

This Fourth Amendment to the Project Agreement (this "Amendment") is made and 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"); 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 Second Amendment to the Project Agreement, dated as of May 9, 2019, and the Third Amendment to the Project Agreement, dated as of December 11, 2019, 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 [●], 2021, by and among the Enterprises, Developer and the Construction Contractor (the "Memorandum of Settlement"), 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 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 Settlement Date (as defined in the Memorandum of Settlement), 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) Part A of Annex A is amended by adding the following definition of "5A Blocked Account" in alphabetical order within such Part A:

“5A Blocked Account” has the meaning given to it in Section 1 of Part 2 of Schedule 4.

- (ii) The definition of “Account Balances” is amended by deleting it in its entirety and replacing it with the following:

“Account Balances” means, in respect of each bank account and/or trust account held by or on behalf of Developer (including the 5A Blocked Account, but excluding, for certainty, the Handback Reserve Account and the Physical Damage Proceeds Account):

- a. the balance of such account; *plus*
- b. to the extent a letter of credit has been issued in partial or full substitution for any amount otherwise required to stand to the credit of any such account pursuant to the Financing Documents, the undrawn principal amount of such letter of credit,

in each case as of the Termination Date.

- (iii) Part A of Annex A is amended by adding the following definition of “Banked MPP” in alphabetical order within such Part A:

“Banked MPP” has the meaning given to it in Section 1 of Part 2 of Schedule 4.

- (iv) 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 February 16, 2023.

- (v) Part A of Annex A is amended by adding the following definition of “Compensable Payment Milestone” in alphabetical order within such Part A:

“Compensable Payment Milestone” means any of Milestone 1, Milestone 2A, Milestone 2B, Milestone 3, Milestone 4A, Milestone 4B or Milestone 5A.

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

“Construction Price” means \$[●].

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

“Construction Work Value” means:

- a. the Construction Price; minus
- b. the Cost to Complete; minus
- c. the amount of any Milestone Payments previously paid to Developer, where (for purposes of this paragraph c.) any amounts set-off by the Enterprises against any such payments pursuant to Section 5 of Part 3 of Schedule 4 (Payments) shall be counted as having been paid to Developer; minus
- d. the amount of any Performance Payments previously paid to Developer, where (for purposes of this paragraph d.) any amounts set-off by the Enterprises against

any such payments pursuant to Section 5 of Part 3 of Schedule 4 (Payments) shall be counted as having been paid to Developer.

- (viii) The definition of “Delay Financing Costs” is amended by deleting it in its entirety and replacing it with the following:

“Delay Financing Costs” means, in respect of any Schedule Delay Period occurring prior to the Performance Payment Start Date, the aggregate of:

- a. all amounts of principal that accrue with respect to the Long Term Project Debt under the Financing Documents during such period;
- b. all amounts of interest (excluding default interest), together with any commitment or standby fees on undrawn loan facilities that will accrue under the Financing Documents with respect to the Long Term Project Debt during such period; and
- c. reasonable financing costs and expenses that accrue during such period with respect to the Long Term Project Debt in connection with any of the foregoing.

- (ix) The definition of “Excused Closure” is amended by deleting it in its entirety and replacing it with the following:

“Excused Closure” means:

- a. any Closure arising as a direct result of:
 - i. a Compensation Event;
 - ii. a Relief Event;
 - iii. an Emergency;
 - iv. the performance of Snow and Ice Control Services in accordance with the requirements of Section 11 of Schedule 11 (Operations and Maintenance Requirements); or
 - v. Work required to be performed in connection with the removal of debris or obstructions, patrols or inspections that requires the Closure of a shoulder where such Closure is too brief to require the implementation of a Closure in accordance with Developer’s most recently Approved Transportation Management Plan;
- b. any Closure under the control of the Emergency Services;
- c. any Closure that:
 - i. was previously under the control of the Emergency Services; and
 - ii. continues to subsist after the Emergency Services have returned operational control of all parts of the Project affected by such Closure to Developer, provided that, if any such Closure continues to subsist for a period in excess of 30 minutes after such control has been returned to Developer, any such excess period shall not be an Excused Closure;

