

This Fourth Amendment to the Design and Construction Contract (this “Amendment”) is made and entered into as of [●], 2021, among:

- (1) Kiewit Meridiam Partners LLC, a limited liability company formed under the laws of the State of Delaware (the “Developer”); and
- (2) Kiewit Infrastructure Co., a corporation incorporated under the laws of the State of Delaware (the “Construction Contractor”).

The Developer and the Construction Contractor are hereinafter referred to collectively as the “Parties”, and “Party” means either the Developer or the Construction Contractor.

RECITALS

Whereas:

- (A) The Developer and the 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, 2017, the Second Amendment to the Design and Construction Contract, dated as of May 9, 2019, and the Third Amendment to the Design and Construction Contract, dated as of December 11, 2019, 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.
- (B) In accordance with that certain Memorandum of Settlement, dated [●], 2021, by and among the Enterprises, the Developer and the Construction Contractor (the “Memorandum of Settlement”), the Parties have agreed to make the amendments to the Construction Contract 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 Construction Contract.
- 1.2. Part 2, Sections 2 and 42.2 of the Construction Contract are incorporated by reference as if set forth herein.

2. AMENDMENTS

In accordance with Part 2, Section 43.1 of the Construction Contract, with effect on and from the Settlement Date (as defined in the Memorandum of Settlement), the Construction Contract 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 Construction Contract:

- (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 February 16, 2023.

- (ii) 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. Construction Work or O&M Work During Construction 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 the Construction Contractor’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 the Construction Contractor, provided that, if any such Closure continues to subsist for a period in excess of 30 minutes after such control has been returned to the Construction Contractor, any such excess period shall not be an Excused Closure;
- 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 the Construction Contractor 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 Construction Contractor-Related Entity; and
- i. the Construction Contractor 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.

(iii) 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 135 Calendar Days after the Substantial Completion Date, as such deadline may be extended from time to time pursuant to:

- a. Part 2, 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.

(iv) The definition of "Milestone 2" is deleted in its entirety.

(v) 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.

(vi) 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.

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- (vii) 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.

- (viii) The definition of "Milestone 4" is deleted in its entirety.

- (ix) 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.

- (x) 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.

- (xi) The definition of "Milestone 5" is deleted in its entirety.

- (xii) 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.

- (xiii) 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.

- (xiv) 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.

- (xv) 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. Part 2, 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.
- (xvi) 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 CC Noncompliance Points accrued during:
 - i. any rolling 12 month period equals or exceeds 215; or
 - ii. any rolling 36 month period equals or exceeds 430;
- provided that, for certainty, any CC Noncompliance Point that is being disputed in good faith by the Construction Contractor 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 CC Noncompliance Point was validly assigned; and provided further that any CC 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) above.
- (xvii) The definition of “PA Longstop Date” is amended by deleting it in its entirety and replacing it with the following:
- “PA 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 PA Longstop Date may be extended from time to time pursuant to:
- a. Section 15.3.1.c.iii of the Project Agreement, as a result of the occurrence of a Supervening Event; or
 - b. a Change documented in a Change Order.
- (xviii) 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.
- (xix) 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 330 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. Part 2, 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 Part 1, Section 8.2¹

2.2.1. Part 1, Section 8.2 of the Construction Contract is amended by deleting it in its entirety and replacing it with the following:

8.2 Subject to Part 1, Article 8.6:

8.2.1 If the Construction Contractor fails to achieve a Payment Milestone or Substantial Completion by the applicable target date set forth in Table 8.2.1 below, then the Construction Contractor shall pay to the Developer Delay Liquidated Damages at the daily rate set forth in Table 8.2.1 below, for such Payment Milestone or Substantial Completion, as applicable, for each day or part of a day which shall elapse between the applicable target date and the date on which the Milestone Completion Date for such Payment Milestone or the Substantial Completion Date, as applicable, is actually achieved.

