 2017 (the “**Lenders Direct Agreement**”); and

WHEREAS, the Enterprises, the Developer and the Collateral Agent desire to amend the Lenders Direct 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 Enterprises, the Developer and the Collateral Agent as follows:

1. Defined Terms. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Lenders Direct Agreement.
2. Amendments to Lenders Direct Agreement.
 - a. Annex A of the Lenders Direct Agreement is hereby amended by deleting it in its entirety and replacing it with Annex A attached hereto.
 - b. Section 1.1(b) of the Lenders Direct Agreement is hereby amended by deleting the definition of “Collateral Agency Agreement” in its entirety and by replacing it with the following:

<u>“Collateral Agency Agreement”</u>	means that certain Second Amended and Restated Collateral Agency and Account Agreement, dated as of [●], 2021, by and among Developer, 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 (the “ <u>TIFIA Lender</u> ”), the Collateral Agent, U.S. Bank National Association, as intercreditor agent on behalf of the Secured Creditors (as defined in the
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Collateral Agency Agreement) (in such capacity, the “Intercreditor Agent”), and in its capacity as securities intermediary on behalf of itself and the other Secured Parties (in such capacity, the “Securities Intermediary”), and each other Secured Party (as defined in the Collateral Agency Agreement) that accedes to the Agreement in accordance with the terms therein.”

c. Section 1.1(b) of the Lenders Direct Agreement is hereby amended by deleting the definition of “Lenders’ Subcontract Direct Agreements” in its entirety and by replacing it with the following:

““Lenders’ Subcontract Direct Agreements” means the documents listed in paragraphs 8 and 9 of Part B of Annex A to this Agreement.”

d. Section 1.1(b) of the Lenders Direct Agreement is hereby amended by adding the following definition in the appropriate alphabetical order:

““Memoranda of Settlement” means the (a) the Memorandum of Settlement, dated as of May 9, 2019, by and among the Enterprises, the Developer and the Construction Contractor and (b) the Memorandum of Settlement, dated as of [●], 2021, by and among the Enterprises, the Developer and the Construction Contractor, in each case resolving certain matters in dispute among the parties.”

e. Section 2.1(a) of the Lenders Direct Agreement is hereby amended by deleting clause (i) thereof in its entirety and by replacing it with the following:

“(i) the collateral assignment by Developer to the Collateral Agent of any or all of Developer’s rights, title and interests in, to or under or derived from, the Project Agreement and the Memoranda of Settlement (including any such rights, title and interests in, to or derived from payments made by the Enterprises to Developer thereunder), the Subcontracts, the Contractor Bonds (to the extent Developer is an obligee (or beneficiary) thereunder), the Insurance Policies, the Supplemental Indenture and the Central 70 Note, in each case excluding, for certainty, any rights or interests to or in the Handback Reserve Account or the Physical Damage Proceeds Reserve; and”

f. Section 15.5(a) of the Lenders Direct Agreement is hereby amended by deleting it in its entirety and by replacing it with the following:

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

Enterprises:

High Performance Transportation Enterprise
2829 W. Howard Place
Denver, Colorado 80204
Attention: Nicholas J. Farber, HPTE Director
Telephone: (720) 248-8544
Email: Nicholas.farber@state.co.us

Colorado Bridge Enterprise
2829 W. Howard Place
Denver, Colorado 80204
Attention: Stephen Harelson, P.E., Chief Engineer
Telephone: (303) 757-9204
Email: stephen.harelson@state.co.us

with a copy to:

Office of the Attorney General
Transportation Unit
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, Colorado 80203
Attention: Andrew Gomez, Assistant Attorney General
Telephone: (720) 508-6638
Email: andrew.gomez@coag.gov

Developer:

Kiewit Meridiam Partners LLC
3543 E. 46th Ave.
Denver, Colorado 80216
Attention: Paulo Andre
Telephone: (512) 970-8983
Email: Paulo.Andre@C70-kmp.com

with copies to:

Meridiam I-70 East CO, LLC
c/o Meridiam Infrastructure North America Corporation

605 Third Avenue, 36th Floor
New York, New York 10158
Attention: Jonathan Dingle
Telephone: (212) 798-8686
Facsimile: (212) 798-8690
Email: j.dingle@meridiam.com

and

Kiewit C70 Investors, LLC
c/o Kiewit Development Company
1550 Mike Fahey St.
Omaha, Nebraska 68102
Attention: J. Samuel Gilmore
Telephone: (402) 536-3617
Email: sam.gilmore@kiewit.com

Collateral Agent:

U.S. Bank National Association, as Collateral Agent
Global Corporate Trust Services
950 17th Street, DN-CO-5GCT
Denver, Colorado 80202
Attention: Gretchen L. Middents
Telephone: (303) 585-4596
Email: gretchen.middents@usbank.com”

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

4. Successors and Assigns; Amendments. This Amendment shall be binding upon and inure to the benefit of the Enterprises, the Developer and the Collateral Agent and their respective successors and permitted assigns. This Amendment may only be amended or waived by a written amendment or waiver duly executed by all parties hereto together with, to the extent required by Law, the Colorado State Controller or its designee.

