



## CENTRAL 70 PROJECT PROJECT AGREEMENT SUMMARY

### Background

At the direction of the Colorado Transportation Commission, and acting in collaboration with the Colorado Department of Transportation (“CDOT”), the Colorado Bridge Enterprise (“BE”) and the Colorado High Performance Transportation Enterprise (“HPTE”) (each individually an “Enterprise” and, together, the “Enterprises” or “Procuring Authorities”) have procured the design, construction, financing, operation and maintenance of a 9.4-mile portion of the I-70 East corridor in greater Denver (the “Project”) as a public-private partnership (“P3”) with a private sector partner (the “Developer”). Following a 14-year environmental review process, the Federal Highway Administration granted its approval of the Project through issuance of its Record of Decision on January 19, 2017.

On June 1, 2017, and August 1, 2017, the Enterprises received, respectively, technical and financial proposals in response to the Final Request for Proposals for the Project from the four shortlisted Proposer teams. On August 24, 2017, the Enterprises, based on a robust evaluation of the Proposers’ technical and financial proposals, issued a notice identifying Kiewit Meridiam Partners (“KMP”) as the successful Preferred Proposer/Developer.

The Project Agreement (“PA”) is the contract that the Developer will sign with the Procuring Authorities that establishes the Developer’s scope of work in delivering the Project, and sets forth the Developer’s and Enterprises’ respective rights and obligations, including risk allocation, over the term of the PA. Constantly updated drafts of the PA (in the form of the Request for Proposals) have been online and publicly available since September 2015. Approval of the PA as part of Commercial Close for Project is scheduled for November 15, 2017.

Executive Order 2014-010, signed by Governor Hickenlooper on June 4, 2014, and the HPTE First Amended Transparency Policy Relating to P3s, dated August 15, 2015, each require that “a summary of the essential terms of the P3 agreement, which are easily understandable by the public” be provided on the HPTE website “after entering into a P3 agreement.” This Central 70 Project Agreement Summary is intended to fulfill that requirement. This document may be read alone, or may be read in connection with the Memorandum to the HPTE and Bridge Enterprise Boards of Directors, dated November 15, 2017, which contains a more detailed summary of the Project Agreement.

### Developer Team

The Developer is a special purpose vehicle established specifically for the delivery of the Project, formed by KMP’s equity partners, Meridiam I-70 East CO, LLC (as holder of a 60% interest in the Developer) and Kiewit C70 Investors, LLC (as holder of a 40% interest in the Developer). The Developer will be part of a broader team engaged in delivering the Project, which will include Kiewit Infrastructure Co., KMP’s lead contractor, who will perform the design and construction work for the Project and Roy Jorgensen Associates Inc., KMP’s lead operator, who will perform the operations and maintenance (O&M) work for the Project.

### Project Agreement Summary

This summary of the PA is organized into sections, as follows: 1) PA term 2) financing and financial close 3) construction period overview, 4) operating period overview, 5) payments to the Developer, 6) safety compliance, suspension of work and Enterprises’ rights to intervene, 7) supervening events, 8) Enterprise termination rights, 9) subcontracting terms and requirements, and 10) other state and federal requirements.

#### 1) Project Agreement Term

The Project will commence when the PA is signed and continue until thirty (30) years after the completion of construction of the Project, unless the PA is terminated earlier.



## 2) Financing and Financial Close

The construction of the Project will be financed, in part, through a combination of milestone payments from the Enterprises (\$319 million), Developer debt, and equity (\$65 million) from KMP's equity partners. The Developer's debt that it will borrow to contribute to the Project construction costs will be comprised of private activity bonds (\$141 million) and a TIFIA loan (\$404 million) from the Build America Bureau, part of the U.S. Department of Transportation.

The Developer is obligated to achieve Financial Close of the Project by the Financial Close Deadline of January 28, 2018, subject to relief for a limited number of events outside of the Developer's control. At Commercial Close, KMP will post Financial Close Security in the amount of \$20 million to secure its obligation to achieve Financial Close on the Project.