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- d. any Closure expressly ordered by, and continuing only for so long as ordered by, the Enterprises, CDOT or any Governmental Authority;
- e. any Closure of a shoulder that is required for the sole purpose of performing the repair of a Category 1 Defect, but only to the extent that any such Closure persists for no longer than the Defect Remedy Period applicable to the relevant Category 1 Defect;
- f. any Closure required solely by the ETC System Integrator for the performance of its obligations pursuant to the E 470 TSA or the E-470 Installation Agreement, provided that, for certainty, to the extent that Developer performs any Work on the portion of the Project that is subject to such a Closure during such Closure, such Closure shall not be an Excused Closure within this paragraph f.; or
- g. any Closure occurring prior to Final Acceptance that is required to complete the westbound 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), which Closures shall, notwithstanding any other provision of Section 2 of Schedule 10 (Design and Construction Requirements), be permitted after the Construction Period subject to compliance with the other requirements of Section 2.11 of Schedule 10 (Design and Construction Requirements);

but only to the extent that:

- h. such Closure does not arise as a result of any breach of Law, Governmental Approval, Permit or this Agreement, fraud, willful misconduct, criminal conduct, recklessness, bad faith or negligence by or of any Developer-Related Entity; and
 - i. Developer is using its Reasonable Efforts to:
 - i. mitigate the impact of the relevant Closure;
 - ii. reopen the affected part(s) of the Project as quickly as possible to traffic; and
 - iii. if such Closure arose as the direct result of an Emergency, respond to the Emergency in accordance with the requirements of this Agreement.
- (x) The definition of "Expiry Date" is amended by deleting it in its entirety and replacing it with the following:
- "Expiry Date" means the 30th anniversary of the Milestone Completion Target Date for Milestone 5A.
- (xi) 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 163 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.

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

“Insurance Review Period” means:

- a. with respect to the initial Insurance Review Period, the two year period commencing on the Benchmarked Insurance Inception Date and ending on the Calendar Day immediately prior to the second Insurance Renewal Date; and
- b. thereafter, each subsequent two year period commencing on the Calendar Day immediately following the expiration of the prior Insurance Review Period and ending on the Calendar Day immediately prior to the second anniversary of the first day of such two year period,

in the case of either paragraphs a. or b., except where the end of such period lies beyond the last Calendar Day of the Term, in which case the relevant Insurance Review Period shall end on the last Calendar Day of the Term.

- (xiii) 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 640 Calendar Days after the Milestone Completion Target Date for Milestone 5A (for certainty, as the Milestone Completion Target Date for Milestone 5A 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.

- (xiv) The definition of “Milestone 2” is deleted in its entirety.

- (xv) Part A of Annex A is amended by adding the following definition of “Milestone 2A” in alphabetical order within such Part A:

“Milestone 2A” means:

- a. the Construction Work to allow for WB I-70 traffic to be switched to the outside new pavement from just west of Monaco Street to the WB Colorado Boulevard off-ramp; and
- b. all outside bridge structures, and decks poured for the Quebec, DRIR, Monaco, Holly and Dahlia bridges over I-70.

- (xvi) Part A of Annex A is amended by adding the following definition of “Milestone 2B” in alphabetical order within such Part A:

“Milestone 2B” means the Construction Work between Dahlia Street and Sand Creek Bridge (Station 2091+00 to 2192+00) comprising the addition of one Tolled Express Lane in each direction within the limits.

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

“Milestone 3” means the UPRR Phase 4B (SY 112) switch onto the new UPRR over I-70 bridge structure.

(xviii) The definition of “Milestone 4” is deleted in its entirety.

(xix) Part A of Annex A is amended by adding the following definition of “Milestone 4A” in alphabetical order within such Part A:

“Milestone 4A” means the Construction Work of UPRR Phase 5 to allow UPRR to perform Phase 5 track work.

(xx) Part A of Annex A is amended by adding the following definition of “Milestone 4B” in alphabetical order within such Part A:

“Milestone 4B” means the removal of the viaduct bridge deck and columns to existing finished grade.