Table 8.2.1 – Delay Liquidated Damages (Daily Rates)

Event	Target Date	Delay Liquidated Damages (per day)
Milestone 1	December 9, 2019	\$7,000
Milestone 2A	November 10, 2020	\$7,000
Milestone 2B	September 29, 2021	\$0
Milestone 3	October 17, 2020	\$0
Milestone 4A	September 26, 2021	\$0
Milestone 4B	December 20, 2021	\$0
Milestone 5A	March 25, 2022	\$[•] ²
Milestone 5B	October 28, 2022	\$0
Milestone 6	November 23, 2022	\$0
Substantial Completion	February 16, 2023	\$0

8.2.2 In addition to the Delay Liquidated Damages described in Part 1, Article 8.2.1, if the Construction Contractor fails to achieve a Payment Milestone by the applicable target date set forth in Table 8.2.2 below, then the Construction Contractor shall

¹ Subject to review by the Enterprises.

² To be sized similarly to the Delay Liquidated Damages in the Construction Contract prior to this Amendment (i.e. \$97,000/day) in order to replace the Performance Payments if Milestone Completion with respect to Milestone 5A is not achieved by the Milestone Completion Target Date with respect to Milestone 5A.

pay to the Developer the lump sum of Delay Liquidated Damages set forth in Table 8.2.2 below for such Payment Milestone as follows:

8.2.2.1 with respect to Milestone 1, Milestone 2A, Milestone 5B and Milestone 6, on each June 20 and December 21 of each year following such target date until such Payment Milestone is actually achieved; and

8.2.2.2 with respect to Substantial Completion, on each December 15 and June 15 of each year following such target date until Substantial Completion is actually achieved.

Table 8.2.2 – Delay Liquidated Damages (Lump Sums)

Event	Target Date	Delay Liquidated Damages (lump sum)
Milestone 1	December 9, 2019	\$2,293,200
Milestone 2A	November 10, 2020	\$2,293,200
Milestone 2B	September 29, 2021	[\$0]
Milestone 3	October 17, 2020	[\$0]
Milestone 4A	September 26, 2021	[\$0]
Milestone 4B	December 20, 2021	[\$0]
Milestone 5A	March 25, 2022	\$0
Milestone 5B	October 28, 2022	\$[•]
Milestone 6	November 23, 2022	\$[•]
Substantial Completion	February 16, 2023	\$[•]

The damages referred to in this Part 1, Article 8.2 are referred to in this Agreement as “**Delay Liquidated Damages**”.

2.3. Amendments to Part 1, Section 8.6

2.3.1. Part 1, Section 8.6 of the Construction Contract is amended by deleting it in its entirety and replacing it with the following:

8.6 If the Construction Contractor becomes aware of any Developer Act which is likely to cause a delay, it shall notify the Developer as soon as reasonably practicable after it becomes aware of the same and the Parties will, within five days of such notification, meet and seek to agree in good faith to the period of time by which the relevant event is reasonably likely to delay the achievement of Milestone 5A, Milestone 5B, Milestone 6 or Substantial Completion, as the case may be (the “**Interim Agreement**”). As soon as reasonably practicable after the impact of the Developer Act can be determined with reasonable certainty the Parties will again meet and seek to agree in good faith the actual period of time by which the relevant event delayed the achievement of Milestone 5A, Milestone 5B, Milestone 6 or Substantial Completion, as the case may be (the “**Final Agreement**”). Any dispute as to the anticipated or actual length of delay will be referred to the Dispute Resolution Procedure.

The deadline for the achievement of Milestone 5A, Milestone 5B, Milestone 6 or Substantial Completion, as the case may be, shall be extended on an interim basis by the delay caused

by the relevant Developer Act in accordance with the Interim Agreement, or as determined pursuant to the Dispute Resolution Procedure. Where the actual impact of the Developer Act varies from the extension agreed in the Interim Agreement, or determined pursuant to the Dispute Resolution Procedure, then as soon as reasonably practicable after the impact of the Developer Act can be determined with reasonable certainty, the deadline for the achievement of Milestone 5A, Milestone 5B, Milestone 6 or Substantial Completion, as the case may be, shall be finally adjusted by a period of time equal to the delay caused by the relevant Developer Act in accordance with the Final Agreement, or as determined pursuant to the Dispute Resolution Procedure. To the extent that there is any dispute as to the length of the delay attributable to any Developer Act, the Construction Contractor will be entitled to relief for the undisputed portion of such delay, with the balance to be determined in accordance with the Dispute Resolution Procedure.