## 3) Construction Period

During the construction period, the Developer will be responsible for the design and construction of the Project, including working with railroad and utility owners. The PA sets forth requirements on maintaining access, managing traffic, and conducting outreach to local community members and the traveling public during the construction period. The Developer will also be responsible for conducting certain O&M work, including on-going maintenance of all structures within the project limit and snow and ice removal, during the construction period. The Developer's lead contractor will provide a fixed-price, date-certain construction contract. Any cost overruns or schedule delays will be the responsibility of the Developer, except where relief is provided in certain circumstances in the PA, as further discussed below. The longest period, which is the maximum period of time by which the Developer can be delayed in achieving construction completion without being in default under the PA, is 585 days (approximately 19.5 months).

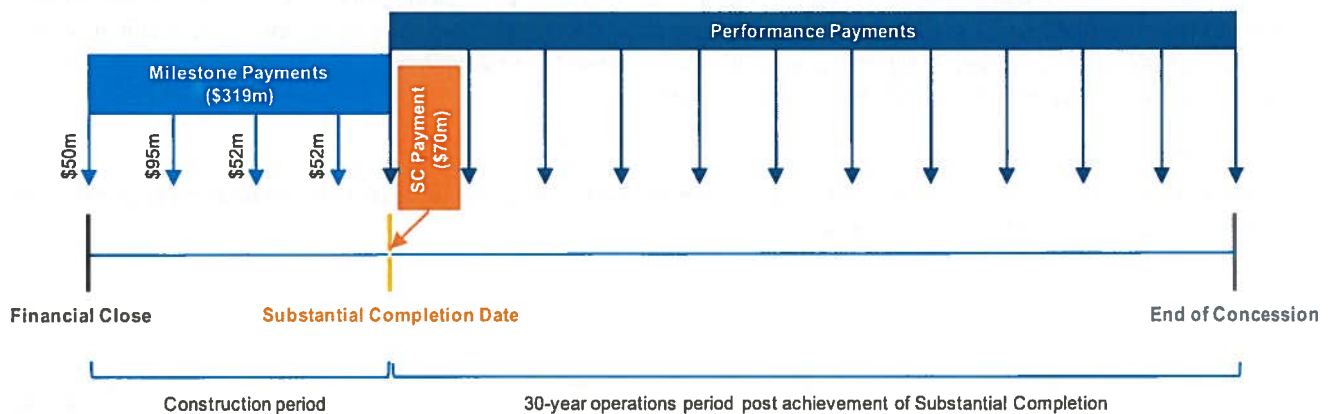
## 4) Operating Period

During the 30-year operating period the Developer will be obligated to perform all operations, maintenance, renewal and replacement work in accordance with the terms and performance criteria set out in the PA. Toll collection will be performed by HPTE, through an existing contract with the E-470 Public Highway Authority, and toll revenues will be remitted back to HPTE, not to the Developer.

The PA also sets out certain "handback" requirements specifying the condition of various Project elements at the conclusion of the term when they are handed back to CDOT for ongoing O&M. These requirements ensure that upon handback to CDOT, Project elements (e.g. pavement and guardrails) are in a high level (not requiring major maintenance) condition. To guarantee the handback requirements are met, the Developer is required to fund a reserve three years prior to the end of the term in an amount equal to the handback work required to turn the Project over in the condition specified in the PA.

## 5) Payments to the Developer

In consideration for its work, the Developer will receive a combination of milestone payments during the construction period and monthly performance payments during the operating period. The Developer is prohibited from collecting tolls on the Project. An illustrative example of when milestone payments and performance payments will be paid is provided in the figure below.



### *Milestone Payments*

There are five milestone events, each defined by a specific scope of work, for which the Developer is entitled to compensation upon completion, including a substantial completion milestone payable at the completion of construction. The milestone events for the Project are as set forth below. Note that the amounts to be paid for each milestone represent less than the estimated cost of the work to complete each milestone.