(xxi) The definition of “Milestone 5” is deleted in its entirety.

(xxii) Part A of Annex A is amended by adding the following definition of “Milestone 5A” in alphabetical order within such Part A:

“Milestone 5A” means:

- a. the Cover girders over the eastbound I-70 lanes are erected;
- b. the Construction Work to allow traffic on the new EB Colorado off-ramp; and
- c. the York to Colorado mass excavation is (+/- 2') complete.

(xxiii) Part A of Annex A is amended by adding the following definition of “Milestone 5B” in alphabetical order within such Part A:

“Milestone 5B” means:

- a. the Construction Work west of Brighton Blvd;
- 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 ultimate configuration will be achieved between Brighton Blvd and Dahlia Street (Station 2000+00 to 2091+00) for eastbound and westbound I-70;
- d. the Construction Work for UPRR Phase 6, UPRR Pepsi Lead Crossing and the UPRR York Street Crossing; and
- e. 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 Construction Work of that portion of 46th Avenue/Stapleton Drive (south of I-70) between Columbine Street and Clayton Street;
- ii. the SMA pavement for the westbound Lowered Section; 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 the infrastructure included within Milestone 5B, including, for certainty:

1. the Elements of the Cover referred to in paragraphs a., b., c. and d. of the definition of Cover O&M Work in Part A of Annex A (Definitions and Abbreviations) (other than the Construction Work associated with Planning Area 1 and Planning Area 2 of the Cover); and
2. the Elements referred to in paragraph e. of the definition of Cover O&M Work in Part A of Annex A (Definitions and Abbreviations) that are below the protection course.

- (xxiv) The definition of "Milestone 6" is amended by deleting it in its entirety and replacing it with the following:

"Milestone 6" means:

- a. the Construction Work for Planning Area 1 and Planning Area 2 of the Cover; and
- b. the Construction Work for the portion of 46th Avenue (south of I-70) between Columbine Street and Clayton Street.

- (xxv) 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 2A, November 10, 2020;
- c. for Milestone 2B, September 29, 2021;
- d. for Milestone 3, October 17, 2020;
- e. for Milestone 4A, September 26, 2021;
- f. for Milestone 4B, December 20, 2021;
- g. for Milestone 5A, March 25, 2022;
- h. for Milestone 5B, October 28, 2022; and

- i. for Milestone 6, November 23, 2022,

as such dates in respect of each of Milestone 5A, Milestone 5B and Milestone 6 may be extended from time to time pursuant to:
- j. Section 15.3.1.c.iii, as a result of the occurrence of a Supervening Event;
or
- k. a Change documented in a Change Order.

(xxvi) The definition of "Milestone Payment Delay Costs" is amended by deleting it in its entirety and replacing it with the following:

"Milestone Payment Delay Costs" means, in respect of any Milestone Delay Period associated with a Compensable Payment Milestone, the aggregate of:

- a. all amounts (excluding default interest) of interest, together with any commitment or standby fees on undrawn loan facilities, that will accrue under the Financing Documents during such Milestone Delay Period;
- b. only if Section Error! Reference source not found. applies, all amounts of principal that will fall due for payment from the date on which termination of this Agreement would have otherwise been effective,

in each case with respect to the Project Debt scheduled (as determined by reference to the Financial Model) to have been repaid by the Milestone Payment (or a portion thereof) following Milestone Completion of the relevant Compensable Payment Milestone.

(xxvii) 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 270; or
 - ii. any rolling 36 month period equals or exceeds 540; 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, reference #1.69 and reference #1.70 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.

- (xxviii) 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 2A, Milestone 2B, Milestone 3, Milestone 4A, Milestone 4B, Milestone 5A, Milestone 5B or Milestone 6.

- (xxix) The definition of "Performance Payment Start Date" is amended by deleting it in its entirety and replacing it with the following:

"Performance Payment Start Date" means the Milestone Completion Date for Milestone 5A."

- (xxx) The definition of "Substantial Completion Deadline Date" is amended by deleting it in its entirety and replacing it with the following:

"Substantial Completion Deadline Date" means the date that occurs 360 Calendar Days after the Milestone Completion Date with respect to Milestone 5B, as such Substantial Completion Deadline 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.