2.4. **Amendments to Part 1, Section 8.8**

2.4.1. Part 1, Section 8.8 of the Construction Contract is amended by deleting it in its entirety and replacing it with the following:

8.8 Where:

8.8.1 any Supervening Event, or any other event for which the Construction Contractor is responsible under this Agreement, has delayed the achievement of a Payment Milestone or Substantial Completion (a “**Delay Event**”); and

8.8.2 the Developer has received or has set-off Delay Liquidated Damages (as calculated and specified in Part 1, Article 8.2) from the Construction Contractor in respect of such Delay Event; and

8.8.3 the Developer receives:

8.8.3.1 any insurance proceeds under delay in startup insurance or any compensation in respect of Delay Financing Costs or Milestone Payment Delay Costs under the Project Agreement, in respect of such Delay Event (“**Delay Proceeds**”); or

8.8.3.2 the Milestone Payment or the Substantial Completion Payment for the Milestone or Substantial Completion, as applicable, for which Delay Liquidated Damages were assessed or set-off,

then:

8.8.4 with respect to Delay Proceeds, the Developer shall, after deducting from such Delay Proceeds any reasonable out-of-pocket costs incurred or likely to be incurred by the Developer to obtain such Delay Proceeds pursuant to Part 1, Article 8.10, pay any balance of such Delay Proceeds to the Construction Contractor up to the amount of the Delay Liquidated Damages received or set-off by the Developer in respect of such Delay Event;

8.8.5 with respect to Milestone Payments for Milestone 1 or Milestone 2A, the Developer shall after deducting from such Milestone Payment, (a) any additional costs incurred or likely to be incurred by the Developer in connection with the applicable Delay Event, and (b) the amount of the portion of such Milestone Payment as is intended pay a portion of the CC Monthly Payment in accordance with Part 1, Article 12.5 and Part 1, Article 12.7, pay any balance of such Milestone Payment

to the Construction Contractor up to the amount of the Delay Liquidated Damages received or set-off by the Developer in respect of such Delay Event;

8.8.6 with respect to Milestone Payments for Milestone 5B or Milestone 6, the Developer shall, after deducting from such Milestone Payment (a) any additional costs incurred or likely to be incurred by the Developer in connection with the late Milestone Completion Date and (b) the amount of the portion of such Milestone Payment intended to pay a portion of the CC Monthly Payment in accordance with Part 1, Article 12.5 and Part 1, Article 12.7, pay any balance of such Milestone Payment to the Construction Contractor up to the amount of the Delay Liquidated Damages received or set-off by the Developer; and

8.8.7 with respect to the Substantial Completion Payment, except if there is a delay of the first equity distribution by the Developer, the Developer shall pay any balance of such Substantial Completion Payment to the Construction Contractor up to the amount of the Delay Liquidated Damages received or set-off by the Developer. Such determination of any payment to the Construction Contractor with regards to the Substantial Completion Payment will occur on the first date which Developer is able to make a distribution to its equity members.³

2.5. Amendments to Part 1, Section 8.13

2.5.1. Part 1, Section 8.13 of the Construction Contract is amended by deleting it in its entirety and replacing it with the following:

8.13 If at the Construction Contractor's request (which the Developer may grant or deny at its sole discretion), the Developer grants an extension of the CC Longstop Date (to which extension the Construction Contractor is not otherwise entitled under this Agreement), the Construction Contractor shall (i) continue to be responsible for Delay Liquidated Damages for the failure to achieve Milestone Completion for Milestone 5A by the Milestone Completion Target Date for Milestone 5A until Milestone Completion for Milestone 5A is achieved (at the same daily rate for up to the number of additional days by which the CC Longstop Date is so extended), (ii) increase the aggregate amount of the Letter(s) of Credit to fully cover such Delay Liquidated Damages that would be payable until the CC Longstop Date (as extended) and (iii) increase the Delay Liquidated Damages Subcap to fully cover such Delay Liquidated Damages that would be payable until the CC Longstop Date (as extended); provided, however, that (1) in no event shall such increase in the aggregate amount of such Letter(s) of Credit exceed the amount of Delay Liquidated Damages that would be payable for the number of additional days by which the CC Longstop Date is so extended, and (2) such increase in the aggregate amount of such Letter(s) of Credit will only be necessary if and to the extent the aggregate amount of the Letter(s) of Credit then in effect is not already sufficient to fully cover the Delay Liquidated Damages that would be payable from the time of such increase until the CC Longstop Date (as so extended).