5. Counterparts. This Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties to this Amendment may execute this Amendment by signing any such counterpart. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or in electronic (e.g., “pdf” or “tif”) format shall be effective as delivery of a manually executed counterpart of this Amendment.

6. Governing Law; Submission to Jurisdiction.

a. 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.

b. Each of the parties hereto hereby irrevocably consents and submits to the exclusive venue of any State or Federal court in the City of Denver in any suit or action arising out of or relating to this Amendment.

c. Each party hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Amendment or the enforcement and recognition of any judgment in any such court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

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

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

KIEWIT MERIDIAM PARTNERS LLC

By: _____
Name: Paulo Andre
Title: Project Manager

HIGH PERFORMANCE TRANSPORTATION
ENTERPRISE

By: _____
Name: Nicholas J. Farber
Title: Director

COLORADO BRIDGE ENTERPRISE

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION, as
Collateral Agent on behalf of the Lenders

By: _____
Name:
Title:

LEGAL REVIEW ON BEHALF OF
HIGH PERFORMANCE TRANSPORTATION
ENTERPRISE AND COLORADO BRIDGE
ENTERPRISE
Philip J. Weiser, Attorney General

By: _____
Name: Andrew Gomez
Title: Assistance 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 Amendment is not valid until signed and dated below by the State Controller or its delegate.

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

Annex A
List of Financing Documents

A. Financing Agreements

1. the Trust Indenture, dated as of December 21, 2017, between BE, as issuer, and U.S. Bank National Association, in its capacity as trustee (the "Trustee") (the "Indenture");
2. the Series 2017 Bonds, authorized and issued pursuant to the Indenture;
3. the Loan Agreement, dated as of December 21, 2017, between BE, as Issuer, and Developer (the "2017 Loan Agreement"), as amended by that First Amendment to Loan Agreement, dated as of May 9, 2019, and the Second Amendment to Loan Agreement, dated as of [•], 2021;
4. the Series 2017 Note, issued and delivered by Developer pursuant to the 2017 Loan Agreement;
5. the First Supplemental Trust Indenture, dated as of [•], 2021, between BE, as Issuer, and Trustee (the "First Supplemental Trust");
6. the Series 2021 Bonds, authorized and issued pursuant to the Indenture and the First Supplemental Trust;
7. the Loan Agreement, dated as of [•], 2021, between BE, as Issuer, and Developer (the "2021 Loan Agreement");
8. the Series 2021 Note, issued and delivered by Developer pursuant to the 2021 Loan Agreement;
9. the TIFIA Loan Agreement, dated as of [•], 2021, between Developer and 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 (the "TIFIA Lender") (the "TIFIA Loan Agreement");
10. the TIFIA Note, issued and delivered by Developer pursuant to the TIFIA Loan Agreement;
11. the Amended and Restated Subordination and Intercreditor Agreement, dated as of [•], 2021, among the Collateral Agent, the Intercreditor Agent, the Trustee, the TIFIA Lender, and the other Secured Creditors party thereto from time to time; and
12. the Fee Letter, dated November 6, 2017, entered into by and between Developer, the Escrow Agent, the Collateral Agent, the Trustee, the Intercreditor Agent, and the Securities Intermediary.

B. Security Documents

1. the Lenders Direct Agreement, dated as of December 19, 2017, among the Enterprises, the Developer, and the Collateral Agent, as amended by that certain First Amendment to Lenders Direct Agreement, dated as of [•], 2021;
2. the Second Amended and Restated Collateral Agency and Account Agreement, dated as of [•], 2021, among the Developer, the Collateral Agent, the Intercreditor Agent, the Securities Intermediary, and the TIFIA Lender (the "Collateral Agency Agreement");
3. the Security Agreement, dated as of December 19, 2017, by and between Developer and the Collateral Agent, as amended by that certain First Amendment to Security Agreement, dated as of [•], 2021;
4. the Amended and Restated Equity Contribution Agreement, dated as of [•], 2021, among Developer, Meridiam I-70 East CO, LLC (the "Meridiam Member"), Kiewit C70 Investors, LLC (the "Kiewit Member"), and the Collateral Agent (the "Equity Contribution Agreement");
5. the Pledge Agreement, dated as of December 19, 2017, by and between the Meridiam Member and the Collateral Agent;
6. the Pledge Agreement, dated as of December 19, 2017, by and between the Kiewit Member and the Collateral Agent;
7. each Equity Letter of Credit (as defined in the Collateral Agency Agreement);
8. the Direct Agreement, dated as of December 19, 2017, by and among the Construction Contractor, Developer, and the Collateral Agent;
9. the Direct Agreement, dated as of December 19, 2017, by and among the O&M Contractor, Developer and the Collateral Agent;
10. the Direct Agreement, dated as of December 19, 2017, by and among Kiewit Infrastructure Group Inc., Developer and the Collateral Agent;
11. the Construction Letter of Credit Consent to Assignment, dated as of [•], 2021, by Developer and [•] in favor of the Collateral Agent; and
12. the Blocked Account Control Agreement, dated as of December 19, 2017, by and among Developer, the Collateral Agent, and U.S. Bank National Association, as depositary bank.