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 Milestone 5A, then the Milestone Completion Target Date for Milestone 5A 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 5A but prior to the Milestone Completion Date for Milestone 5B, 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 Target Date for Milestone 5B or Milestone 6, then, as applicable, the Milestone Completion Target Date for Milestone 5B and/or Milestone 6 shall be extended by the number of Calendar Days equal to the applicable Milestone Delay Period;
 - D. if such Relief Event or Compensation Event occurred after the Milestone Completion Date for Milestone 5B but prior to the Substantial Completion Date, then the Substantial Completion Deadline Date shall be extended by the number of Calendar Days equal to the Schedule Delay Period;
 - E. if such Relief Event or Compensation Event occurred prior to the Baseline Substantial Completion Date, then the Baseline Substantial Completion Date shall

be extended by the number of Calendar Days equal to the Schedule Delay Period;
and

- F. 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 15.6 (Delay Financing Costs and Milestone Payment Delay Costs)

- 2.3.1. Section 15.6.2 of the Project Agreement is amended by deleting it in its entirety and replacing it with the following:

15.6.2 No later than 45 Calendar Days after the Milestone Completion Date for Milestone 5A, the Parties shall determine pursuant to Section Error! Reference source not found. (such determination being referred to in this Section Error! Reference source not found. as the “Reconciliation”), the extent to which Developer was left in a position that was No Better and No Worse as a direct result of the Milestone Delay Periods caused by any one or more Relevant Events taking into account (without double-counting):

- a. payments made by the Enterprises to Developer pursuant to Section 15.6.1;
- b. Milestone Payment Delay Costs and Delay Financing Costs incurred by Developer as a direct result of the occurrence of all such Relevant Events but which were not previously taken into account in any payments made by the Enterprises to Developer pursuant to Section 15.6.1;
- c. Developer’s actual avoided costs of Work not being performed as a direct result of the occurrence of all such Relevant Events; and
- d. the amount Developer is (or, pursuant to Section 35.5.a, should be) entitled to recover under any “delay in startup” coverage under the Available Insurance as a direct result of the occurrence of all such Relevant Events.

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

- 2.4.1. 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 5B 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.

2.5. Amendments to Schedule 3

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

(iv) in the case of Milestone 4A, Milestone 4B, Milestone 5A, Milestone 5B 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);

- 2.5.2. Section 1(c) of Part 5 of Schedule 3 of the Project Agreement is amended by deleting it in its entirety and replacing it with the following:

- (c) Developer shall have completed the Construction Work for the Project in accordance with this Agreement, including:
 - (i) the repair, replacement or correction and full remediation of all Defects; and
 - (ii) the remediation of all Nonconforming Work pursuant to Section 6.5 of Schedule 8 (*Project Administration*),

including such that the Project is in a condition that can be open to traffic in the final configuration (subject only to completion of (A) any incomplete Substantial Completion Punch List Items which are permitted to be completed after the Substantial Completion Date and (B) any Construction Work the completion of which constitutes a Final Acceptance Condition).

For the avoidance of doubt, that portion of 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) shall not be a Substantial Completion Condition, but shall be included in the Substantial Completion Punch List developed pursuant to Section 2(b) of Part 7 of this Schedule 3;

2.6. Amendments to Schedule 4

- 2.6.1. 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*).

All Performance Payments made from the Performance Payment Start Date through the Milestone Completion Date for Milestone 5B (collectively, the “Banked MPP”) shall be deposited by the Enterprises in a restricted account or subaccount held by the Collateral Agent under the Financing Documents (the “5A Blocked Account”). Except (a) to the extent permitted by Section 27.3 (including as a result of any foreclosure or other enforcement of any security interest that Developer is permitted to grant or create pursuant to Section 27.3 or the occurrence of any Insolvency Event or similar event with respect to the Developer) or (b) upon the exercise of a termination right under this Agreement, the Developer shall not draw on or otherwise access the Banked MPP held in the 5A Blocked Account prior to achieving the Milestone Completion Date for Milestone 5B.