2.6. Amendments to Part 1, Section 12.1

2.6.1. Part 1, Section 12.1 of the Construction Contract is amended by deleting it in its entirety and replacing it with the following:

12.1 The contract price is \$[●] inclusive of all applicable Taxes and shall not be subject to indexation, but shall be subject to adjustment as set forth in this Agreement (the "**Contract Price**").

³ Subject to ongoing review by the Enterprises in connection with the financing solution.

2.7. Amendments to Part 1, Section 12.4

2.7.1. Part 1, Section 12.4.4 of the Construction Contract is amended by deleting it in its entirety and replacing it with the following:

12.4.4 the estimated date of the achievement of Milestone Completion for Milestone 5A and Substantial Completion.

2.8. Amendments to Part 2, Section 15.3 (Resolution)

2.8.1. Part 2, Section 15.3.1.c.iii. of the Construction Contract 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 CC 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.

2.9. Amendments to Part 2, Section 32.1 (Construction Contractor Defaults and Cure Periods)

2.9.1. Construction Contractor Default number (5) in Part 2, Section 32.1.1 of the Construction Contract is amended in the column titled "Construction Contractor 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 CC Longstop Date or (b) the Substantial Completion Date does not occur on or prior to the Substantial Completion Deadline Date.

2.10. Amendments to Schedule 3

2.10.1. Section 1(c)(iv) of Part 4 of Schedule 3 of the Construction Contract 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);

2.10.2. Section 1(c) of Part 5 of Schedule 3 of the Construction Contract is amended by deleting it in its entirety and replacing it with the following:

- (c) the Construction Contractor 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;

2.11. Amendments to Schedule 6

2.11.1. Table 6A.1 of Schedule 6 of the Construction Contract is amended by deleting rows with reference #1.68 and reference #1.69 and by adding the following CC 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	1	N/A	4

			Completion Target Date for Milestone 5B			
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

2.12. Amendments to Schedule of Values

2.12.1. Attachment D (*Schedule of Values*) to the Construction Contract is hereby deleted and replaced in its entirety by Exhibit A (*Schedule of Values*) hereto.

2.13. Amendments to Proposed Payment Schedule

2.13.1. Attachment E (*Proposed Payment Schedule*) to the Construction Contract is hereby deleted and replaced in its entirety by Exhibit B (*Proposed Payment Schedule*) hereto.

3. AMENDMENTS TO THE PROJECT AGREEMENT

The Construction Contractor hereby acknowledges that it has received a copy of the Fourth Amendment to the Project Agreement, dated as of the date hereof, between the Enterprises and the Developer.

4. 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 Construction Contract contained herein shall be of no further force and effect. In the event of such early termination, the Construction Contract, as previously amended by the First Amendment to the Design and Construction Contract, dated December 21, 2017, the Second Amendment to the Design and Construction Contract, dated as of May 9, 2019, and the Third Amendment to the Design and Construction Contract, dated as of December 11, 2019, shall remain in full force and effect.

5. DOCUMENTS OTHERWISE UNCHANGED

Except as herein provided, the Construction Contract 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 Construction Contract, and references in the Construction Contract to such agreement itself, shall reference the Construction Contract as amended hereby and as the same may be further amended, modified or supplemented from time to time.

6. CHOICE OF LAW

6.1. 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.

6.1.1. Part 2, Sections 37 and 38 of the Construction Contract are incorporated by reference as if set forth herein.

7. BINDING EFFECT; SUCCESSORS AND ASSIGNS

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

8. SEVERABILITY

8.1. Notwithstanding Part 2, Section 2.4.1 of the Construction Contract (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.

8.2. 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.

9. COSTS AND EXPENSES OF THE PARTIES

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

10. 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 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 first set forth above.

KIEWIT MERIDIAM PARTNERS LLC

By: _____
Paulo Andre
Project Manager

KIEWIT INFRASTRUCTURE CO.

By: _____
Jason Proskovec
Project Director

Exhibit A
Schedule of Values

[To follow.]

Exhibit B
Proposed Payment Schedule
[To follow.]