Event	Milestone Payment
Milestone 1 - Sand Creek Bridge to Chambers Road	\$50,000,000
Milestone 2 - Dahlia Street to Sand Creek Bridge	\$95,000,000
Milestone 3 - WB I-70 Brighton Boulevard to Dahlia Street	\$52,000,000
Milestone 4 - EB I-70 Brighton Boulevard to Dahlia Street	\$52,000,000
Milestone 5 - Substantial Completion	\$70,000,000
<b>TOTAL</b>	<b>\$319,000,000</b>

### *Performance Payments*

Performance payments are monthly availability payments made from the Enterprises to the Developer, if the Project is being operated according to the performance requirements. The base performance payment, or the annual payment performance amount bid by the Developer, is \$35.5 million, and will increase by set rates as described below over the 30 year term. Performance payments will have two main components: 1) an operations, maintenance, and renewal payment (the "OMRP"), which will amount to 20% of the total performance payment, and 2) a capital payment that compensates the Developer for the debt and equity it raised during construction to fund the Project (the "CPP"), which will amount to 80% of the total performance payment. The OMRP will escalate each year at the Consumer Price Index and the CPP will escalate at a fixed 2% rate per year.

### *Performance-based Payment Deductions*

The Substantial Completion Milestone Payment and all performance payments will be subject to monetary deductions for the Developer's failure to meet: 1) quality or service requirements ("Noncompliance Events"), and 2) unexcused lane closures ("Closures"). In addition to monetary penalties, the Enterprises have a default right against the Developer for frequent occurrence of these events above threshold levels established in the PA. The Enterprises also have a default right for "Persistent Breach" of the PA by the Developer for obligations that fall outside of Noncompliance Events and Closures.

#### **6) Safety Compliance, Suspension of Work and Enterprises' Rights to Intervene**

The Enterprises have the right to issue safety compliance orders, suspend the Project because of unsafe conditions, and/or step-in to the Project to remedy emergencies.

#### **7) Supervening Events**

While the PA allocates cost, performance, and schedule risk to the Developer during both the construction and operating periods, there are certain risks that are not completely transferred to the Developer - either because they are out of the control of the Developer, uninsurable, or prohibitively expensive for the Developer to price. These risks are referred to as "Supervening Events" in the PA. Generally speaking, the basic risk allocation principles of the PA are as follows:

- Risks that are within the control of the Enterprises, or where it is a better value proposition for the Enterprises' to take the risk, are retained by the Enterprises and the Developer is entitled to compensation - e.g. schedule relief, performance relief, financing costs, and additional costs incurred by the

Developer as a result of these events. Examples include delays in Developer's access to necessary right of way, unexpected geological conditions, and unexcused utility owner delays.

- Risks for which neither party has control but where a better value proposition arises from the Enterprises retaining some portion of the risk (and which are otherwise uninsurable), and the Developer is entitled to schedule relief, performance relief, and financing costs incurred by the Developer as a result of these events. Examples include unexcused railroad delays and unexpected governmental approval delays.
- Risks for which neither party has control, for example force majeure events, but that are insurable, for which the Developer is entitled to schedule and performance relief only. Examples include force majeure events, fire or explosions, and earthquakes.

#### **8) Enterprise Termination Rights**

The PA includes rights for the Enterprises to terminate the PA under the following circumstances:

- **Termination for Convenience:** Enterprises termination of the PA at its sole discretion, subject to payment to the Developer of the fair market value of the Developer's equity and debt obligations; and
- **Termination for Developer Default:** Enterprises exercise of their right to terminate the PA due to a default by the Developer in the performance of its obligations under the PA.

#### **9) Subcontracting Terms and Requirements**

The PA includes provisions that require the Developer to pass down certain mandatory subcontract terms to its subcontractors. The Procuring Authorities have included a number of mandatory terms in order to protect the rights and interests of smaller contractors, while attempting to provide an appropriate balance of flexibility in contract terms for larger contractors in order to maximize the benefits of the public-private partnership.

#### **10) Other State and Federal Requirements**

In order to ensure opportunities for small and disadvantaged businesses and the local workforce, the PA includes goals for disadvantaged business enterprises (DBE), emerging small businesses (ESB), on-the-job training (OJT), and local hiring. Relevant state and federal environmental regulations are stipulated in the PA along with additional requirements specific to equipment idling, the use of older construction equipment, handling of soils, and construction staging in community areas.