Upon achieving Milestone Completion with respect to Milestone 5B (as evidenced by the issuance of a Milestone Completion Certificate for Milestone 5B), Developer shall be entitled to unrestricted access to the Banked MPP held in the 5A Blocked Account.

Following Milestone Completion with respect to Milestone 5B, the Enterprises shall deposit the Performance Payments to such account as may be designated by the Developer in the relevant Payment Request or by the Collateral Agent pursuant to the Lenders Direct Agreement.

2.7. Amendments to Schedule 5

- 2.7.1. 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	\$50,000,000
Completion of Milestone 2A	\$61,800,000
Completion of Milestone 2B	\$33,200,000
Completion of Milestone 3	\$52,000,000
Completion of Milestone 4A	\$26,000,000
Completion of Milestone 4B	\$26,000,000
Completion of Milestone 5A	\$26,700,000
Completion of Milestone 5B	\$26,700,000
Completion of Milestone 6	\$3,000,000
Substantial Completion	\$13,600,000
TOTAL	\$319,000,000

2.8. **Amendments to Schedule 6**

2.8.1. Table 6A.1 of Schedule 6 of the Project Agreement is amended by deleting rows with reference #1.68 and reference #1.69 and 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 5B	Achieve Milestone Completion with respect to Milestone 5B by the Milestone Completion Target Date for Milestone 5B	1	N/A	4
1.69	Project Delivery	Milestone Completion with respect to Milestone 6	Achieve Milestone Completion with respect to Milestone 6 by the Milestone Completion Target Date for Milestone 6	1	N/A	1
1.70	Project Delivery	Substantial Completion	Achieve Substantial Completion by the Baseline Substantial Completion Date	1	N/A	2

2.9. Amendments to Schedule 10

2.9.1. Section 2.11.14.d of Schedule 10 of the Project Agreement is amended by deleting it in its entirety and replacing it with the following:

d. Any Closure set during the Operating Period without active Substantial Completion Punchlist activities or Routine Maintenance or Renewal Work being performed within the Closure on any half-mile of roadway within the Closure for a duration of more than 30 minutes shall be deemed to be a Non-Permitted Operating Period Closure and shall result in the accrual of Construction Closure Deductions in accordance with, and subject to the terms of, Schedule 6 Performance Mechanism. The proviso to Section 2.11.14.c shall apply equally to Closures deemed to be Non-Permitted Operating Period Closures pursuant to this Section 2.11.14.d. In its individual MHT submittals the Developer may submit, for Acceptance by the Department, Closures that would otherwise be so deemed to be Non-Permitted Operating Period Closure in order to develop a safe Closure or to allow for the Developer's reasonable productivity during the allowable Closure period.

2.10. Amendments to Schedule 11

2.10.1. 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) upon traffic being safely transferred to the Lowered Section.)

3. EARLY TERMINATION

The Parties acknowledge that this Amendment is being entered into in furtherance of the transactions contemplated by the Memorandum of Settlement. In the event the Memorandum of Settlement is terminated prior to financial close of the restructuring of the Developer's Project Debt as contemplated therein, this Amendment shall also terminate, and the amendments to the Project Agreement contained herein shall be of no further force and effect. In the event of such early termination, the Project Agreement, as previously amended by the First Amendment to the Project Agreement, dated December 21, 2017, the Second Amendment to the Project Agreement, dated

as of May 9, 2019, and the Third Amendment to the Project Agreement, dated as of December 11, 2019, shall remain in full force and effect.

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 Settlement Date (as defined in the Memorandum of Settlement), 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 1.2 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, 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 its designee below.

KIEWIT MERIDIAM PARTNERS LLC

By: _____
Paulo Andre
Project Manager

COLORADO HIGH PERFORMANCE TRANSPORTATION ENTERPRISE

By: _____
Nicholas Farber
Director

COLORADO BRIDGE ENTERPRISE

By: _____
Stephen Harelson, P.E.
Chief Engineer

APPROVED:
Philip J. Weiser, Attorney General

By: _____
Andrew J. Gomez
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: _____, 2021</p>
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